BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

BRIEF OF
PETITIONER PEORIA DISPOSAL COMPANY

George Mueller
GEORGE MUELLER, P.C.
Attorney at Law
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500 - Telephone
(815) 431-1501 - Facsimile

Brian J. Meginnes
ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.
Attorneys at Law
416 Main Street, Suite #1400
Peoria, IL 61602-1153
(309) 637-6000 - Telephone
(309) 637-8514 - Facsimile

TABLE OF CONTENTS

		Page Nos.
TABLE OF CONTENTS		**i-v**
INTRODUCTION		**1-2**
ISSUES PRESENTED FOR REVIEW		**2**
STATEMENT OF FACTS		**2-57**
I.	BACKGROUND.	**2-4**
II.	FACTS SUPPORTING ARGUMENT THAT THE APPLICATION IS DEEMED APPROVED PURSUANT TO 415 ILCS §5/39.2(e).	**5-6**
III.	FACTS SUPPORTING ARGUMENT THAT THE PROCEDURES USED BY THE COUNTY BOARD IN THIS CASE WERE NOT FUNDAMENTALLY FAIR.	**6-25**
A.	The County Board members did not understand their functions to be quasi-judicial, did not understand the meaning or import of *ex parte* contacts, and did not disclose such contacts.	**6-10**
B.	The County Board members who voted against approval of the Application received more than 1,000 *ex parte* contacts from opponents of the Application during the pendency of the Application.	**11-19**
1.	PDC's First Set of Requests to Admit: 309 Emails, Letters and other Documents Not Placed in the Record.	**11-12**
2.	County Board member admissions.	**12-13**
3.	The campaign by the opponent groups.	**13-19**
C.	The votes of eight (8) of the County Board members who voted against approval of the Application must be stricken.	**20-25**
1 & 2.	G. Allen Mayer and James Thomas	**20-21**
3.	Eldon Polhemus	**21-22**
4.	Tom O'Neill	**22-23**

5. Brian Elsasser **23**

6. Michael Phelan **24**

7. Philip Salzer **24**

8. Lynn Scott Pearson **24-25**

IV. FACTS SUPPORTING ARGUMENT THAT THE PURPORTED DECISION OF THE COUNTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND WAS OTHERWISE IMPROPER UNDER THE LAW. **25-57**

A. Criterion i: the facility is necessary to accommodate the waste needs of the area that it is intended to serve. **25-28**

1. Hazardous waste service area. **26**

2. Manufactured gas plant remediation waste service area. **26-27**

3. Non-hazardous process waste service area. **27-28**

B. Criterion ii: the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. **28-53**

1. Facility overview. **28-31**

2. Geologic and hydrogeologic setting. **31-33**

3. Facility design. **33-34**

4. Performance evaluation and groundwater impact assessment. **35-37**

5. Peer review by Dr. Daniel. **37-40**

6. Groundwater monitoring and monitoring history. **40-43**

7. Operating plan. **43-47**

8. The opposition witnesses. **47-53**

C. Criterion iii: the facility is so located as to minimize incompatibility with the character of the surrounding area, and to minimize the effect on the value of surrounding property. **53-56**

D. Criterion 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. **56-57**

STANDARD OF REVIEW AND APPLICABLE LAW **57-59**

ARGUMENT **59-113**

I. THE APPLICATION IS DEEMED APPROVED PURSUANT TO 415 ILCS §5/39.2(e). **59**

II. THE PROCEDURES USED BY THE COUNTY BOARD IN THIS CASE WERE NOT FUNDAMENTALLY FAIR. **59-86**

A. The entire County Board was irrevocably tainted by the volume of *ex parte* contacts in this case. **60-71**

1. The County Board members did not understand their roles and obligations as quasi-judicial decision-makers. **63-66**

2. The sheer volume of *ex parte* contacts in this case creates a presumption of prejudice. **67-71**

B. Eight (8) County Board members actually considered evidence outside the Record rather than evidence in the Record, or were biased. **71-83**

1 & 2. G. Allen Mayer & James Thomas **72-73**

3. Eldon Polhemus **73-75**

4. Tom O'Neill **75-77**

5. Brian Elsasser **77-78**

6. Michael Phelan **78-80**

7. Philip Salzer **80-82**

8. Lynn Scott Pearson **82-83**

C. The proper remedy for the gross unfairness of the proceedings on the Application is approval of the Application or, if the Application is remanded, payment of PDC's costs incurred in the previous proceedings on the Application. **83-86**

III. THE PURPORTED DECISION OF THE COUNTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND WAS OTHERWISE IMPROPER UNDER THE LAW. **86-113**

A. The causes for the County Board's failure to weigh the evidence properly. **88-92**

1. The County imposed an impossible burden of proof. **89-90**

2. The County elevated speculation to the level of fact. **91-92**

B. Criterion i: The facility is necessary to accommodate the waste needs of the area that it is intended to serve. **92-95**

C. Criterion ii: The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. **96-110**

1. The theories of Charles Norris are not credible or supported by facts. **97-99**

2. No other competent evidence was presented by the opponents. **99-102**

3. PDC's Perpetual Care Fund proposal guarantees long-term safety. **102-104**

4. The County's findings of fact. **104-110**

D. Criterion iii: The proposed facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. **111-112**

E. Criterion v: The imposition of a $5.00 per ton surcharge as a condition of approval of siting Criterion v is against the manifest weight of the evidence. **113**

AFFIDAVIT OF SERVICE **114**

AFFIDAVIT OF FILING **115**

Tab

APPENDIX

Excerpts: Brief of the Illinois Pollution Control Board prepared by the Attorney General in Case Nos. 101619 and 101652, Town & Country Utilities, Inc., and Kankakee Regional Landfill, LLC, Petitioners/Cross-Respondents-Appellees, v. Illinois Pollution Control Board, Respondent/Cross-Respondent-Appellant, and County of Kankakee and Edward D. Smith, State's Attorney of Kankakee County, Respondents/Cross-Petitioners-Appellants, pending before the Illinois Supreme Court — **A**

EXHIBITS

Exhibit 1: County invoice no. CoAdm06282006, dated June 28, 2006, with supporting documents — **1**

Exhibit 2: County invoice no. CoAdm08012006, dated August 1, 2006, with supporting documents — **2**

Exhibit 3: Accounting of PDC's expert costs from the hearings — **3**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

BRIEF OF
PETITIONER PEORIA DISPOSAL COMPANY

NOW COMES Petitioner, Peoria Disposal Company, (hereinafter "PDC" or "Petitioner") by its attorneys, Brian J. Meginnes and George Mueller, and as and for its Brief, states as follows:

INTRODUCTION

The County failed to render a final decision in this matter within the statutory timeframe. Even if the County's vote had been an effective denial of the Application, the County failed to memorialize its decision in writing within (or even after) the statutory deadline passed. Therefore, the Application was deemed approved as filed, without any conditions, pursuant to 415 ILCS §5/39.2(e). In any case, regardless of the failure of the County to render a decision on the Application, the proceedings on the Application were so dramatically violative of PDC's due process guarantees as to nullify any purported decision. Finally, the supposed bases for the County Board's alleged denial of the Application flew in the face of the evidence, and reveal a significant failure of the County Board to apply the legal standards and evidentiary practices crucial to a proper determination of siting criteria i, ii, iii and v, set forth in 415 ILCS §5/39.2(a).

For any and all of these reasons, the Application should be approved by the Pollution Control Board, as set forth herein.

ISSUES PRESENTED FOR REVIEW

1. Whether the County rendered a final decision in this matter and, if so, whether the final decision was in writing and was timely pursuant to 415 ILCS §5/39.2(e).

2. Whether the proceedings pertaining to the Application were fundamentally fair.

3. Whether the County's purported decisions as to siting criteria i, ii, iii and v, set forth in 415 ILCS §5/39.2(a), were against the manifest weight of the evidence.

STATEMENT OF FACTS

I. BACKGROUND.

On November 9, 2005, PDC filed an Application for expansion of its hazardous waste facility located west of the City of Peoria, in Peoria County, Illinois (the "Application"). The existing facility, known as Area C, is approximately 32 acres; in the Application, PDC sought a horizontal expansion of eight acres and a vertical expansion over the existing unit of up to 45 feet. (Clearly, the PDC No. 1 Landfill, even with the expansion requested in the Application, is a very small landfill by modern standards). The landfill is tucked away into heavily wooded, rolling terrain, and is surrounded on three sides by undeveloped land also owned by PDC.

The proposed expansion sought to extend the facility's operating life by an additional 15 years, to 2023. The facility currently receives, and plans to continue to receive, approximately 150,000 tons of solid waste per year, consisting mainly of non-hazardous special waste and metal bearing listed hazardous waste, which is treated onsite to below the Land Disposal Restriction (LDR) standards before ultimate disposal.

Peoria Families Against Toxic Waste ("PFATW"), a voluntary association and the Heart of Illinois Chapter of the Sierra Club ("HOI Sierra"), registered and participated in the proceedings on the Application as objectors. Both groups were represented by counsel.

A public hearing on the Application was conducted by the County, commencing on February 21, 2006, and continuing for six days. PDC called nine expert witnesses who gave direct testimony and were cross-examined at length on all of the statutory siting criteria. The opposition groups collectively called four witnesses, only one of whom was qualified as an expert. Many people gave unsworn public comment. Both PDC and the opposition groups made post-hearing unsworn written submissions to the County.

The County Staff issued a 103-page, detailed report analyzing the evidence properly submitted in the Record, and issued a 36-page supplemental report after the close of the public comment period. Both reports recommended siting approval, subject to conditions, with which PDC had agreed during the public hearing. The County Staff also provided the County Board with three sets of alternative proposed findings of fact.

On April 6, 2006, the County Board met as a Committee of the Whole to consider and recommend findings of fact. What action, if any, the County Board took at that meeting is unclear, as discussed in great detail in a Motion for Summary Judgment (415 ILCS §5/39.2(e)) and Memorandum of Law in support thereof, filed on November 20, 2006, by PDC with this Board.

On May 3, 2006, the County Board met again for the purported purpose of making a final decision. The County Board had before it a resolution recommending unconditional siting approval, and a set of proposed findings of fact consistent with outright disapproval. A motion for approval of the Application with conditions failed, and no other motions or resolutions with

regard to approval or denial of the Application were brought before the County Board. The findings of fact before the County Board were orally amended, and then adopted as amended. No written decision issued.

The legal implications and consequences of what occurred and did not occur on May 3, 2006, and in the weeks thereafter, have been argued in detail in the Applicant's Motion for Summary Judgment (415 ILCS §5/39.2(e)) which is pending before this Board. PDC takes the position that there was no final action or written decision as those terms are used in §39.2 of the Illinois Environmental Protection Act and in the Illinois Administrative Code. However, in the alternative and without waiver of that argument, PDC also argues that, if there was a decision denying the Application, it was against the manifest weight of the evidence. PDC had considerable difficulty identifying any writing that could arguably be a decision for the purposes of its manifest weight argument. The County has identified the transcript of the May 3, 2006 meeting as the written decision, but the transcript does not "specify[] the reasons for the decision" as required by law. 415 ILCS §5/39.2(e). (Notably, as is set forth in PDC's Reply in Support of its Motion for Summary Judgment (415 ILCS §5/39.2(e)), filed on December 28, 2006, the transcript of the May 3, 2006 meeting was not actually approved and adopted by the County Board until its meeting on June 8, 2006, the day after PDC filed its Petition for Review in this case and the 36th day after the May 3, 2006 meeting). The proposed findings of fact filed by the County Staff in the County Clerk's office on April 27, 2006, were not adopted as written by the County Board, but at least provide an approximation of the County Board's reasons for its purported denial of the Application. Accordingly, this Brief will reference those proposed findings as though they represent the written reasons for a denial of siting.

II. FACTS SUPPORTING ARGUMENT THAT THE APPLICATION IS DEEMED APPROVED PURSUANT TO 415 ILCS §5/39.2(e).

As and for its Statement of Facts regarding the first question presented for review by the Pollution Control Board, PDC adopts and incorporates the statements of fact made in PDC's Motion for Summary Judgment (415 ILCS §5/39.2(e)) and the Memorandum in Support thereof, filed on November 20, 2006, and in PDC's Reply in Support of its Motion for Summary Judgment (415 ILCS §5/39.2(e)), filed on December 28, 2006. In addition, PDC submits the following excerpt from the testimony of Patrick Urich, Peoria County Administrator, at the hearing held by the Pollution Control Board on January 8, 2007, regarding the County internet website, the only location where a transcript of the May 3, 2006 hearing could ever be found prior to this appeal:

> Q [by Mr. Mueller] Now are there any County ordinances which designate this website that you refer to as the official repository of County records?
>
> A No.
>
> Q Is it the official repository of County records?
>
> A No.
>
> Q Were there any ordinances adopted in connection with this landfill application indicating that notices to the public and to the parties and other official information would be officially transmitted via the County's website?
>
> A No.
>
> Q So the County's website was really an informal way of getting information out to those members of the public who wanted to utilize it, right?
>
> A Yes.

Q And efforts were made to keep the information accurate, but nobody ever pretended that the website was the official repository of landfill application information; is that true?

A That is true.

Q And your understanding is that the County Clerk's Office was the official repository of landfill related information?

A By our ordinance the County Clerk's Office is the keeper of the official record.

Q And so, actually, the County Clerk, who at that time was JoAnn Thomas, was the keeper of the official record?

A Yes.

(Tr. 1/8/07, 43/10-44/16).[1]

III. FACTS SUPPORTING ARGUMENT THAT THE PROCEDURES USED BY THE COUNTY BOARD IN THIS CASE WERE NOT FUNDAMENTALLY FAIR.

A. The County Board members did not understand their functions to be quasi-judicial, did not understand the meaning or import of *ex parte* contacts, and did not disclose such contacts.

The facts clearly support the conclusion that the County Board members who voted against approval of the Application did not understand their function to be quasi-judicial, rather than legislative, did not understand the meaning or import of *ex parte* contacts, and did not know that they were to disclose such contacts.

Board member Brian Elsasser stated that he was not aware that he was to avoid *ex parte* communications, and in fact, "welcome[d] anybody's phone calls at any time if they have something they want to say to me." (Elsasser, Dep. 1, 11/16-12/5). Elsasser contended that he

[1] Citations to the various transcripts of hearings filed in the record with the Pollution Control Board will generally be in this format: "Tr. [date of hearing], [page/line]-[page/line]; C_____" or "Tr. [date of hearing], [page]/[line-line]; C_____." Citations to transcripts of depositions filed at the hearing before the Pollution Control Board's hearing officer will reference the name of the deponent and the "number" of the deposition (correlating with the indices and tabs in the bound volumes of depositions submitted to the hearing officer).

was permitted to receive information from any member of the public throughout the proceedings, but was not permitted to respond to same. (Id., 12/9-19). He further stated that he read all the emails he received, to the extent possible, and that he was to consider emails and letters in conjunction with the information gathered at the hearing. (Id., 14/15-24, 12/20-13/8). Elsasser testified that he first disclosed the documents he received during the proceedings on the Application in discovery. (Id., 16/24-17/8).

Board member Joyce stated that he put emails received during the proceedings "straight into a folder, and then that folder has since been emptied." (Joyce, Dep. 2, 10/15-24). Joyce further testified that the County did not ask him to disclose the "couple of dozen" letters he received during the proceedings on the Application. (Id., 24/13-21).

Board member Thomas O'Neill also testified he was told (or at least understood) that while he was not to express his opinions about the Application to members of the public, he was free to listen to and consider the opinions of the public regardless of whether or not same were in the Record. (O'Neill, Dep. 4, 15/16-16/6). O'Neill shredded all the letters he received. (Id., 19/3-12).

Board member Lynn Scott Pearson stated that she was to consider "[e]verything that was presented to [her]" in rendering her decision on the Application, including the emails she received outside of the Record. (Pearson, Dep. 5, 23/21-24/9). She also testified that while she was not to express her opinions about the Application to members of the public, she was free to accept communications from the public regardless of whether or not same were in the Record, and that she never discouraged anyone from delivering their opinions to her. (Id., 24/16-25/14). Pearson testified that she was never told to file the letters she received during the proceedings on the Application with the Clerk. (Id., 13/1-7).

Board member Michael Phelan also testified that, while he was not to express his opinions about the Application to members of the public, he was free to listen to communications from the public regardless of whether or not same were in the Record, and that "the public was allowed to weigh in on this" in public and in private. (Phelan, Dep. 6, 7/3-16, 7/21-8/7). Phelan testified that he destroyed the communications he received during the proceedings on the Application ("shortly after the vote was concluded like I do with most of my county things I get rid of it, just throw it out"), and that he was never told to, and did not, file any of such materials with the County Clerk. (Id., 22/21-23/12).

Board member Eldon Polhemus stated that while he was allowed to, and did, receive communications from registered opponent groups, he was not allowed to receive communications from representatives of PDC during the proceedings on the Application. (Polhemus, Dep. 7, 10/8-15, 9/9-10/1). Polhemus "stacked up" the letters he received, and then "threw everything away" after the May 3, 2006 meeting, without ever filing same with the Clerk. (Id., 11/2-9).

Board member Phil Salzer also testified that, while he was not to express his opinions about the Application to members of the public, he was free to listen to communications from the public regardless of whether or not same were in the Record. (Salzer, Dep. 8, 14/20-15/4). He further stated that he actually considered the communications he received at his home in forming his decision on the Application, after weeding out the "crackpot" communications. (Id. 12/9-13/12, 17/1-18/1). Salzer testified that he first disclosed documents he received during the proceedings on the Application in discovery, and that he had "pitched" a number of letters so received during the proceedings. (Id., 46/24-47/8).

Board member James Thomas stated that "[the Board members] were instructed that while we could not discuss in the sense of giving opinions that it was all right to listen to constituents" regardless of whether or not such communications were in the Record. (James Thomas, Dep. 9, 20/24-21/20). However, Thomas did not believe that he was free to listen to communications from representatives of PDC concerning the Application outside the Record. (Id., 17/13-18/3). Furthermore, upon receiving communications from the heads of the two registered opponent groups, Thomas failed to advise them to cease and desist such communications. (Id., 25/17-26/6). Thomas testified that he discarded most of the communications he received during the proceedings on the Application, and that he was not aware that it was necessary to file letters with the County Clerk (his wife, JoAnn Thomas). (Id., 14/8-18, 15/4-10, 32/18-33/5).

Board member Carol Trumpe stated that while she was not supposed to communicate her opinions about the Application, it was appropriate for her to receive opinions from the public regardless of whether or not such communications were in the Record. (Trumpe, Dep. 10, 9/7-17, 9/24-10/4). Trumpe did not believe that she was free to listen to communications from representatives of PDC concerning the Application outside the Record, "because they were really the litigants" and she "did not see these other people who were in opposition here as individuals as litigants." (Id., 38/24-39/5, 39/21-40/7). Trumpe testified that she first disclosed emails she received during the proceedings on the Application in discovery. (Id., 16/21-17/4).

Board member Junior Watkins testified that at some point in the proceedings, he was instructed not to give his opinion to members of the public, but that he was free to listen to communications from the public regardless of whether or not same were in the Record. (Watkins, Dep. 11, 11/10-18, 13/4-14/2). Watkins specifically testified regarding a conversation

with Mary Harkrader, a former Peoria County Clerk, who opposed the Application. (Id., 22/2-14). Watkins did not testify regarding filing of documents with the County Clerk or production of same in discovery, but also apparently did not produce any documents during proceedings on the Application or in discovery. (Watkins, Dep. 11).

Board Chairman David Williams testified that he and his fellow Board members "don't have a choice whether he calls, you call. We've got to -- you know, we're going to take the call." (Williams, Dep. 12, 13/12-13; *see* id., 12/20-14/8). Williams did not specifically testify regarding filing of documents with the County Clerk or production of same in discovery. (Id.) Williams testified that he did receive numerous letters during the proceedings on the Application (id., 18/10-22), though he apparently produced none of these during such proceedings or in discovery.

In conclusion, eleven (11) of the twelve (12) County Board members who voted against approval of the Application clearly did not understand their functions to be quasi-judicial, rather than legislative, and did not understand the meaning or import of *ex parte* contacts. The same eleven (11) out of the twelve (12) County Board members who voted against approval of the Application did not disclose some or all of the *ex parte* contacts they received during the pendency of the Application. In fact, every Board member voting against approval of the Application other than G. Allen Mayer (a practicing attorney) failed utterly to comprehend his or her duties in the local siting process.

B. The County Board members who voted against approval of the Application received more than 1,000 *ex parte* contacts from opponents of the Application during the pendency of the Application.

1. PDC's First Set of Requests to Admit: 309 Emails, Letters and other Documents Not Placed in the Record.

In its First Set of Requests to Admit, PDC asked that the County admit that certain documents were received by one or more County Board members, and were never filed with the County Clerk or otherwise made available to PDC.[2] These documents were received from various County Board members subsequent to the May 3, 2006 meeting, and in the course of discovery. However, as is set forth in Section II(C), below, eleven of the twelve County Board members who voted against approval of the Application discarded some or all of the documents they received during the proceedings on the Application (namely, every Board member other than G. Allen Mayer, who is a practicing attorney). In fact, five (5) of the twelve (12) County Board members who voted against approval of the Application produced no documents whatsoever in the course of discovery (namely, Joyce, O'Neill, Polhemus, Thomas and Watkins).

Of the 379 documents presented by PDC, the County admitted that **309** were not filed with the Peoria County Clerk, namely, documents 2, 3, 11, 12, 19, 23, 49, 50, 51, 52, 54, 57, 64, 65, 66, 68, 70, 72, 73, 74, 76, 77, 78, 82, 83, 84, 85, 86, 92, 93, 94, 95, and 103 through 379. These documents represent 1,139 contacts by opponents with County Board members who voted against approval of the Application (or 998 such contacts if County Board Chairman Williams failed to check his email, as he has claimed). Of those documents, **263** were dated after the

[2] The First Set of Requests to Admit of PDC was filed with the Pollution Control Board on September 25, 2006. The binder of *ex parte* documents referenced therein was not sent to the Clerk of the Pollution Control Board, but was contemporaneously tendered to the hearing officer, Carol Webb. If the Pollution Control Board would like access to the binder and is unable to procure same from Ms. Webb, PDC is more than willing to tender a copy of same for the Board's review at its request.

public comment period closed (947 contacts, or 821 without Williams). Moreover, **201** of the un-filed documents were received from April 7, 2006, through May 3, 2006 (610 contacts, or 517 without Williams).

2. County Board member admissions.

The County Board members who voted against approval of the Application all admitted receiving a substantial volume of *ex parte* contacts during the pendency of the Application. The following chart summarizes the points in these County Board members' depositions at which *ex parte* contacts were discussed:

	Yard Signs	**Emails**	**Letters**	**Phone calls**	**In-person contacts**
Dep. 1 – Elsasser	32/5-15	13/9-21; 38/3-5	12-13; 16-17	17/19-22; 29/15-30/19; 38/3-5	n/a
Dep. 2 – Joyce	26/3-8	10/15-18	9/20-10/4	25/1-5	n/a
Dep. 3 – Mayer	n/a	9/9-10/6 (Deposition Exhibit 27)	8/3-9/8	n/a	n/a
Dep. 4 – O'Neill	21/8-18	16/23-18/1	18/21-19/2	20/5-18	n/a
Dep. 5 – Pearson	13/19-24	9/21-10/4	11/5-7	16/9-18	n/a
Dep. 6 – Phelan	19/6-13	13/8-15	10/22-11/6	13/19-21	n/a
Dep. 7 – Polhemus	17/4-9	11/10-13/18	10/20-11/1	13/19-14/7	16/16-20; 24/1-5
Dep. 8 – Salzer	24/12-21	22/3-24	23/13-15	23/20-24/1	51/8-20
Dep. 9 – James Thomas	37/5-13; 38/1-4	23/18-24/8	23/18-24/8; 25/17-26/6, 26/16-24	32/8-17	39/3-40/4

Dep. 10 – Trumpe	28/16-22	15/14-16/8	21/12-21	30-38, 42-43	43/17-22
Dep. 11 – Watkins	n/a	n/a	n/a	16/19-21	12/2-5; 18/6-11
Dep. 12 – Williams	23/13-24/3	15/14-16/18	18/10-19/6; 20/24-21/6	19/10-20/12; 20/18-23	18/1-2; 21/6-10; 22/6-8

For example, without limitation, Joyce viewed "[t]wo or three dozen" yard signs in his district. (Joyce, Dep. 2, 26/3-8). Elsasser received emails (20 or 30 of which he deleted), letters, flyers and "many phone calls" from opponents, including opponents registered in the proceedings and represented by counsel. (Elsasser, Dep. 1, 15/5-16/19, 17/19-22, 20/14-20 (calls from Blumenshine and K. Converse)). Polhemus received "15 to 20" telephone calls and "between 100 and 125" letters at his home (Polhemus, Dep. 7, 13/19-14/7, 10/20-11/1). James Thomas received letters from Blumenshine, head of HOI Sierra, and "[t]hree or four" letters from Kim Converse, head of PFATW, which he destroyed. (James Thomas, Dep. 9, 25/17-26/6, 26/16-24). Phelan received dozens of letters, emails and telephone calls. (Phelan, Dep. 6, 10/22-11/6, 13/8-15, 13/19-21). Pearson received "75 or 80" emails (all of which she read), "around 50" letters, and "maybe 40-plus" telephone calls. (Pearson, Dep. 5, 9/21-10/4, 11/5-7, 16/9-18).

The County Board members who voted against approval of the Application admitted that they received few or no contacts from PDC or its representatives during the pendency of the Application. (*See, e.g.* Elsasser, Dep. 1, 15/1-4, 20/21-21/3; Trumpe, Dep. 10, 40/8-41/6).

3. The campaign by the opponent groups.

Two opposition groups were registered as opponents during the proceedings on the Application: Peoria Families Against Toxic Waste ("PFATW"), and the Heart of Illinois Sierra Club ("HOI Sierra"). Both these groups were represented by counsel. PFATW and HOI Sierra

readily admitted that they contacted County Board members directly throughout the proceedings on the Application, including after the public comment cutoff date (March 29, 2006). County Board Chairman David Williams testified that he was threatened by Kim and Ted Converse, the heads of PFATW, in March of 2006. (Williams, Dep. 12, 19/10-20/12). In addition to PFATW and HOI Sierra and their members, other members of the public who were "primary" opponents of the Application included Diane Storey (under the name "Citizens for Our Environment"), Tom Edwards (under the name "River Rescue"), and Cathy Stevenson.

PDC deposed Joyce Blumenshine, Chair of HOI Sierra during the proceedings on the Application. Ms. Blumenshine testified that she did not believe that members of the public should be restrained from freely contacting County Board members during the proceedings on the Application. (Blumenshine, Dep. 17, 29/7-30/11). Nonetheless, Ms. Blumenshine clearly understood the meaning of the term "*ex parte*". (Id., 36/7-10). Blumenshine claimed in her deposition that a communication was not "*ex parte*" as long as it discussed and highlighted only factual information already in the Record that she thought was important. (Id., 39/5-40/14). Blumenshine rationalized such *ex parte* communications on the grounds that she "thought it was appropriate under the circumstances that PDC had spent over a million dollars on the application and was a large corporation to make an effort to highlight the facts as we saw it." (Id., 67/13-68/8).

As the chairperson of HOI Sierra, Blumenshine wrote in HOI Sierra's bimonthly newsletter, the *Tallgrass Sierran*, that members of the public should "contact as many board members as you can", and provided contact information for each Board member. (Deposition Exhibits Volume II, Ex. 36). Regarding this directive, Blumenshine testified that she was never advised by anyone (including, presumably, her attorney and the County) that members of the

public and opposition groups were not to communicate freely with the Board members during the pendency of the Application. (Blumenshine, Dep. 17, 33/20-34/15). Blumenshine's emails admitted as Group Exhibit 37 (Dep. Exhibits Vol. II) include discussions amongst members of HOI Sierra, PFATW and other opponents concerning the need for and occurrence of numerous contacts with County Board members outside the hearing process. (*See also*, Blumenshine, Dep. 17, 42/2-45/21). Blumenshine sent letters to the County Board members directly on HOI Sierra letterhead (Dep. Exhibits Vol. II, Ex. 40; Blumenshine, Dep. 17, 58/12-59/5), and, after the April 6, 2006 vote of the Committee of the Whole, permitted distribution of flyers through HOI Sierra to the public, urging people to contact County Board members voting in favor of the Application and tell the members to "vote NO!" (Dep. Exhibits Vol. III, Ex. 43).

In addition to her activities with HOI Sierra and PFATW, Blumenshine testified that she personally paid for fifteen (15) billboards opposing the Application. (Blumenshine, Dep. 17, 20/14-22). Photographs of the billboards were submitted to the Pollution Control Board at the hearing on this matter as Exhibit 17 (in Dep. Exhibits Vol. II) pursuant to Stipulation (Ex. 105). The billboards pictured in the photographs in Exhibit 17 state as follows:

PEORIA COUNTY
TOXIC Waste from 10 states!
SAY NO! www.notoxicwaste.org

PEORIA COUNTY
Say no to 15 more years of TOXIC Waste!
SAY NO! www.notoxicwaste.org

(Ex. 17). (The website "www.notoxicwaste.org" was created and is run by PFATW. *See* K. Converse, Dep. 20, 17/19-20). Blumenshine testified that she spent an additional $2,000 of her own money on yard signs. (Blumenshine, Dep. 17, 47/14-16; *see* Dep. Exhibits Vol. II, Ex. 38). Blumenshine herself "did call board members and leave messages mostly on answering

machines" and "did write some letters and ... sent them thank you cards." (Blumenshine, Dep. 17, 32/15-17). (*See* Dep. Exhibits Vol. II & III, Ex. 37C-G, 37J-K, 37M-R, 42; *see* Blumenshine, Dep. 17, 50/20-52/6).

PDC deposed a number of members of PFATW, including Kim Converse, the apparent leader of the organization. Exhibit 58 is a printout from PFATW's website, dated January 31, 2006. (Dep. Exhibits Vol. III; K. Converse, Dep. 20, 22/7-17). Immediately below the name of the organization on the first page of the website is the following phrase: "tell the county board no toxic waste in peoria". (Ex. 58). This tagline remained on the website throughout the proceedings on the Application. (*See* Dep. Exhibits Vol. III, Ex. 59; K. Converse, Dep. 20, 27/13-22). In addition to the website, PFATW distributed fliers urging members of the public to contact County Board members and tell the Board members to vote against the Application (*see* Dep. Exhibits Vol. III, Ex. 61, 64, 65), based on PFATW's alleged belief that such contacts were permissible under the law (K. Converse, Dep. 20, 48/22-49/14).

Ms. Converse, like Blumenshine, claimed that she believed that she was permitted to contact County Board members regarding the Application, and to highlight and emphasize portions of the Record favorable to PFATW's position. (K. Converse, Dep. 20, 30/13-17, 31/2-3, 31/11-23, 24/23-26/2). However, the PFATW website included the following discussion of restrictions on *ex parte* communications:

> **County Board Restrictions:** The County Board's legal counsel (States Attorneys Office) has advised members not to share their view on the issue since it could open them up to lawsuits. They argue that Board members will be acting as "judges" in this matter and therefore sharing any viewpoint would be pre-judging.
>
> This presents a Catch 22 for citizens trying to engage in the public process. County Board members are legally "gagged" from communicating in a free and open way with concern[ed] constituents since they may act as judges, but if they do not vote up

> or down vote on the measure, the permit will be automatically approved. The pre – hearing silence could result in a total failure of accountability on the part of Board Members to the concerned public since their views might always be left in the dark – hidden under the cloak of a pre-judgment silence.
>
> This is unacceptable to us. It is undemocratic and thwarts our power as citizens to make elected officials accountable on election day.

(Dep. Exhibits Vol. III, Ex. 58, pg. 3; emphasis added). Clearly, PFATW did understand the restrictions on communications with Board members, and deliberately chose to ignore such restrictions. Regardless of the restrictions on *ex parte* contacts, Ms. Converse herself corresponded extensively with the County Board members. (*See* Dep. Exhibits Vol. III, Ex. 60, 61, 63, 67). Another member of PFATW testified that "it's part of [the County Board members'] job to know my opinion", and that "[i]t's their job to figure out what they take into consideration." (Rosson, Dep. 25, 12/4-22).

Other opponents of the Application communicated with Board members through ignorance (engendered by the County), rather than malice as in the case of PFATW and HOI Sierra. PDC deposed Cathy Stevenson, an opponent of the Application who was not specifically allied with PFATW or HOI Sierra. Like PFATW and HOI Sierra, Stevenson claimed that she was permitted to communicate directly with Board members. (Stevenson, Dep. 27, 8/23-9/15). Stevenson sent several emails to County Board members. (*See* Dep. Exhibits Vol. III, Ex. 90A-F, 92). In fact, as late as April 18, 2006, Peoria County Administrator Patrick Urich recommended to Stevenson that she ask questions regarding the Application of her County Board member, Michael Phelan. (Dep. Exhibits Vol. III, Ex. 92; Tr. 1/8/07, 47/24-48/18).

PDC deposed Tom Edwards, the head of the organization named "River Rescue." Edwards did not believe that he was prohibited from communicating with County Board

members outside the Record. (Edwards, Dep. 22, 33/12-34/3). In fact, Edwards thought all written communications with County Board members were permissible, throughout the Application process. (Id., 35/17-20). Edwards brought documents with him to his deposition, including letters dated February 9, 2006, and May 1, 2006, which he stated were mailed to County Board members. (Id., 30/4-9). (Edwards refused to leave copies of the letters with PDC and failed to mail copies of same to counsel, in spite of his promise to do so). Edwards additionally authenticated Exhibits 47, 48, 59, 51, 52, 53, 54, 56 and 57, various letters and fliers, and stated that he mailed or hand-delivered same to the County Board members. (Id.; Dep. Exhibits Vol. III). Several of the County Board members who voted against approval of the Application testified that Edwards actually visited them at their homes to distribute documents. (*See* Polhemus, Dep. 7, 24/1-5; Salzer, Dep. 8, 51/8-20; Watkins, Dep. 11, 18/6-11; Williams, Dep. 12, 21/6-10).

In addition to the foregoing, PDC deposed nine other opponents, who testified to various and sundry *ex parte* contacts with County Board members, namely:

- Tessie Bucklar, Dep. 18; Ex. 70-77
- Tom Bucklar, Dep. 19; Ex. 78
- Ted Converse, Dep. 21; Ex. 96-96
- John McLean, Dep. 23; Ex. 94
- Jean Roach, Dep. 24; Ex. 86-89
- Cara Rosson, Dep. 25; Ex. 79-85 (briefly quoted above)
- Amy Schlicksup, Dep. 26
- Diane Storey, Dep. 28; Ex. 44-46
- Mayvis Young, Dep. 29

Opponents of the Application appeared and spoke at each and every regular County Board meeting from November, 2005, when the Application was filed, through May, 2006, after the decision on the Application. (Hearing Exhibits 97-103). At the November, 2005, meeting, Tom Edwards and Sarah Beth Horton spoke. (Ex. 97; Ex. 104, pgs. 1-2). At the December,

2005, meeting, Tom Edwards spoke. (Ex. 98; Ex. 104, pgs. 3-4). At the January, 2006, meeting, Tom Edwards, Carol Ann Purcell and Mayvis Young spoke. (Ex. 99; Ex. 104, pgs. 5-8). At the February, 2006, meeting, Tom Edwards, Jean Roach, Janet Kelly, Mayvis Young, Diane Storey, Nancy Lawless, Kim Converse and Annie Kirchgessner spoke. (Ex. 100; Ex. 104, pgs. 9-14). During that meeting, Tom Edwards stated as follows regarding the basis for the County Board's decision on the Application:

> And I'm saying I disagree with a lot of the people here. You have the power to totally say "NO" on this. You don't have to—those 9 criteria—you have to use those, yes—but you can set as many more criteria as you want. And if this expansion were put to a referendum, it would be resoundingly defeated. I mean by 90 to 95 percent of the voters. Probably the most overwhelmingly majority in Illinois history.

(Ex. 104, pg. 9; emphasis added). At the March, 2006, regular County Board meeting, Tom Edwards and Mayvis Young spoke. (Ex. 101; Ex. 104, pg. 15). Tom Edwards stated as follows regarding *ex parte* communications with the County Board:

> Starting [inaudible] by Mr. Meginnes [counsel for PDC] I cannot talk ex parte about the hazardous waste landfill and, um, of course I do everything he tells me to do it, so I won't. Look at him. He's smiling. I would rather see him smile. He's a good guy. I did pass out this thing to all of you – this thing I wrote. I think it is one of my better efforts and shares a message and understanding - it is okay to hand out printed material this month and next month, and I would also like to tell you guys you did a – I was amazed at the good job you did – [inaudible] you carried through very well, and I think everybody that talked felt gratified and all got a chance to speak with those that [inaudible].

(Ex. 104, pg. 15). At the April, 2006, meeting, Tom Edwards, Mayvis Young and Diane Storey spoke. (Ex. 102; Ex. 104, pg. 16). At the May, 2006, meeting, Tom Edwards and Joyce Blumenshine spoke. (Ex. 103; Ex. 104, pgs. 17-18).

C. The votes of eight (8) of the County Board members who voted against approval of the Application must be stricken.

Based on their testimony during the depositions, it is clear that the votes of at least eight (8) of the County Board members who voted against approval of the Application must be stricken, namely, the votes of G. Allen Mayer (Dep. 3), James Thomas (Dep. 9), Eldon Polhemus (Dep. 7), Tom O'Neill (Dep. 4), Brian Elsasser (Dep. 1), Michael Phelan (Dep. 6), Phil Salzer (Dep. 8) and Lynn Scott Pearson (Dep. 5).

1 & 2. G. Allen Mayer and James Thomas

Board members Mayer and Thomas concealed their membership with the Sierra Club (a registered opponent group represented by counsel during the proceedings on the Application) until directly asked about such membership at the last County Board meeting, on May 3, 2006. Prior to the May 3, 2006 meeting, PFATW and HOI Sierra filed a motion seeking to bar Board member William Prather from voting on the Application, because he had previously sold property to an affiliate of PDC in Chillicothe, Illinois. The County denied the Motion of PFATW and HOI Sierra, and made a general inquiry into the bias of the Board members. In fact, it was the Chair of the Siting Hearing Subcommittee, Board member Patricia Hidden, who asked whether any County Board members were members of the Sierra Club:

> MR. ATKINS: And at this point I have a question that I'm going to direct to all of the Board members. Since there has been a question, directly an objection regarding Mr. Prather and there have been some allegations regarding some contacts that other Board members have had with other individuals, I'm going to ask all of you whether you can be fair and impartial and make your decision based solely on the evidence that has been presented in the hearing process and in the documents that have been submitted for public comment or in the public comment period.
>
> So is there anyone here who thinks, any of the Board members who think that there is anything that would bias your decision? If any of you feel that there is any reason that you would

be unable to decide based solely on the evidence presented to you, then I'd ask for you to point that out at this time.

CHAIRMAN WILLIAMS: Pat?

MS. HIDDEN: Can I ask you a question first?

MR. ATKINS: Sure.

MS. HIDDEN: How many of the County Board members are also members of the Sierra Club?

MR. ATKINS: I don't know that, but if you think that that's something that would sway a member, then we can certainly ask that.

MS. HIDDEN: I think it would be pertinent to find out how many are.

CHAIRMAN WILLIAMS: Is there any members of the County Board a member of the Sierra Club?

(Show of hands.)

CHAIRMAN WILLIAMS: We have two.

(*See* Tr. 5/3/06, 23/12-25/4, C13717). Those two covert Sierra Club members were Mayer and Thomas. (*See* Tr. 5/3/06, 25/10-12, 29/9-10, C13717-18).

3. Eldon Polhemus

Eldon Polhemus admitted that he considered none of the evidence submitted during the proceedings on the Application, or the Application itself. (Polhemus, Dep. 7, 19/2-21/8). Instead, Polhemus made his decision based on contacts with opponents and his straw poll of the community's opinion regarding the Application:

Q [by Ms. Nair] Did you believe you were to rely on those findings of fact in coming up with your decision?

A No. I believed if they met what my reasons were because the findings of fact really never meant anything to me until after the

vote. After the vote was over, then I was -- I was satisfied that the findings of fact would match the reason to deny.

Q So you had independent reasons?

A Yes.

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

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

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

A Yes.

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

A No. I -- the only way I considered the letters and that I got was I used it like a tally sheet. If I got 100 letters and 80 or 90 of them were against it, I felt that's the way the public felt, that's the way -- I was supposed to represent the public, too.

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

(Id., 36/16-38/1; *see also* id., 10/16-19, 15/9-17, 22/16-22; Exhibit 104, pg. 18, Peoria County Board Meeting: May, 2006).

4. Tom O'Neill

Tom O'Neill first voted in favor of the Application on April 6, 2006, with the Committee of the Whole, and on May 3, 2006, voted against approval of the Application. (O'Neill, Dep. 4, 24/8-21). O'Neill admitted to the local newspaper that his vote against approval of the Application was based on the opinion of his constituents (Dep. Exhibits Vol. II, Ex. 30),

however, during his deposition, O'Neill alleged that he was misquoted, and that he did not say that he changed his mind based on the wishes of his constituents (O'Neill, Dep. 4, 23/15-23). O'Neill admitted that he considered none of the evidence submitted during the proceedings on the Application, or the Application itself (id., 26/13-27/5, 37/21-38/2), and that he had received communications from opponents between the April 6 and May 3 votes (id., 24/22-25/2, 25/17-26/3). Nevertheless, O'Neill baldly denied that any communications he received between the meetings caused the change in his vote. (Id., 27/10-23). His protests to the contrary, it is crystal clear to a neutral third party that O'Neill's vote on May 3, 2006, was based on information outside the Record in this case, between April 6, 2006, and May 3, 2006.

5. Brian Elsasser

Brian Elsasser predetermined his position regarding the Application. (Elsasser, Dep. 1, 22/18-21, 23/8-12 (communication with Board member Trumpe), 27/11-28/4 (father's illness); Tr. 4/6/06, 104/10-105/15, C13436). Elsasser performed his own research during the proceedings on the Application: (1) Elsasser contacted Dean Faulkner of the Illinois American Water Company in March of 2006, "just trying to get an idea of what his opinion was on where the aquifer was really located at" (Elsasser, Dep. 1, 25/6-26/7); (2) Elsasser called the Illinois Environmental Protection Agency, because he "was still confused about the PM and the PM10 test, and they finally clarified the fact that your license does not require you to be a specific level for the PM10 test but only for the particula[te] matter" (id., 26/13-22).

Finally, while Elsasser did not testify regarding same, Kim Converse, leader of the opposition group PFATW, testified that Elsasser phoned her immediately before or after the April 6, 2006 vote of the Committee of the Whole, in order to get the telephone number of Cindy Herman, another opponent to the Application. (K. Converse, Dep. 20, 36/4-37/12).

6. Michael Phelan

Michael Phelan clearly did not understand his role in the proceedings, or that he was not to consider *ex parte* communications in reaching his decision. (Phelan, Dep. 6, 7/3-16). Phelan testified that the public was permitted to "weigh in" publicly and privately (id., 7/21-8/7), and that he could consider "facts" from outside the record (id., 8/23-9/20). Phelan's vote against approval of the Application was clearly based on information outside the Record in this case.

7. Philip Salzer

Phil Salzer also did not understand his role in the proceedings, or that he was not to consider *ex parte* communications in reaching his decision. (Salzer, Dep. 8, 14/20-15/4). He further stated that he actually considered the communications he received at his home in forming his decision on the Application, after weeding out the "crackpot" communications. (Id. 12/9-13/12, 17/1-18/1). Moreover, Salzer considered information digested and conveyed outside the Record; in particular, he sought factual analysis and scientific opinion from his fellow Board member G. Allen Mayer (a member of the opponent group, the Sierra Club): "I had a question about the hydraulically connected, hydraulically connected the -- to the Sankoty [aquifer]." (Id., 25/18-26/12, 27/3-7, 28/13-18; *see also* id., 29/18-30/13). Salzer's decision to vote against approval of the Application was clearly based on information outside the Record in this case. Also, Salzer appears to have predetermined his position regarding the Application, without regard to the evidence. (Pearson, Dep. 5, 21/3-11; *see also* Dep. Exhibits Vol. II, Ex. 25, pg. 5, "I'm 67. Do I want to Be Remembered as one Who Caused this?").

8. Lynn Scott Pearson

Lynn Scott Pearson clearly did not understand that she was not to consider *ex parte* communications in reaching her decision, admitting that she thought she was supposed to

consider information gleaned from *ex parte* communications. (Pearson, Dep. 5, 23/21-24/9, 24/16-25/14). Moreover, Pearson admitted that she placed special value on the opinion of Joyce Blumenshine, then Chair of opponent group HOI Sierra, specifically because of Ms. Blumenshine's affiliation with that organization. (Id., 32/7-9). Pearson's decision to vote against approval of the Application was clearly based on information outside the Record in this case.

IV. FACTS SUPPORTING ARGUMENT THAT THE PURPORTED DECISION OF THE COUNTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND WAS OTHERWISE IMPROPER UNDER THE LAW.

A. Criterion i: the facility is necessary to accommodate the waste needs of the area that it is intended to serve.

Testimony on the need for the proposed expansion was provided by Sheryl Smith, a Senior Project Manager with Golder Associates of Columbus, Ohio. (Tr. 2/21/06, 112, C7295; hearing exhibit A-1, C7937). Ms. Smith has a Master's Degree in Engineering from Cornell University and 23 years of experience in the waste management industry, both as a consultant and for waste management companies. (Hearing exhibit A-1, C7937). She has participated in the preparation of needs assessments in 23 siting applications. (Tr. 2/21/06, 113, C7295).

Ms. Smith indicated that the existing PDC landfill is projected to close in 2008. (Tr. 2/21/06, 114, C7296). The proposed expansion anticipates receipt of an average of 150,000 tons of waste per year, of which 90,000 tons are hazardous wastes, 20,000 tons are non-hazardous manufactured gas plant remediation waste and 40,000 tons are non-hazardous process waste (special waste). (Id.) The expansion would extend the facility's life for another 15 years, from 2009 to 2023. (Id.)

Because of the three distinct waste types received at the facility, there are three distinct service areas designated.

1. Hazardous waste service area.

The hazardous waste service area consists of Illinois and nine surrounding states, from Nebraska on the West, to Minnesota on the North and Tennessee on the South. (Tr. 2/21/06, 117, C7296). With regard to hazardous waste generation, the most current, complete data set available at the time that Ms. Smith prepared her report was the 2001 data set. (Tr. 2/21/06, 120, C7297). The service area is projected to generate 9.9 million tons of hazardous waste over the 15 year service life of the expanded landfill. (Tr. 2/21/06, 121, C7297). PDC is the only active hazardous waste landfill in the designated service area. (Tr. 2/21/06, 122, C7298). Ms. Smith computed that 14 other hazardous waste landfills outside the service area provided about 3.49 million tons of capacity for the service area. (Tr. 2/21/06, 123, C7298). She also looked at hazardous waste incinerators, which would provide minimal additional capacity, as well as treatment and recycling facilities, which also would provide some additional capacity. (Tr. 2/21/06, 123-124, C7298).

Taking into consideration the hazardous waste generation of the proposed service area during the operating life of the expansion and subtracting capacity from all other facilities available to the service area (*i.e.*, incineration, treatment, recycling and diversion to non-hazardous waste landfills), Ms. Smith concluded that the hazardous waste service area has a projected capacity shortfall of 2.2 million tons. (Tr. 2/21/06, 127/22-128/3, C7299).

2. Manufactured gas plant remediation waste service area.

Ms. Smith identified the service area for the manufactured gas plant ("MGP") remediation waste as the State of Illinois. (Tr. 2/21/06, 117, C7296). The State of Illinois, as of

2003, had identified 132 manufactured gas plant sites that required remediation and cleanup. (Tr. 2/21/06, 117, C7296). These facilities typically operated from the late 1880's to the mid-1950's. (Tr. 2/21/06, 116, C7296). Based upon a historic average of 12,000 tons of waste generated per MGP site cleanup, Ms. Smith projected the future need for disposal capacity of 1,090,000 tons of manufactured gas plant waste. (Tr. 2/2106, 121, C7297). Ms. Smith explained that this waste stream is technically non-hazardous, but in Illinois, is required to be disposed of in a hazardous waste facility. (Tr. 2/21/06, 115,116, C7296). Hence, the PDC No. 1 Landfill is the only facility in the State of Illinois which can receive manufactured gas plant remediation waste. (Tr. 2/21/06, 115, C7296). Without the proposed expansion of the facility, the disposal capacity shortfall for manufactured gas plant remediation waste is, therefore, equal to the amount of waste expected to be generated.

3. Non-hazardous process waste service area.

The third service area identified by Ms. Smith is for non-hazardous process waste, an area consisting of Peoria County and five surrounding counties in Central Illinois. (Tr. 2/21/06, 118, C7297). To project waste generation within this service area, Ms. Smith looked at the population projections for the service area for the time period 2009 through 2023, and the solid waste management plans for the counties in the service area (to determine past special waste generation rates), as well as the recycling goals within those counties. (Tr. 2/21/06, 120, 121, C7297). The results of that analysis demonstrated that non-hazardous process waste generation within the service area over the life of the proposed expansion, taking recycling into account, would be 2.3 million tons. (Tr. 2/21/06, 128/10-12, C7297). To calculate the disposal capacity available to the six-county non-hazardous process waste service area, Ms. Smith looked at all of the landfills within the service area and all other landfills within 100 miles of the service area.

(Tr. 2/21/06, 125, C7298). The resulting difference between projected generation and available disposal capacity showed a net shortfall in the service area of 995,000 tons. (Tr. 2/21/06, 125, C7298).

Ms. Smith concluded that, even with the proposed expansion, there will still be a significant disposal capacity shortfall for all three types of waste received by PDC. The most significant impact of this shortfall will be on Peoria County generators, including Keystone Steel and Wire, which generates electric arc furnace dust (RCRA hazardous waste code K061) disposed of at PDC, and Caterpillar, which generates non-hazardous process waste disposed of at PDC. (Tr. 2/21/06, 129, C7299). For the foregoing reason, Ms. Smith concluded that the proposed expansion is necessary to accommodate the waste needs of the areas it is intended to serve.

No other witnesses testified under oath regarding the need for the proposed facility, although many members of the public made unsworn statements that Peoria County does not need and they did not want waste from other counties and other states.

B. Criterion ii: the facility is so designed, located and proposed to the operated that the public health, safety and welfare will be protected.

1. Facility overview.

Ron Edwards, Vice-President of Development and Operations, was the first witness for PDC. Mr. Edwards has 23 years of experience in the management of solid and hazardous waste; he is the past chairman of the technical committee of the Illinois Chapter of the National Solid Waste Management Association. (Hearing exhibit A-1, C7936). He has served on the Illinois Environmental Protection Agency ("IEPA") and Illinois Pollution Control Board committees to develop solid waste landfill regulations and he is a licensed landfill operator. (Tr. 2/21/06, 31, C7275).

PDC was founded in 1928 and has operated continuously in Peoria County through 4 generations since that time. (Tr. 2/21/06, 32, C7275). PDC's first solid waste landfill was permitted in 1968, and began operations in the management and disposal of hazardous waste in 1980. (Tr. 2/21/06, 32-33, C7275). Today, PDC operates multiple companies in Peoria County including PDC Laboratories, PDC Transportation, PDC Technical Services and the PDC No. 1 Landfill. (Tr. 2/21/06, 34, C7276). The existing hazardous waste landfill services many local businesses, including Caterpillar, Keystone, and John Deere. (Tr. 2/21/06, 37, C7276).

The PDC No. 1 Landfill consists of multiple units, some of which are closed and not the subject of the Application. Area C is the active portion of the facility. (Tr. 2/21/06, 38, C7277). In its Application, PDC seeks to vertically expand over trenches C1 through C4. (Tr. 2/21/06, 38-39, C7277). PDC also seeks a lateral expansion of 8.2 acres in the form of the new trench: C5. (Tr. 2/21/06, 39, C7277). The expansion would extend the facility's operating life by an additional 15 years. (Tr. 2/21/06, 39-40, C7277).

George Armstrong, Vice-President of PDC Technical Services, a professional engineer with a Master's Degree in Geo-Technical Services from the University of Illinois, testified in greater detail regarding the site location and the dimensions of the proposed expansion. (Tr. 2/21/06, 188, C7314; *see* hearing exhibit A-1, 7949-53). The proposed site is approximately 1.3 miles from the boundary of the Pleasant Valley Public Water District regulated recharge area. (Tr. 2/21/06, 192, C7315). The existing facility consisting of trenches C1 through C4 is only 32.4 acres in area, with a design capacity of 2.6 million cubic yards. (Tr. 2/21/06, 199, C7317). The proposed expansion would add an additional 2.47 million cubic yards of air space. (Tr. 2/21/06, 200, C7317).

Both the existing site and proposed expansion area are extensively buffered on all sides, insulating it from surrounding neighbors. (Tr. 2/21/06, 196, C7316). These buffers include steep, heavily wooded and vegetated natural relief on both the East and West sides, as well as 300 acres of surrounding property owned by PDC, which property is not planned to be developed. (Tr. 2/21/06, 196, C7316). Mr. Armstrong pointed out that, in pre-filing meetings with local homeowners' groups in the area, many of PDC's neighbors replied that they did not even know that the facility existed. (Tr. 2/21/06, 197, C7316).

The proposed expansion only seeks to continue the existing operation for an additional 15 years. (Tr. 2/21/06, 39-40, C7277). The facility receives permitted, solid hazardous waste, consisting primarily of certain metal-bearing materials. (Tr. 2/21/06, 46, C7279). The facility does not receive wastes which are ignitable, reactive or corrosive. (Tr. 2/21/06, 63, C7283). PDC only accepts 8 of the 40 types of wastes exhibiting the characteristic of toxicity. (Tr. 2/21/06, 48, C7279). These metal bearing wastes are treated by chemical stabilization so that the toxicity characteristic is removed and only a non-hazardous waste residue is disposed in the landfill. (Tr. 2/21/06, 48, C7279).

PDC is also permitted to and accepts certain listed hazardous wastes such as electric arc furnace dust. (Tr. 2/21/06, 49, C7279). All of this waste must be treated to meet Federal and State land disposal restrictions ("LDRs"). (Tr. 2/21/06, 53, C7280). Most of the LDRs that are applicable to the PDC No. 1 Landfill are more stringent than the concentrations allowed in wastes characterized as "non-hazardous." (Tr. 2/21/06, 54, C7281). PDC's existing operating permit as well as State and Federal land disposal restrictions require that characteristic waste must be rendered non-hazardous prior to disposal and listed waste must be treated to ensure no migration into the environment. (Tr. 2/21/06, 53, C7280). As a result, the toxicity of all waste

placed into the PDC landfill after treatment has been reduced to less than non-hazardous waste toxicity levels. (Tr. 2/21/06, 54, C7281). As a result, leachate generated at PDC, based upon years of analysis approved by the IEPA, is not significantly different and, in many cases, is less toxic than the leachate generated at municipal solid waste landfills. (Tr. 2/22/06 (Liss), 38, C7369).

Kenneth Liss, a licensed professional geologist, with twenty-two (22) years of experience, including fourteen (14) years working for the IEPA and now Director of Environmental Services at Andrews Environmental Engineering, explained that past testing has demonstrated that leachate generated at PDC was particularly low in organic compounds. (Id.; *see also* hearing exhibit A-1, C7954-56). He explained that this is the result of (1) PDC's decision not to accept liquids and organics, (2) the fact that PDC's waste streams are primarily metal-bearing wastes and contain only low concentrations of organic compounds, and (3) the fact that PDC treats all of its hazardous wastes to meet non-hazardous or LDR standards. (Tr. 2/22/06, 39, C7369).

2. Geologic and hydrogeologic setting.

George Armstrong testified regarding the geologic setting in which the site is located. He pointed out, initially, that because of the multiple past expansions and permitting procedures, the site has been extensively studied. (Tr. 2/22/06, 19-21, C7364). There have been 259 soil borings and monitoring wells at the site, 55 of which were drilled proximate to the expansion area. (Tr. 2/22/06, 20, C7364). Hundreds of samples of soil materials have been tested in a laboratory for hydrogeologic and geotechnical properties. (Id.) This has included permeability testing and strength testing. (Id.) Sixty piezometers have been installed, 27 of which continue to be actively monitored. (Tr. 2/22/06, 20-21, C7364). PDC conducted more than 30 field

hydraulic conductivity tests in the form of both packer tests and slug tests in the geologic materials underlying the site. (Tr. 2/22/06, 21, C7364). PDC, in preparing its Application, analyzed more than 21 years of water level measurements at the site and over 21 years of water quality measurements. (Id.) Over 2,000 groundwater samples were previously analyzed. (Tr. 2/22/06, 21-22, C7364-65).

The geologic materials at the site consist of silty clay with occasional discontinuous sand lenses, immediately underneath the facility. (Tr. 2/22/06, 23, C7365). The clay is unweathered beneath the landfill invert and can be described as competent and massive. (Id.) There is no evidence of fractures or joints in the clay (also known as the upper till). (Id.) The minimum thickness of the upper till, beneath the existing and proposed landfill floor is 34 feet and the average thickness is 55 feet. (Tr. 2/22/06, 22-24, C7365). The till is unsaturated and, most significantly, exhibits a permeability three times lower than the minimum standard for recompacted engineered clay landfill liners. (Tr. 2/22/06, 24, C7365).

Beneath the upper till is the lower sand, a unit between 90 and 100 feet thick, which lies atop the Pennsylvanian shale bedrock. (Tr. 2/22/06, 25-26, C7365-66). This unit is different from the Sankoty aquifer, lacking the distinctive pink quartz grains and being 15 to 800 times less permeable than the Sankoty sand. (Tr. 2/22/06, 26, C7366). The upper 50 feet of the sand unit is dry; the lower 40 to 50 feet is saturated and constitutes the uppermost aquifer. (Tr. 2/22/06, 24, C7365).

Beneath the site, the average groundwater flow velocity is less than 10 feet per year. (Tr. 2/22/06, 27 & 29, C7366). Groundwater flow is from the northwest to the southeast. (Id.)

The PDC property line is 500 feet down-gradient from the proposed waste boundary. (Tr. 2/22/06, 27, C7366). The nearest down-gradient water well is 3,000 feet away from the

landfill boundary. (Tr. 2/27/06, 80, 81, C7796). The nearest active community water supply well that is down gradient of the site is 1.6 miles away. (Tr. 2/22/06, 17-18, C7363-64). This well is operated by the Pleasant Valley Public Water District which, in the early 1990's, conducted an extensive engineering study to assess potential threats to their water supply. (Tr. 2/22/06, 18-19, C7364). The study was part of the establishment of the Pleasant Valley Public Water District as the only regulated recharge area in Illinois. (Tr. 2/22/06, 19, C7364). The study identified 25 facilities as potential hazards to groundwater quality within the regulated recharge area. The PDC landfill was not one of those facilities identified and was given a hazard ranking of zero. (Id.)

3. Facility design.

George Armstrong also detailed the facility design, pointing out that all elements of the existing facility and proposed expansion meet the strict RCRA Subtitle C standards for hazardous waste containment. (Tr. 2/21/06, 204 C7318). The basic liner system consists of three (3) feet of recompacted clay, overlain by an 80 mil HDPE geomembrane, overlain by a drainage layer, overlain by a second HDPE geomembrane, overlain by the primary leachate collection system which is finally overlain by a filter layer. (Tr. 2/21/06, 204-206, C7318-19). (This is commonly known as a double-composite liner system). Mr. Armstrong pointed out that the 80 mil HDPE geomembranes exceed minimum State and Federal standards by one-third (1/3). (Tr. 2/21/06, 204-05, C7318). Trenches C2 through C4 and the proposed C5 add a geocomposite clay liner sandwiched between the upper 80 mil geomembrane and a third HDPE geomembrane in the liner system with a thickness of 60 mil. (Tr. 2/21/06, 207, C7319).

Additionally, the design incorporates both primary and secondary leachate collection systems, which are isolated from each other. (Tr. 2/21/06, 209, C7319).

The final cover will consist of 18 inches of recompacted clay overlain by a 60 mil HDPE geomembrane, overlain by a drainage system, and topped by three (3) feet of vegetative soil. (Tr. 2/21/06, 225, C7323). The final cover will have drainage terraces as part of an extensive storm water runoff system, designed to keep precipitation from infiltrating the waste. (Tr. 2/21/06, 226-27, C7324). Additional features of the storm water control system include perimeter channels, fabric form concrete letdown channels, mild slopes and a large, over-designed sedimentation basin to prevent erosion. (Tr. 2/21/06, 220-227, C7322-24).

Because the facility does not accept putrescible waste and organic waste, a landfill gas management system is not necessary. (Tr. 2/21/06, 230, C7325). Testing at the existing gas vents detected negligible amounts of gas, and demonstrated that no air pollution comes from the landfill. (Tr. 2/21/06, 231, C7325).

Mr. Armstrong described, in great detail, the extensive construction quality assurance program, ("CQAP") which regulates the construction and development of the facility. (Tr. 2/21/06, 213-18, C7320-22). The CQAP developed by PDC must conform to the stringent standards of the IEPA and United States Environmental Protection Agency ("USEPA"). (Tr. 2/21/06, 213, C7320). The CQAP requires the presence of an independent, licensed, professional engineer onsite, who monitors construction progress and tests various elements of the engineered liner system. (Tr. 2/21/06, 214, C7321). A "practice" recompacted liner must be constructed with a large scale permeability test performed thereon. (Tr. 2/21/06, 215-16, C7321). 100% of the HDPE geomembranes' welded seams must be tested to ensure integrity. (Tr. 2/21/06, 219, C7322).

4. Performance evaluation and groundwater impact assessment.

Mr. Armstrong emphasized that the Federal RCRA regulations have been established for hazardous waste landfill liner and final cover design to essentially ensure safe waste containment at virtually any location with stable geologic conditions. (Tr. 2/22/06, 10, C7362). Despite the Federal government's exacting specifications, the specific design proposed for the expansion was itself subjected to extensive computer simulation to model its performance in the specific geolologic setting where the site is located. (Tr. 2/22/06, 11-12, C7362). He emphasized that both past experience in the existing disposal cells and computer modeling demonstrate that the maximum accumulation of leachate on the bottom liner would be less than one-tenth (1/10) of one inch. (Tr. 2/22/06, 10-11, C7362). This is significantly less than the maximum head of leachate allowed by regulations: twelve (12) inches.

The performance of the final cover system was also modeled and demonstrated that only 0.025 inches of precipitation will infiltrate through the final cover in the 100 year post-closure period. (Tr. 2/22/06, 11, C7362). Geotechnical analysis of the landfill and its components demonstrates that the facility will be stable, even during extreme, very rare earthquake loading. (Tr. 2/22/06, 12, C7362).

A complete groundwater impact evaluation (the kind required by the IEPA for permitting, but not required for local siting approval, pursuant to 35 Ill.Adm.Code §811.317) was performed by Dr. Larry Barrows. (Tr. 2/22/06, 72, C7377). Dr. Barrows has his doctoral degree in geophysics; he has engaged for over 30 years in various types of environmental studies; he has worked for the Department of Energy; he has performed a study of geophysical surveying of hazardous waste sites for the USEPA and he has taught graduate courses in hydrogeology at Illinois State University. (Tr. 2/22/06, 72, C7377; *see also* hearing exhibit A-1, C7957-58). He

is currently employed at Andrews Environmental Engineering, and has conducted nine groundwater impact assessments in his six years there. (Id.) He is an Illinois licensed professional geologist. (Id.)

The purpose of Dr. Barrows' study was to determine the likely impact, if any, that the proposed expansion would have on groundwater quality. He started by using the abundant site-specific data to develop a conceptual model of groundwater flow at the proposed site. (Tr. 2/22/06, 73, C7377). Dr. Barrows described the hydrogeology at the site as "simple." (Tr. 2/22/06, 75, C7378). Dr. Barrows identified the lower sand underneath the site as side valley outwash facies of the Sankoty formation, distinct from the Sankoty sand and one or two orders of magnitude less conductive than the Sankoty sand. (Tr. 2/22/06, 75-76, C7378). Dr. Barrows confirmed the fact that the upper clay till and the top half of the lower sand are unsaturated and that groundwater flow in the uppermost aquifer is to the southeast. (Tr. 2/22/06, 76, C7378). For purposes of his groundwater impact assessment, Dr. Barrows identified the compliance boundary as being only 50 feet down gradient from the landfill. (Tr. 2/22/06, 77, C7378).

Using approved computer modeling techniques, Dr. Barrows generated a solute prediction factor at the compliance boundary. (Tr. 2/22/06, 77, C7378). He explained that, even though the regulations require a demonstration of no groundwater impact for 100 years, he, arbitrarily, decided to run the model out to 500 years. (Tr. 2/22/06, 77, C7378).

Dr. Barrows made a number of conservative assumptions in his groundwater impact assessment, perhaps the most conservative being that the system only had a single liner, rather than a double- and in some places triple-composite liner system. (Tr. 2/22/06, 79-80, C7379). The various computer models used in the assessment included the H.E.L.P. Model, used to predict leachate flux through the liner system, VS2DT (developed by the U. S. Geologic Survey)

to model solute travel in the unsaturated zones, and MODFLOW/MT3D (a three-dimensional flow and contaminant transport model) to simulate solute travel once it reaches the water table. (Tr. 2/22/06, 79-83, C7379-80).

Dr. Barrows concluded that, even after 500 years, the proposed expansion would have no negative impact on groundwater quality and that the concentration of all leachate constituents at the compliance boundary would be within drinking water standards. (Tr. 2/22/06, 89-90, C7381-82). Dr. Barrows also performed extensive sensitivity analyses where he varied the values of different input parameters to see if that would change the model outcomes. (Tr. 2/22/06, 85, C7380). Using all possible, reasonable values for input parameters, Dr. Barrows was unable to demonstrate any negative impact on groundwater quality 50 feet from the landfill boundary, 500 years after facility closure. (Tr. 2/22/06, 85-86, C7380-81). Dr. Barrows concluded that the naturally occurring processes of biochemical decay, sorption, and partitioning would further reduce contaminant concentrations in groundwater (though he, conservatively, did not even consider these factors in his analysis). (Tr. 2/22/06, 89, C7381).

5. Peer review by Dr. Daniel.

The extensive site characterization and proposed design analyses described above were peer-reviewed by Dr. David Daniel, former Dean of the College of Engineering at the University of Illinois, now President of the University of Texas, at Dallas. (*See* hearing exhibit A-1, C7959-74). Dr. Daniel has authored 5 or 6 textbooks, nearly all of them dealing with waste disposal design, remediation, lining and final covers. (Id.; Tr. 2/22/06, 96-97, C7383). Dr. Daniel was the first person in the United States to develop a course in landfill design for engineering students. (Tr. 2/22/06, 94, C7383). Dr. Daniel has consulted on about 20 hazardous landfill projects over the years, generally on behalf of government agencies. (Tr. 2/22/06, 95, C7383).

Dr. Daniel's specialty is the containment of waste and the design of engineering systems oriented toward containment. (Tr. 2/22/06, 95, C7383). Dr. Daniel performed the definitive study for the EPA on the actual field performance of landfills and waste containment systems. (Tr. 2/22/06, 96, C7383). Dr. Daniel co-authored the EPA's manual on how to build landfills, as well as the report on proper procedures for inspection and verification of construction of landfills. (Tr. 2/22/06, 96, C7383). At the time of his testimony, Dr. Daniel was Chairman of the Committee of the American Society of Civil Engineers studying the reasons for the failure of the New Orleans levee system during Hurricane Katrina, at the request of the U.S. Secretary of Defense. (Tr. 2/22/06, 93-94, C7382-83).

Dr. Daniel opined that modern technology has solved the problem of groundwater contamination and, that to his knowledge, there has not been a single facility built according to modern standards and regulations that has caused groundwater contamination. (Tr. 2/22/06, 101, C7384). Dr. Daniel added that because of the extensive screening and treatment of waste disposed of in modern hazardous waste landfills, the leachate from these landfills tends to be less threatening than leachate from most municipal solid waste landfills. (Tr. 2/22/06, 101-102, C7383-84). Dr. Daniel also pointed out that the standards for liner systems in hazardous waste landfills are designed to render the facilities fully protective of the environment, regardless of the geologic setting. (Tr. 2/22/06, 103, C7385). At the proposed expansion, the thick layer of clay separating the landfill from the water table is an important additional protective feature, both because of its low permeability and because of its ability to chemically attenuate the metals which form a significant portion of the PDC waste stream. (Tr. 2/22/06, 103, C7385). Dr. Daniel described the underlying clay as being like a metallic sponge. (Tr. 2/22/06, 103-104, C7385).

Dr. Daniel described the landfill design as using an established technology, one that has been proven to work. (Tr. 2/22/06, 108, C7386). Dr. Daniel opined that the geomembranes in the liner system could be expected to lose one-half of their strength in 300-500 years and slowly degrade thereafter over periods of hundreds to thousands of years. (Tr. 2/22/06, 110, C7387). On the other hand, the recompacted clay at the base of the liner is the most stable element of the system. (Tr. 2/22/06, 111, C7387). The weight of the waste above this liner tends to compact and compress it and make it even less permeable over time. (Tr. 2/22/06, 111, C7387). The liquids that move through this clay liner tend to drive permeability down and biodegradation of leachate in the clay tends to get better over time. (Tr. 2/22/06, 111, C7387). In one thousand years, Dr. Daniel would expect the geomembrane components of the liner system to be substantially degraded, while the recompacted clay would be present and functional. (Id.)

Dr. Daniel also evaluated the final cover design and concurred that the modeling projections of one-quarter inch of precipitation infiltration per century are reasonable and realistic. (Tr. 2/22/06, 113, C7387). Dr. Daniel likened this amount of infiltration to running a sprinkler system on a lawn for 15 minutes. (Tr. 2/22/06, 114, C7388).

Dr. Daniel pointed out that studies demonstrating the permeability of HDPE geomembranes to organic chemicals are not applicable because organics are not present in sufficient concentration in hazardous waste landfill leachate to pose a threat to geomembranes. (Tr. 2/22/06, 117, C7388).

Dr. Daniel concluded that the facility and proposed expansion are so designed, located and proposed to be operated that the public health, safety and welfare would be protected. (Tr. 2/22/06, 121, C7389). Dr. Daniel would have no concern about the proposed expanded facility if

he were a resident of the community, or for future generations of citizens in the community. (Tr. 2/22/06, 122, C7390).

6. Groundwater monitoring and monitoring history.

Kenneth Liss, one of the first professional geologists licensed in Illinois, testified regarding the groundwater monitoring program at the facility and analyzed the results of past groundwater monitoring. (Tr. 2/22/06, 32, 33, C7367). Mr. Liss is the Director of Environmental Services and manager of the Springfield office of Andrews Environmental Engineering. (Tr. 2/22/06, 32-33, C7367; *see also* hearing exhibit A-1, C7954-56). Mr. Liss has 14 years of experience in the permit section of the IEPA and was Vice-Chairman of the first board which licensed professional geologists in Illinois. (Id.)

Andrews Environmental Engineering performed an independent review of the site data, including a great deal of information previously submitted to the IEPA and other published sources. (Tr. 2/22/06, 33, C7367). Mr. Liss agreed with PDC's characterization of the site's geologic and hydrogeologic conditions. (Tr. 2/22/06, 36, C7368).

Mr. Liss pointed out that past groundwater monitoring demonstrates that leachate quality at the facility has improved over time. (Tr. 2/22/06, 43, C7370). The leachate is high in naturally occurring salts, but does not contain high concentrations of toxic hazardous constituents. (Tr. 2/22/06, 43-44, C7370). Mr. Liss explained how groundwater monitoring involves comparing the quality of samples taken in down gradient monitoring wells with samples from upgradient wells where the groundwater would not have passed underneath the facility. (Tr. 2/22/06, 45, C7370). Mr. Liss described the three sequential and increasingly serious components of groundwater monitoring as being detection monitoring, compliance monitoring

and corrective action monitoring. (Tr. 2/22/06, 45, C7370). Groundwater monitoring at the site has generated over 10,000 analytical results over the past 21 years. (Tr. 2/22/06, 47, C7371).

Low level organic compounds have been detected in wells near PDC's northeastern property corner, more than 1,000 feet upgradient or sidegradient of the proposed expanded landfill area. The IEPA has agreed that these low level organics do not originate from the PDC landfill, rather an offsite source is suspected. (Tr. 2/22/06, 47, C7371). In the case of the other possible past monitoring exceedences, PDC has always complied with the IEPA rules and demonstrated through investigation to the satisfaction of the IEPA, that the landfill was not the cause. (Tr. 2/22/06, 49, C7371). For example, high zinc levels at some monitoring locations in the past were attributed to the use of galvanized metals in the wells, and the levels dropped to normal when PDC replaced these with stainless steel wells. (Tr. 2/22/06, 50, C7372). PDC has never been required to move to the corrective action phase of monitoring and the groundwater at the site is in full compliance with the IEPA and USEPA standards. (Tr. 2/22/06, 50, C7372). The facility remains in detection monitoring mode, "which is the best place to be." (Id.)

There has been significant controversy regarding chloride levels in a few of the monitoring wells and whether they possibly represent evidence of leachate releases from the existing facility. No one, not even the opposition expert, testified that any chloride level in any monitoring well represented a release of leachate from the facility. The evidence was to the contrary (as is set forth below). The controversy regarding chloride stems from a comment in the County Staff Report that "geochemical fingerprinting shows that there is a possibility of chloride from trench C1 leachate impacting one monitoring well. Other possible sources, in reviewing the groundwater flow maps, show that the leachate tank T-4 and older landfill units are upgradient to the well." (County Staff Report, p. 15, C12109). The Supplemental Staff

Report stated that "the leachate fingerprinting provided in the March 22, 2006, submittal rules out trench C as a possible source of the increases, except for the chloride found in well R138. County staff believes that this well could be impacted from manmade offsite sources of chloride, natural increases in chloride, closed PDC landfills and/or trench C1." (Supp. Staff Report, p.20, C139575). The County Staff Reports are not evidence. The County Staff Reports are merely one analysis by unnamed individuals of the sworn evidence and other unsworn submittals of the parties.

Sworn testimony revealed that the Pennsylvanian age rocks that form the shale bedrock underlying the lower sand unit have high chloride content. (Tr. 2/22/06, 34, C7368). Chlorides are used in many applications and are naturally occurring. (Tr. 2/22/06, 41, C7369). Chlorides in groundwater are frequently due to road deicing salts. (Tr. 2/22/06, 42, C7370). Chloride concentrations in groundwater tend to "bounce around." (Tr. 2/22/06, 57, C7373). Mr. Liss, who reviewed chloride levels in monitoring data while employed at the IEPA opined that variations in chloride levels in monitoring data at the PDC site were due to naturally occurring differences. (Tr. 2/22/06, 58, C7374). The roads in the area of the facility have considerable grade and require deicing. (Tr. 2/22/06, 42, C7370). Interestingly, analysis of a groundwater sample collected in 1942 (26 years prior to the opening of the landfill) from a well drilled into shale near the landfill, at the former Pottstown School, indicated a chloride concentration of 1,150 parts per million, significantly higher than the concentrations detected in the groundwater monitoring wells surrounding the PDC No. 1 Landfill. (Supp. Groundwater Quality Assessment Report, pg. 4; C11538).

Mr. Liss also pointed out that the deeper monitoring wells at the site exhibited more chloride, evidence that naturally occurring chloride in the shale bedrock is moving upward into

the groundwater. (Tr. 2/22/06, 59, C7374). Mr. Liss explained that the shale bedrock was formed in a saltwater sea. (Tr. 2/22/06, 60, C7374).

Mr. Liss also described a scientifically valid technique whereby comparing the ratio of bromide to chloride in a sample can help to identify the source of the chloride. (Tr. 2/22/06, 63, C7375). At the PDC facility, the bromide/chloride ratios in the leachate are significantly different than the bromide/chloride ratios in the monitoring samples with high chloride, indicating that the landfill is not the source of the chloride. (Tr. 2/22/06, 67, C7376).

Mr. Liss also explained that TOX levels (Total Organic Halides) in monitoring wells are unreliable measures of contamination in areas that have high naturally occurring chlorides. (Tr. 2/24/06, 60, C7374). As a result, while Mr. Liss was still at the IEPA, the analysis of TOX levels was falling into disfavor as a regulatory parameter. (Tr. 2/22/06, 69-70, C7376-77).

On cross-examination, Mr. Liss indicated that it was difficult to find a pattern in the variation of chloride levels in monitoring wells at the site. (Tr. 2/24/06, 65, C7586). Mr. Liss specifically attributed the occasional high chloride levels in well R138 to drainage of road salt impacted surface water into the ravines in the area. (Tr. 2/24/06, 254, C7634). Mr. Liss also pointed out that, along with chloride, sulfate is a mobile constituent of leachate used as an early marker for contamination, and that, in the case of well R138, sulfate levels have remained stable during the period when chloride levels were fluctuating. (Tr. 2/24/06, 255, C7634). Mr. Liss also analyzed the monitoring samples for other characteristic constituents of leachate and was unable to find any. (Tr. 2/24/06, 258-259, C7635).

7. Operating plan.

Ron Edwards, the Vice-President of Development and Operations for PDC, detailed the existing and proposed operating plan of the facility and the proposed expansion, respectively.

(Tr. 2/21/06, 57-98, C7281-92). He began by describing the chemical stabilization facility onsite which uses best-demonstrated available technology to immobilize metals received at the facility. (Tr. 2/21/06, 57, C7281). Toxicity of these metals is reduced to State and Federal land disposal restriction standards. (Tr. 2/21/06, 58-60, C7282). The waste is essentially mixed with cement and other reagents, and has to be retested after treatment and before disposal. (Tr. 2/21/06, 59, C7282). Mr. Edwards identified the treatment and stabilization of waste as a key component of the operating plan. (Tr. 2/21/06, 62, C7283).

Mr. Edwards also identified and detailed all of the other components of the operating plan for the facility. (Tr. 2/21/06, 57-98, C7281-92). PDC has detailed acceptance procedures and a waste acceptance committee to ensure that ignitable, corrosive and reactive wastes, as well as municipal solid waste, potentially infectious medical waste and regulated radioactive waste are not received. (Tr. 2/21/06, 63, 7283). The waste approval analysis includes physical and chemical testing of a sample of the waste proposed to be landfilled. (Tr. 2/21/06, 64, C7283).

Every load of waste received at the PDC No. 1 Landfill is checked and inspected. (Tr. 2/21/06, 66, C7284). This includes physical inspection comparison to historical photographs, analysis of pH values, a paint filter test to determine the presence of liquids, load bearing analysis, testing for reactivity with water, a volatile organic vapor scan, a radioactivity scan and a review by the gate control administrator of the required paperwork accompanying each load of waste. (Tr. 2/21/06, 65-66, C7283-84).

Roadways within the facility are paved to the edge of the landfill. All weather gravel roads provide access to the active waste disposal areas. Waste-hauling trucks are not allowed onto uncovered waste. (Tr. 2/21/06, 67, C7284). Daily cover, consisting of a minimum of 6 inches of soil or other approved synthetic daily cover is applied at the end of each day. (Tr.

2/21/06, 68, C7284). Intermediate cover consisting of a minimum of 18 inches of soil is placed over all areas that will not receive waste within 60 days. (Id.)

Leachate generated at the landfill is routed to a central collection point and then removed to the onsite wastewater treatment facility. (Tr. 2/21/06, 70, C7285). Only after this treatment is the leachate discharged pursuant to permit to the Greater Peoria Sanitary Sewer System. (Tr. 2/21/06, 71, C7285). Mr. Edwards pointed out that the current surface impoundment for wastewater is proposed to be replaced as part of the expansion by leachate storage tanks. (Tr. 2/21/06, 71, C7285). (In fact, the Application provides that as part of the expansion, the surface impoundment would be replaced with a new, 100,000 (minimum) gallon above-ground storage tank. *See* Application, pgs. 2.3-13-14; C245-46, and drawings S-4, S-6 and S-7; C263, C265 and C266). Storm water which contacts waste is treated as leachate. (Id.) Other non-contact storm water is routed to a detention basin where it will "silt out" before discharged to the unnamed tributary to Kickapoo Creek. (Tr. 2/21/06, 72-73, C7285).

Regarding the allegation that PDC is responsible for significant toxic releases as documented in the Toxic Release Inventory ("TRI"), Mr. Edwards pointed out that this inventory includes intentional placement of waste into a properly permitted landfill as land releases. (Tr. 2/21/06, 74, C7286). The metal compounds which have been treated for safe land disposal are not volatile and do not present a threat for airborne release. (Tr. 2/21/06, 75, C7286). The only airborne emissions at the site are associated with the waste treatment plant, the operations of which are indoors and are not a part of the Application. (Id.) Nonetheless, PDC has an air permit for operation of the waste treatment facility and reports emissions less than two-thirds of the allowable emissions under the permit. (Tr. 2/21/06, 75, C7286).

PDC has conducted, and will continue to conduct, ambient air monitoring at its facility boundaries. (Tr. 2/21/06, 75, C7286; Tr. 2/21/06, 100-01, C7292). This is a voluntary program and is conducted by a qualified air quality contractor, who places measurement devices at roughly each corner of the facility. (Tr. 2/21/06, 76, C7286).

In 2003, PDC reported zero emissions to the surface waters of the State and 1,533 pounds as a point-source discharge of six metals from the bag house that services the waste treatment plant. (Tr. 2/21/06, 95, C7291). The second figure was a calculated estimate of bag house emissions and, of that amount, 1,170 pounds represent zinc, which is not even a regulated hazardous waste. (Tr. 2/21/06, 96, C7291). However, actual testing suggested that the true airborne emissions from the waste treatment facility bag house are a mere 160 pounds per year, rather then the reported 1,533 pounds. (Tr. 2/21/06, 99, C7292). Ambient air monitoring at the facility boundary demonstrated no releases and all results of such monitoring have been below IEPA screening levels. (Tr. 2/21/06, 101, C7292).

Mr. Edwards detailed the usual suite of operational procedures and plans, including noise control, vector and litter control, inspections and maintenance, access control, safety training, hazard prevention and emergency response plans. (Tr. 2/21/06, 76-80, C7286-87).

Mr. Edwards discussed fire prevention and spill control at some length. He pointed out that fires are not inherently significant risks, because PDC rejects ignitable and explosive wastes and because the lack of organic content in the waste stream makes methane generation negligible. (Tr. 2/21/06, 80, C7287). Chemical reactions are controlled by performing a detailed compatibility determination for each waste stream accepted. (Id.)

Tanks used on site for treatment or temporary storage of wastes are corrosion resistant and have secondary containment. (Tr. 2/21/06, 80, 81, C7287). Piping at the facility is double-

walled. (Tr. 2/21/06, 81, C7287). The Application sets forth elaborate and extensive spill containment and remediation procedures. (Id.) A contingency plan exists to respond to emergency conditions. (Id.) PDC has written coordination agreements with all governmental units that could be summoned to the facility in the event of an emergency. (Tr. 2/21/06, 82, C7288). Emergency coordinators are in contact with the facility at all times, have 24 hour communication devices and are authorized to commit company resources in the event of an emergency. (Tr. 2/21/06, 84, C7288). Mr. Edwards concluded that PDC's facility is proposed to be operated so that the public health, safety and welfare will be protected and the Plan of Operations for the facility is designed to minimize the danger to the surrounding area from fires, spills and other operational accidents. (Tr. 2/21/06, 82, C7288).

No other sworn testimony was presented regarding the adequacy of PDC's operational and emergency plans.

8. The opposition witnesses.

Four witnesses offered sworn testimony on behalf of the opposition groups. Only one of these was qualified as an expert. Charles Norris, a self-employed geologist from Denver, Colorado, testified on behalf of PFATW and HOI Sierra. Mr. Norris previously testified on behalf of citizens' groups opposing landfill development or expansion at over a dozen hearings and, on each occasion, he opined that the applicant did not adequately discuss flaws in the geology and hydrogeology of the site. (Tr. 2/24/06, 174, C7614). Despite this history of opposition to landfills, Norris did not opine in his testimony at the hearing concerning the Application that the site was not protective of the public health, safety and welfare, nor did he conclude that the PDC site was not suitable from a geologic and hydrogeologic perspective for landfill development. (Tr. 2/24/06, 172-173, C7613).

Mr. Norris's first major contention was that water at the PDC site moves rapidly from the ground surface to the uppermost aquifer, in a vertical direction. (Tr. 2/24/06, 121-122, C7600-01). In support of this conclusion, Mr. Norris alleged that parts of the site geology and hydrogeology as described in the application are contradicted by the data (Tr. 2/24/06, 115, C7599), but he never provided or even identified the data that he referenced. In fact, Mr. Norris acknowledged that the evidence for his theory of rapid downward movement of water at the PDC site was largely "negative," meaning that he did not visually see much evidence of horizontal movement of water offsite. (Tr. 2/24/06, 122, C7601). Mr. Norris's conclusions were based on walking around the perimeter of the site and looking for evidence of seepage or springs. (Tr. 2/24/06, 123-124, C7601). On cross-examination, Mr. Norris acknowledged that, in his walk around the site perimeter, he never got closer than five hundred feet (500') to the site and was often further away. (Tr. 2/24/06, 198, C7620). Other than his visual observations from a great distance, Mr. Norris collected no other data to support his theory of rapid downward migration of water at the site.

Mr. Norris also acknowledged that, on every other occasion when he has testified for citizens' groups, he theorized that groundwater and contaminant migration through tills would be significantly faster than described in the siting application and that the mechanism for such movement would be through fractures or interconnected sands in the tills. (Tr. 2/24/06, 165, C7611). Mr. Norris hypothesized that, at the PDC site, the primary mechanism for rapid downward movement of ground water was interconnected sand. (Tr. 2/24/06, 163, C7611). Mr. Norris has never published any articles to support his theory, although he has expressed this theory in every case where he has testified on behalf of a citizens' group against a landfill siting application. (Tr. 2/24/06, 165-66, C7611-12).

Mr. Norris pointed to large annual, and sometimes seasonal, changes in water levels at various monitoring wells at the PDC site as evidence of rapid downward movement of precipitation through the till. (Tr. 2/24/06, 145, C7606). The validity of this conclusion was specifically contradicted by Dr. Larry Barrows, who explained that seasonal variations in monitoring well levels are not the result of rainfall infiltration, but rather the result of pressure changes which can be transmitted throughout an aquifer almost instantaneously. (Tr. 2/27/06, 76-77, C7795). These pressure changes would be expected as a result of the close proximity of the deeply incised Kickapoo Creek. Kickapoo Creek is believed to directly recharge the lower sand aquifer. (*See* id.)

Mr. Norris's next point was that contaminants in the vicinity of the site have already reached the aquifer. (Tr. 2/24/06, 140, C7605). He did qualify this opinion, however, to state that he was not alleging any leakage from any disposal unit, either open or closed, at the PDC facility. (Tr. 2/24/06, 210, C7620). He also acknowledged that the chlorinated, organic compounds observed in minute quantities at some monitoring wells were actually observed in wells that are upgradient of the PDC facility, including R-122 and R-128. (Tr. 2/24/06, 204-205, C7621). The only explanation that he could offer for contaminants moving upgradient from the site is that they might behave like a "leaf fluttering to the ground." (Tr. 2/24/06, 206, C7622).

Mr. Norris drew further support for his theories from what he described as elevated TOX levels in some of the monitoring wells at the site. (Tr. 2/24/06, 147,148, C7607). He disagreed with the testimony of Kenneth Liss that TOX is not a reliable indicator of contamination at a site with high naturally occurring chlorides such as the PDC site, but did not offer a basis for the disagreement. (Tr. 2/24/06, 212-213, C7623).

Mr. Norris's last major point was that the groundwater impact assessment performed by Dr. Barrows, showing that the facility, even with ultraconservative assumptions, would pose no threat to groundwater quality for the entire five hundred (500) year study period, was not properly calibrated. (Tr. 2/24/06, 215, C7624). He opined that the multiple sensitivity studies performed by Dr. Barrows in his modeling are not the same as calibration. (Tr. 2/24/06, 215, C7624). Mr. Norris, however, did not do any modeling of his own with respect to the site data. He acknowledged that Dr. Barrows correctly identified diffusion and dispersion as the driving forces for groundwater movement. (2/24/06, 216, C7624). He could not point to any mathematical errors in Dr. Barrows' modeling. (Tr. 2/24/06, 217, C7624). He admitted that he was not familiar with all of the various government-developed or -approved computer programs used by Dr. Barrows. (Id.) Most significantly, Mr. Norris' unsupported belief that the groundwater impact analysis was not calibrated was directly contradicted by Dr. Barrows, who explained exactly how the groundwater impact model was calibrated. (Tr. 2/27/06, 43, C7787).

Mr. Norris readily acknowledged that his theories have been rejected at a number of other hearings where landfills were successfully sited and ultimately permitted. Most notably, he admitted that in the final report and the recommendations of Will County to the pollution control facility siting committee concerning the Prairie View RDF Siting Application, testimony similar to what he offered here was specifically rejected as not being supported by any "substantive evidence." (Tr. 02/24/06, 185-187, C7616-17).

Despite the foregoing, Mr. Norris did make some important admissions which are relevant to an evaluation of the safety of the proposed expansion. He did not dispute the accuracy of PDC's hydraulic conductivity test results. (Tr. 2/24/06, 193, C7618). He also acknowledged that the PDC facility does not overlie the Sankoty aquifer. (Tr. 2/24/06, 239,

C7629). He also accepted PDC's calculation of the horizontal groundwater flow velocity in the uppermost aquifer underneath the site as being about ten feet (10') per year. (Tr. 2/24/06, 152, C7608). Additionally, Mr. Norris acknowledged that the uppermost aquifer recharges from precipitation at topographically low points offsite, where it is actually exposed at the ground's surface, and that this alone could explain the trace amounts of organic chemicals detected in some upgradient wells. (Tr. 2/24/06, 203, C7621).

Mr. Norris is not an engineer and, when asked whether he agreed with Dr. Daniel's estimate of the longevity of the engineered containment systems proposed for the expansion, he testified that he neither agreed nor disagreed with that estimate. (Tr. 2/24/06, 223, C7626). He did, however, agree with Dr. Daniel that leachate which escapes from a landfill will clean up over time through reaction and biodegradation. (Tr. 2/24/06, 224, C7626).

The opponents called no other witnesses who qualified as experts in any subject. PFATW and HOI Sierra did offer Timothy Montague as an expert on landfill liners and landfills in general, but the Hearing Officer found "that he has not been qualified as an expert." (Tr. 2/27/06, 211, C7829). As a result, the testimony of Mr. Montague proceeded in the nature of sworn public comment.

Mr. Montague is a self-described "researcher" and part-time graduate student who works out of his house. (Tr. 2/27/06, 209, C7622; 237, C7629). He has a varied job history, mostly in the fields of advertising and public relations. (Tr. 2/27/06, 237-240, C7629-30). His presentation was directed at all landfills in general and not the Application. (Tr. 2/27/06, 212-230, C7623-28). He had not studied or even seen the Application. (Tr. 2/27/06, 231, C7834). Mr. Montague compared the PDC facility to Love Canal, even though he was unaware of the sophisticated containment engineering in a modern hazardous waste landfill. (Tr. 2/27/06, 232-

234, C7628-29). In fact, Mr. Montague was unaware of what the Federal Subtitle C and Subtitle D regulations or RCRA even are. (Tr. 2/27/06, 252, C7839). He could not name a single landfill built pursuant to RCRA regulations which is leaking or has negatively impacted human health. (Tr. 2/27/06, 252-253, C7839).

In this case, Mr. Montague's fear was encapsulated in what he expressed as "the second law of thermodynamics," which he described as the law of entropy, by which everything "will spontaneously break apart and diffuse into the universe." (Tr. 2/27/06, 246, C7838). Mr. Montague's proffered solution to the world's waste disposal problem is above-ground storage where "you put it in a large seven-story building...." (Tr. 2/27/06, 263, C7842).

The third witness offered by the opponents was Gary Zwicky, a local physician who had been active in rallying the opposition of the medical community. (Tr. 2/27/06, 276-96, C7845-50). Dr. Zwicky was not qualified as an expert concerning any of the nine statutory criteria. He was concerned about possible heavy metal leakage from the site, but could not identify a potential exposure pathway for such leakage. (Tr. 2/27/06, 279, C7846). He is not an engineer, a geologist or a hydrogeologist, and he had not read any substantial portion of the Application. (Tr. 2/27/06, 279-280, C7846).

Finally, the opponents offered the testimony of Michael Vidas, an ear, nose and throat doctor, who also had not studied any part of the siting application. (Tr. 2/27/06, 296-333, C7850-59). Dr. Vidas was not qualified as an expert concerning any of the nine statutory criteria. He had no knowledge regarding landfill design or construction. (Tr. 2/27/06, 297-298, C7850-51). Nonetheless, he was concerned about the possible health effects of the "toxins" within the landfill, and all the studies he had seen said that property values near landfills go down. (Tr. 2/27/06, 301-302, C7851-52). He did not hear the testimony of any of the other

witnesses, and he was unfamiliar with the regional hydrogeology. (Tr. 2/27/06, 312, C7854). However, from his "naïve" perspective, the location of the landfill was "bothersome." (Tr. 2/27/06, 314-15, C7855).

C. Criterion iii: the facility is so located as to minimize incompatibility with the character of the surrounding area, and to minimize the effect on the value of surrounding property.

Chris Lannert, a landscape architect and land use planner of significant experience testified that the proposed expansion was designed so as to minimize incompatibility with the surrounding area. (Tr. 2/21/06, 174, C7311). President of the Lannert Group in Geneva, Mr. Lannert offers professional services in the area of planning, landscape architecture and community consulting. (Tr. 2/21/06, 161, C7307). Mr. Lannert is a registered landscape architect and sits on the Illinois Department of Professional Regulation for his profession. He has provided expert testimony regarding the compatibility of solid waste landfill proposals with the surrounding area in excess of 25 times. (Tr. 2/21/06, 163, C7308).

Using an aerial photograph, Mr. Lannert described the PDC site and surrounding areas. Mr. Lannert pointed out that PDC owns in excess of 350 acres surrounding the site. (Tr. 2/21/06, 164, C7308). The site is buffered on one side by railroad tracks, on another by a creek and on the East, by residential development. (Tr. 2/21/06, 166, 168, C7309). Within a 1.5 mile radius of the proposed expansion, Mr. Lannert identified approximately 49% of the land as agricultural, conservation land or park land, all of which he found compatible with the proposed use of the expansion. (Tr. 2/21/06, 166, C7309). Most of the land in proximity to the proposed site is zoned either industrial or agricultural. (Tr. 2/21/06, 167, C7309).

Mr. Lannert pointed out that PDC's other land holdings provide a significant buffer between the site and the existing residential uses within Peoria. (Tr. 2/21/06, 168, C7309). The

site itself represents a transition between the predominantly agricultural uses to the West and the predominantly residential uses to the East. (Tr. 2/21/06, 169, C7309).

The vertical portion of the expansion proposes to raise the maximum site elevation by 45 feet. (Tr. 2/21/06, 170, C7310). To demonstrate graphically that this elevation gain will not have negative impacts (and in most cases will not even be visible) from surrounding areas, Mr. Lannert took a series of photographs from a number of points circumventing the facility and superimposed the new land form onto those photographs. (Id.) For example, from the apartment complex to the southeast of the site, the existing landfill and proposed expansion would still be below the tree line. (Tr. 2/21/06, 171, C7310). In addition to the dense vegetation surrounding the site, Mr. Lannert pointed out that the significant land undulation between the landfill and neighboring residential uses reduces visibility and impact. (Tr. 2/21/06, 172, C7310). Another photograph taken from a single-family home in a cul-de-sac north of the landfill demonstrated that the facility is not visible. (Tr. 2/21/06, 173, C7310).

Mr. Lannert concluded that the subject site is effectively screened from view by the existing vegetation and topography and that the end use plan of passive open space is compatible with other land uses in the area. (Tr. 2/21/06, 174, C7311).

Gary DeClark, a member of the Appraisal Institute since 1981, testified that the proposed expansion would have no negative impact on surrounding property values. (Tr. 2/21/06, 187, C7314). He is a Managing Director of Integra Realty Resources of Chicago, a national real estate valuation and consulting firm, having 512 offices across the United States. (Tr. 2/21/06, 175, C7311). Mr. DeClark has over 28 years of experience in the real estate valuation and consulting business, is a professional real estate appraiser licensed in Illinois and 10 other states, and is a past President of the Chicago chapter of the Appraisal Institute. (Tr. 2/21/06, 176,

C7311). Mr. DeClark directed a real estate impact study to ascertain the effect, if any, of the existing facility and proposed expansion on surrounding property values. (Tr. 2/21/06, 177, C7311). The purpose of an impact study, he explained, is to examine the influence of a particular land use on adjoining properties. (Tr. 2/21/06, 177, C7311). The methodology for an impact study involves comparing real estate appreciation rates in a target area, proximate to the use being studied with appreciation rates in a control area, located some distance away. (Tr. 2/21/06, 177, C7311). Typically, residential sales prices are converted to a price-per-square-foot figure in his analysis. (Tr. 2/21/06, 178, C7312). In this case, Mr. DeClark analyzed two separate types of properties, both single-family residential properties and condominium properties, because both types of properties are proximate to the landfill expansion location. (Tr. 2/21/06, 178, C7312).

In the study of detached single-family home sales, Mr. DeClark used 206 sales within the target area and 960 sales in the control area. (Tr. 2/21/06, 180, C7312). To ensure that the designated control area was outside any possible influence from the existing landfill, Mr. DeClark also examined sales in a second, more distant, control area. (Tr. 2/21/06, 181, C7312).

The study results demonstrated average annual appreciation in single-family, detached homes in the target area of 4.58%, appreciation in control area one, east of the target area, of 4.29% and appreciation in control area two, two miles north of the target area, of 4.63%. (Tr. 2/21/06, 182, C7313). Mr. DeClark found these appreciation rates to be so similar as to conclude that the PDC landfill is obviously not impacting appreciation of single-family homes in the area immediately adjacent to the landfill. (Tr. 2/21/06, 183, C7313).

As an additional control and to make sure that the areas being compared were actually similar, Mr. DeClark compared the per square foot sales prices of homes in the target and control

areas. (Tr. 2/21/06, 182, C7313). These varied from $65.35 per square foot in control area two to $66.66 per square foot in the Lexington Hills subdivision in the target area and, accordingly, Mr. DeClark concluded that the properties being compared were similar to one another and regionally homogenous. (Tr. 2/21/06, 182, C7313). The average holding period of properties in all three areas was also similar. (Tr. 2/21/06, 183, C7313).

The comparison of appreciation in condominiums used similar methodology and, again, Mr. DeClark selected two separate control areas. (Tr. 2/21/06, 184, C7313). The highest rate of average annual appreciation was found in the target area, the properties closest to the landfill. (Tr. 2/21/06, 184, C7313). Actual prices as well as average holding period were similar in all three areas. (Tr. 2/21/06, 185, C7313).

Mr. DeClark concluded that the results in his Peoria studies were consistent with results obtained by him in other studies analyzing the impact of large regional landfills on surrounding property values. (Tr. 2/21/06, 186, C7314). He specifically identified the Winnebago Landfill, Settlers Hill in Kane County, Riverbend Prairie Landfill in Dolton, and Lake Landfill in Northbrook as examples. (Tr. 2/21/06, 186, C7314). Accordingly, Mr. DeClark concluded that the proposed facility and expansion are so located as to minimize any effect on the value of surrounding property. (Tr. 2/21/06, 187, C7314).

No other witnesses offered sworn testimony regarding property values, and the conclusions of Mr. Lannert and Mr. DeClark were not rebutted.

D. Criterion 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.

As and for its statement of facts regarding the County's improper imposition of a $5.00 per ton surcharge as a condition of approval of siting Criterion v, PDC adopts and incorporates

the facts set forth in PDC's Motion for Partial Summary Judgment (Criterion v) and Memorandum of Law in Support thereof, filed on September 8, 2006, and in PDC's Reply in Support of Motion for Partial Summary Judgment (Criterion v), filed on October 16, 2006.

STANDARD OF REVIEW AND APPLICABLE LAW

As to the arguments raised in PDC's Motion for Summary Judgment (415 ILCS §5/39.2(e)) and the Memorandum in Support thereof, filed on November 20, 2006, and in PDC's Reply in Support of its Motion for Summary Judgment (415 ILCS §5/39.2(e)), filed on December 28, 2006 (incorporated as Argument Section I herein), the proper standard of review is *de novo*:

> The law is well settled that when reviewing a question of law the reviewing court should use the de novo standard of review. See Panhandle Eastern Pipe Line Company v. IEPA, 314 Ill. App. 3d 296, 734 N.E.2d 18, 21 (4th Dist. 2000).

City of Kankakee v. County of Kankakee, *et al.*, PCB 03-125, PCB 03-133, 2003 WL 21995876, *13 (IPCB, August 7, 2003).

Similarly, the Pollution Control Board's review of whether the local siting proceedings were fundamentally fair is *de novo* pursuant to 415 ILCS §5/40.1. The Board has the initial responsibility for making findings of fact and conclusions of law on this issue, and is to consider evidence developed in discovery during this appeal:

> Generally, the PCB must confine itself to the record developed by the local siting authority. 415 ILCS 5/40.1(a) (West 1998). However, in some cases, such as the one at bar, it is proper for the PCB to hear new evidence relevant to the fundamental fairness of the proceedings where such evidence necessarily lies outside of the record. See *E & E Hauling, Inc. v. Pollution Control Board,* 116 Ill.App.3d 586, 71 Ill.Dec. 587, 451 N.E.2d 555 (1983), *aff'd,* 107 Ill.2d 33, 89 Ill.Dec. 821, 481 N.E.2d 664 (1985).

Land and Lakes Co. v. Illinois Pollution Control Bd., 319 Ill.App.3d 41, 48, 743 N.E.2d 188,194, 252 Ill.Dec. 614, 620 (3 Dist. 2000).

The standard of review with respect to whether or not the local decision is against the manifest weight of the evidence on the substantive siting criteria is more complex. The Pollution Control Board has recently argued before the Illinois Supreme Court that the Pollution Control Board makes the final agency decision which is subject to review by the Appellate Court, pursuant to the Administrative Review Act, and that the local siting decision is an "interim decision." As such, while the Board is charged with determining whether the local decision is against the manifest weight of the evidence, the Board must first apply its technical expertise to determine whether the evidence considered by the local siting authority was competent and reliable. For the Board to simply confine its review to a determination of whether there was some evidence in support of a local decision, without first determining whether that evidence was competent, reliable and scientifically valid, defeats the legislative intent in investing the Board with technical expertise. (*See* Brief of the Illinois Pollution Control Board prepared by the Attorney General in Case Nos. 101619 and 101652, Town & Country Utilities, Inc., and Kankakee Regional Landfill, LLC, Petitioners/Cross-Respondents-Appellees, v. Illinois Pollution Control Board, Respondent/Cross-Respondent-Appellant, and County of Kankakee and Edward D. Smith, State's Attorney of Kankakee County, Respondents/Cross-Petitioners-Appellants, pending before the Illinois Supreme Court. A copy of the relevant portion of the Brief is attached as Appendix A hereto.)

Accordingly, on review of an interim local siting decision on the substantive siting criteria, the Board must first apply its superior technical expertise to determining what evidence was competent, relevant and scientifically valid. An interim local decision can then be

overturned only if it is against the manifest weight of that evidence which the Board has determined to be competent, relevant and scientifically valid.

ARGUMENT

I. THE APPLICATION IS DEEMED APPROVED PURSUANT TO 415 ILCS §5/39.2(e).

As and for its argument regarding the first question presented for review by the Pollution Control Board, PDC adopts and incorporates the arguments made in PDC's Motion for Summary Judgment (415 ILCS §5/39.2(e)) and the Memorandum in Support thereof, filed on November 20, 2006, and in PDC's Reply in Support of its Motion for Summary Judgment (415 ILCS §5/39.2(e)), filed on December 28, 2006, and the relevant portions of the Statement of Facts, above.

II. THE PROCEDURES USED BY THE COUNTY BOARD IN THIS CASE WERE NOT FUNDAMENTALLY FAIR.

Pursuant to Section 40.1(a) of the Act, the Pollution Control Board is vested with the power to review the fundamental fairness of a proceeding for local siting approval:

> * * *. In making its orders and determinations under this Section the Board shall include in its consideration ... the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision. * * *.

415 ILCS §5/40.1(a).

In rendering a decision on an application for siting approval, a local siting authority is called upon to act in a quasi-judicial, rather than legislative, manner:

> There is little in this record which indicates that the County Board Members ... made any real distinction between their quasi-judicial functions and their legislative functions, and much that they did not.

City of Rockford v. Winnebago County Board, PCB 87-92, 1987 WL 56379, *14 (IPCB, November 19, 1987). Therefore, County Board members are to make their decisions regarding a siting application based solely on the evidence before them in the Record, and may not be biased in favor of or against such application.

In this case, the majority of County Board members who voted against the motion for approval of the Application did not understand their quasi-judicial function, or that they were to base their decision solely on the evidence, or their obligation to avoid *ex parte* contacts. Moreover, the sheer volume of the *ex parte* contacts in this case is unprecedented, and reached a level where no reasonable person could conclude that the purported decision was free of bias and undue influence. Several of the County Board members have specifically stated that they considered material outside the record in making up their minds regarding the Application, and/or were actually biased against PDC and the Application.

A. The entire County Board was irrevocably tainted by the volume of *ex parte* contacts in this case.

Ex parte contacts between opponents and County Board members are not permitted during the siting process:

> The case law condemns such *ex parte* contacts because they (1) violate statutory requirements of public hearings, and concomitant rights of the public to participate in the hearings, (2) may frustrate judicial review of agency decisions, and (3) may violate due process and fundamental fairness rights to a hearing. The impropriety of *ex parte* contact in administrative adjudication is well established. *U.S. Lines v. Federal Maritime Commission,* 584 F.2d 519, 536-42 (D.C.Cir.1978); *PATCO v. Federal Labor Relations Authority,* 685 F.2d 547, 564-66 (D.C.Cir.1982); *Sangamon Valley Television Corp. v. United States,* 106 U.S.App.D.C. 30, 33, 269 F.2d 221 (D.C.Cir.1959); *No. Fed. Sav. & Loan Assoc. v. Becker,* 24 Ill.2d 514, 520, 182 N.E.2d 155 (1962); *Fender v. School Dist. No. 25,* 37 Ill.App.3d 736, 745, 347 N.E.2d 270 (1976).

E & E Hauling, Inc. v. Pollution Control Bd., 116 Ill.App.3d 586, 606-07, 451 N.E.2d 555, 571, 71 Ill.Dec. 587, 603 (2 Dist. 1983), *affirmed*, 107 Ill.2d 33, 481 N.E.2d 664, 89 Ill.Dec. 821 (1985).

It was the obligation of the individual County Board members to avoid *ex parte* contacts and to minimize the impact of any unavoidable *ex parte* contacts. The County Board members' failure to do so requires reversal of the County Board's purported decision, and is reminiscent of (though far more egregious than) the circumstances in City of Rockford v. Winnebago County Board, *supra*, wherein the Pollution Control Board stated as follows:

> As well as evidencing an unacceptable blurring by the County of the issues to be considered, and disinclination to be bound by the limits of the record before the County, this record also indicates a basic failure by the majority of County Board Members to appreciate the significance of the concept of ex parte contacts.
>
> The prohibition against ex parte contacts flows from the requirement that adjudicatory decisions be made on the basis of a sworn and transcribed record subject to cross-questioning by all parties involved. To the extent the SB172 process contains a 30-day post hearing public comment period without including a restriction of the scope of comments to argument about information already in the record, the ability to rebut all on-record information is diminished; nonetheless the principle of prohibiting informal or special access to decisionmakers remains the same.
>
> There is no indication that most Board Members did anything either to restrict their usual informal contacts with their constituents or to make such contacts part of the record by e.g. routinely forwarding all correspondence to the Clerk, by reducing the contents of unavoidable phone calls to writing and filing the memo with the Clerk. * * *.

PCB 87-92, 1987 WL 56379, *15. In City of Rockford, as in this case, the County Board members were barraged with inappropriate contacts from members of the public, which contacts were in keeping with legislative, but not quasi-judicial, functions:

> Any natural, if inappropriate, tendencies the County Board Members may have to confuse their duties and role was exacerbated by STL's public opinion campaign. STL's flyers urging the writing and proper filing of written comments as well as hearing attendance and testimony was perfectly proper and indeed laudable in an adjudicatory context. Its other activities--the signs, hearing room refreshment stand, and submittal to the County of off-record comments during its deliberation of the Committee's recommendations, and the radio commercial-call in campaign immediately before the County's vote--are all time honored lobbying activities which are inappropriate in the quasi-judicial atmosphere of an SB172 proceeding. STL's running of its anti-landfill radio commercials, urging citizens to call the judge/jury, only served to encourage ex parte contacts. The legislature has provided for and doubtless and anticipated hot debate in SB172 proceedings, but the forum provided for such debate is the hearing room, not the cloakroom, the streets, or the airwaves. (The Board of course notes that, news reportage of the proceeding is to be expected, as was the case here, where news articles (PCB Tr. 35, 84, 94) as well as radio programs discussed the subject.)

Id. at *16.

The Courts have adopted a 5-part test to establish improper *ex parte* contacts:

> In considering whether ex parte contacts have 'irrevocably tainted' a decisionmaking process so as to render it fundamentally unfair, relevant considerations include:
>
> 1) the gravity of the ex parte communications;
>
> 2) whether the contacts may have influenced the agency's ultimate decision;
>
> 3) whether the party making the improper contacts benefitted from the agency's ultimate decision;
>
> 4) whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and
>
> 5) whether vacation of the agency's decision and remand for a new hearing would serve a useful purpose . . . E & E Hauling, 451 N.E. 2d at 571, citing PATCO v. Federal Labor Authority, 685 F. 2d 547, 564-5 (D.C. Cir. 1982).

Id. The most crucial part of the foregoing test is a finding of prejudice:

> A court will not reverse an agency's decision because of improper *ex parte* contacts without a showing that the complaining party suffered prejudice from these contacts. *Fender v. School Dist. No. 25,* 37 Ill.App.3d 736, 745, 347 N.E.2d 270.

Id.; *see also,* Waste Management of Illinois, Inc. v. Pollution Control Bd., 175 Ill.App.3d 1023, 1043, 530 N.E.2d 682, 697, 125 Ill.Dec. 524, 539 (2 Dist. 1988), *appeal denied,* 125 Ill.2d 575, 537 N.E.2d 819, 130 Ill.Dec. 490 (1989); Fairview Area Citizens Taskforce v. Illinois Pollution Control Bd., 198 Ill.App.3d 541, 549, 555 N.E.2d 1178, 1183, 144 Ill.Dec. 659, 664 (3 Dist. 1990), *appeal denied,* 133 Ill.2d 554, 561 N.E.2d 689, 149 Ill.Dec. 319 (1990).

It is clear that the County Board members in this case did not understand their roles and obligations as quasi-judicial decision-makers. Moreover, there is no reported case at the Pollution Control Board or the Appellate or Supreme Court levels in which anywhere near the number of *ex parte* contacts present in this case occurred.

1. The County Board members did not understand their roles and obligations as quasi-judicial decision-makers.

Of the twelve (12) County Board members who voted against approval of the Application, ten (10) Board members thought that they were permitted to receive communications regarding the Application from members of the public outside the hearing process and outside the Record. (*See* Elsasser, Dep. 1, 11/16-12/5, 12/9-19, 12/20-13/8, 14/15-24; O'Neill, Dep. 4, 15/16-16/6; Pearson, Dep. 5, 23/21-24/9, 24/16-25/14; Phelan, Dep. 6, 7/3-16, 7/21-8/7; Polhemus, Dep. 7, 9/9-10/1; Salzer, Dep. 8, 11/17-24, 12/9-13/12, 14/20-15/4, 17/1-18/1; James Thomas, Dep. 9, 20/24-21/20, 42/11-19, 17/13-18/3; Trumpe, Dep. 10, 9/24-10/4; Watkins, Dep. 11, 11/10-18; Williams, Dep. 12, 12/20-14/8).

Several of the ten (10) County Board members who voted against approval of the Application who thought they could receive communications from the public outside the hearing

process and the Record, further believed that they could not receive communications outside the hearing process and the Record from PDC.

> Q [by Mr. Mueller] Well, was it your understanding that the proponents were not supposed to be contacting County Board members outside of the hearing?
>
> A Yes, because they were really the litigants. I did not see these other people who were in opposition here as individuals as litigants.

(Trumpe, Dep. 10, 38/24-39/5; *see also* Polhemus, Dep. 7, 9/19-10/1; James Thomas, Dep. 9, 17/13-17).

Of the twelve (12) County Board members who voted against approval of the Application, nine (9) Board members specifically testified that they did not file the *ex parte* contacts they received during the pendency of the Application with the County Clerk, because they were not aware that they were required to do so. (Elsasser, Dep. 1, 16/24-17/8; Joyce, Dep. 2, 10/15-24, 24/13-21; O'Neill, Dep. 4, 19/3-12; Pearson, Dep. 5, 13/1-7; Phelan, Dep. 6, 22/21-23/12; Polhemus, Dep. 7, 11/2-9; Salzer, Dep. 8, 46/24-47/8; James Thomas, Dep. 9, 14/8-18, 15/4-10, 32/18-33/5; Trumpe, Dep. 10, 16/21-17/4). Two (2) additional County Board members who voted against approval of the Application did not specifically testify regarding this point, though they (a) admitted that they received *ex parte* communications during the proceedings of the Application, and (b) did not disclose same during discovery in this case. (*See* Watkins, Dep.11; Williams, Dep.12, 18/10-22).

Moreover, of the twelve (12) County Board members who voted against approval of the Application, six (6) Board members admitted that they believed they could consider the *ex parte* contacts they received in rendering their decisions on the Application:

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

A Everything that was presented to me, yes.

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

A Oh, yes.

(Pearson, Dep. 5, 24/3-9).

Q [by Ms. Nair] So it was your -- so you considered the information that you received at your home?

A No. I -- the only way I considered the letters and that I got was I used it like a tally sheet. If I got 100 letters and 80 or 90 of them were against it, I felt that's the way the public felt, that's the way -- I was supposed to represent the public, too.

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

(Polhemus, Dep. 7, 37/14-38/1).

Q [by Mr. Mueller] * * *. Is it then fair that you understood that you should take the content of all of those communications into consideration in making your decision?

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

* * *

Q [by Mr. Mueller] But the ones that weren't crackpot letters that offered substantiative information which wasn't at the hearing those you felt you were free to consider?

A Yes, but I didn't consider everything.

(Salzer, Dep. 8, 17/5-10, 17/21-18/1). (*See* also Watkins, Dep. 11, 13/15-14/2; Phelan, Dep. 6, 7/21-8/7; Elsasser, Dep. 1, 13/2-8).

The consensus among the County Board members who voted against approval of the Application, was that the law permitted them to receive communications from members of the public and opposition groups, though they were not permitted to receive communications directly from PDC, outside of the hearing process and outside of the Record. These same County Board members did not disclose the communications they received outside the hearing process and the Record, because they did not believe they were required to do so. Finally, six of these same Board members believed that they were permitted to consider the communications they received outside the hearing process and the Record, in whole or in part, in making their decisions on the Application. It is a fair inference that the other six (6) County Board members who voted against approval of the Application believed the same thing, because none of them made any real attempt to discourage these improper contacts. There is absolutely no point in listening to, reading and sometimes responding to *ex parte* contacts if one knows that such contacts should not be considered in a final decision.

Taken as a whole, "this record ... indicates a basic failure by the majority of County Board Members to appreciate the significance of the concept of ex parte contacts." City of Rockford, *supra*, PCB 87-92, 1987 WL 56379, *15. Moreover, it is clear that, like the case of City of Rockford:

> There is no indication that most Board Members did anything either to restrict their usual informal contacts with their constituents or to make such contacts part of the record by e.g. routinely forwarding all correspondence to the Clerk, by reducing the contents of unavoidable phone calls to writing and filing the memo with the Clerk.

Id.

Therefore, the decision of the County Board (if any such decision was made) should be reversed, and Application in this case should be approved, as requested below.

2. The sheer volume of *ex parte* contacts in this case creates a presumption of prejudice.

There are no reported cases in which a local siting authority received anywhere near the volume of *ex parte* contacts received by the Board members in this case.

In its Responses to PDC's First Set of Requests to Admit, the County admitted that 309 documents received by County Board members from opponents of the Application were not filed with the Peoria County Clerk, namely, documents 2, 3, 11, 12, 19, 23, 49, 50, 51, 52, 54, 57, 64, 65, 66, 68, 70, 72, 73, 74, 76, 77, 78, 82, 83, 84, 85, 86, 92, 93, 94, 95, and 103 through 379. Taken together, these documents represent 1,139 contacts in writing by opponents with County Board members who voted against approval of the Application (or 998 such contacts if County Board Chairman Williams failed to check his email, as he has claimed in this matter). Of those documents, 263 were dated after the public comment period closed (947 contacts, or 821 without Chairman Williams). Moreover, 201 of the un-filed documents were received from April 7, 2006 (the day after the vote of the Committee of the Whole), through May 3, 2006 (the date of the County Board vote against approval of the Application, with conditions) (610 contacts, or 517 without Chairman Williams).

In reality, there were likely significantly more written *ex parte* contacts than were revealed in discovery in this appeal. Eleven (11) of the twelve County Board members who voted against approval of the Application discarded some or all of the documents they received during the proceedings on the Application (namely, every Board member other than G. Allen Mayer, who is a practicing attorney). In fact, five (5) of the twelve (12) County Board members who voted against approval of the Application produced no documents whatsoever in the course of discovery (namely, Board members Joyce, O'Neill, Polhemus, Thomas and Watkins).

In addition to written contacts with County Board members, the Board members deposed by PDC admitted collectively receiving dozens of telephone contacts from opponents:

- Elsasser (17/19-22 "many")
- Joyce (25/1-5 "ten or twelve")
- O'Neill (20/5-18, 24/22-25/5)
- Pearson (16/12-15 "40-plus")
- Phelan (13/19-21 "dozens")
- Polhemus (13/19-24 "15 to 20")
- Salzer (23/23-24/1 "Eight, 10, 12")
- Thomas (32/14-16 "Less than 20")
- Trumpe (30-38, 42-43)
- Watkins (16/19-20)
- Williams (20/18-23 "a dozen")

Moreover, the County Board members were besieged with contacts from opponents at regular meetings of the County Board (Exhibits 97-103 (tapes), 104 (transcripts)), and were even contacted at their homes by certain opponents (*see* Polhemus, Dep. 7, 24/1-5; Salzer, Dep. 8, 51/8-20; Watkins, Dep. 11, 12/2-5, 18/6-11; Williams, Dep. 12, 21/6-10, 22/6-8).

As in the City of Rockford case, the Board members in this case were barraged with *ex parte* contacts through the machinations of several opponent groups, which systematically promulgated incorrect information to the public regarding the propriety of contacts with County Board members outside the hearing process and outside the Record. *See* PCB 87-92, 1987 WL 56379, *16. In particular, HOI Sierra and PFATW urged members of the public to contact County Board members directly and urge the Board members to "vote no" on the Application, both prior to the public hearing and after the close of the public comment period.

In HOI Sierra's bimonthly newsletter, the *Tallgrass Sierran*, members of the public were asked to "contact as many board members as you can", and provided contact information for each Board member. (Dep. Exhibits Vol. II, Ex. 36). On the PFATW website, there appeared the tagline, "tell the county board no toxic waste in peoria". (Ex. 58). The PFATW website

("www.notoxicwaste.org") made clear the rationale behind the campaign to encourage *ex parte* contacts:

> County Board members are legally "gagged" from communicating in a free and open way with concern[ed] constituents since they may act as judges, but if they do not vote up or down vote on the measure, the permit will be automatically approved. * * *.
>
> This is unacceptable to us. It is undemocratic and thwarts our power as citizens to make elected officials accountable on election day.

(Dep. Exhibits Vol. III, Ex. 58, pg. 3).

In addition to the website, PFATW distributed fliers urging members of the public to contact County Board members and tell the Board members to vote against the Application (*see* Dep. Exhibits Vol. III, Ex. 61, 64, 65). By way of example, one flier stated as follows:

> **Tell the**
> **Peoria County Board**
> **VOTE NO**
>
> * * *
>
> **Contact your Peoria County Board member.** Write, email and call you board member and let them know you are opposed to the landfill expansion. The County Board is elected to serve the citizens of Peoria County. They need to hear what you think. **Don't wait, contact your board member today!**

(Dep. Exhibits Vol. III, Ex. 64). The flier was distributed at the St. Patrick's Day Parade in Peoria, on or about March 17, 2006. (K. Converse, Dep. 20, 58/4-6). There is no mention of the public comment cutoff date (March 29, 2006) in the flier.

Joyce Blumenshine directly petitioned the County Board to "vote no" in fifteen (15) billboards located throughout Peoria County (Blumenshine, Dep. 17, 20/14-22), stating as follows:

PEORIA COUNTY
TOXIC Waste from 10 states!
SAY NO! www.notoxicwaste.org

PEORIA COUNTY
Say no to 15 more years of TOXIC Waste!
SAY NO! www.notoxicwaste.org

(Dep. Exhibits Vol. II, Ex. 17). In addition, the opponents posted yard signs throughout the community, some of which stated as follows:

STOP Hazardous
TOXIC WASTE
TELL PEORIA COUNTY BOARD:
Say NO to Peoria Disposal Company's
Toxic Landfill Expansion

(Dep. Exhibits Vol. II, Ex. 38; *see* Blumenshine, Dep. 17, 47/14-16). All the County Board members who voted against approval of the Application who were asked about the yard signs testified that they had seen same in the community. (Elsasser, Dep. 1, 32/5-15; Joyce, Dep. 2, 26/3-8; O'Neill, Dep. 4, 21/8-18; Pearson, Dep. 5, 13/19-24; Phelan, Dep. 6, 19/6-13; Polhemus, Dep. 7, 17/4-9; Salzer, Dep. 8, 24/12-21; Thomas, Dep. 9, 37/5-13, 38/1-4; Trumpe, Dep. 10, 28/16-22; Williams, Dep. 12, 23/13-24/3).

All told, the sheer volume of the *ex parte* contacts (written contacts, telephone calls, personal communications, billboards, yard signs, fliers, websites, association newsletters, and so on) is absolutely unprecedented. The effect of these contacts is irreparable, and has forever tainted the County Board regarding the Application. Based on the foregoing, there is no possible means to eradicate the taint of the thousands of *ex parte* contacts received by the County Board in this case.

These voluminous, if not incessant, *ex parte* contacts go far beyond what this Board has tolerated as the inevitable contacts between the public and their elected officials. These contacts

were for the most part directly made or sponsored by named party opponents and their leaders. These were groups represented by counsel, and should have known better. The Sierra Club is well experienced in landfill sitings, and is presumably well-acquainted with the rules of the game. PFATW, by its own admission, found the rules unacceptable and chose to flaunt them. This aggravates the impact of the improper contacts.

The fact that PDC lost the vote (that is, the vote to approve the Application with conditions) should be sufficient proof of prejudice suffered by PDC. Prejudice becomes an illusive concept to prove when the law bars an aggrieved party from inquiring into the mental processes of the decision-maker. Nonetheless, there is some guidance. The standard for determining whether the presumption that public officials act without bias is overcome if a disinterested observer would conclude that there has been some prejudgment of adjudicative facts. E & E Hauling, Inc., *supra.* "A finding of disqualifying bias and prejudice on the part of the County Board will be upheld if it can be said that the Board had in some measure adjudged the facts of the permit application in advance of hearing it." (Id., 116 Ill.App.3d at 599). Given the volume of the improper contacts in this case, combined with the undisguised intent of named party opponents to flaunt the rules of fundamental fairness, a disinterested observer could not reach any conclusion other than the obvious.

Therefore, the decision of the County Board (if any such decision was made) should be reversed, and Application in this case should be approved, as requested below.

B. Eight (8) County Board members actually considered evidence outside the Record rather than evidence in the Record, or were biased.

Based on their testimony during the depositions, it is clear that the votes of at least eight (8) of the County Board members who voted against approval of the Application must be stricken, namely, the votes of G. Allen Mayer (Dep. 3), James Thomas (Dep. 9), Eldon Polhemus

(Dep. 7), Tom O'Neill (Dep. 4), Brian Elsasser (Dep. 1), Michael Phelan (Dep. 6), Phil Salzer (Dep. 8) and Lynn Scott Pearson (Dep. 5).

The law presumes that public officials act without bias:

> Public officials should be considered to act without bias. *Cf. Memphis Light, Gas & Water Division v. Craft* (1978), 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30; *Goss v. Lopez* (1975), 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725.

E & E Hauling, Inc. v. Pollution Control Bd., 107 Ill.2d 33, 42, 481 N.E.2d 664, 668, 89 Ill.Dec. 821, 825 (1985); *see also* Land and Lakes Company v. Randolph County Board of Commissioners, PCB 99-69, 2000 WL 1456871, *19 (IPCB, September 21, 2000). However, bias may be shown if a "disinterested observer" would conclude that a public official pre-judged an issue:

> However, collusion between the applicant and the actual decision-maker resulting in the prejudgment of adjudicative facts is fundamentally unfair. See Land and Lakes, 319 Ill. App. 3d 41, 51, 743 N.E.2d 188, 196. Where a municipal government "operates in an adjudicatory capacity, bias or prejudice may only be shown if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it." Concerned Adjoining Owners, 288 Ill. App. 3d 565, 573, 680 N.E.2d 810, 816.

Rochelle Waste Disposal, L.L.C. v. City Council of the City of Rochelle, Illinois, PCB 03-218, 2004 WL 916231, *24 (IPCB, April 15, 2004) (emphasis added).

1 & 2. G. Allen Mayer & James Thomas

Board members Mayer and Thomas concealed their membership with the Sierra Club (a registered opponent group represented by counsel during the proceedings on the Application) until directly asked about such membership at the last County Board meeting, on May 3, 2006. Prior to the May 3, 2006 meeting, PFATW and HOI Sierra filed a motion seeking to bar Board member Prather from voting on the Application, because he had previously sold property to

PDC. The County denied the Motion of PFATW and HOI Sierra, and made a general inquiry into the bias of the Board members. In fact, it was the Chair of the Siting Hearing Subcommittee, Board member Patricia Hidden, who asked whether any County Board members were members of the Sierra Club. (*See* Tr. 5/3/06, 23/12-25/4, C13717; 25/10-12, 29/9-10, C13717-18). Only when forced to reveal their membership in an opponent group (and resulting representation by HOI Sierra's attorney) did Mayer and Thomas come clean.

Clearly, regardless of the legal effect of their membership in an opponent group, Mayer's and Thomas's concerted attempts to conceal such membership are sufficient to warrant a finding of actual bias in this case. Therefore, the votes of Mayer and Thomas should be stricken, and in the event this matter is remanded, Mayer and Thomas should be barred from voting on the Application.

3. Eldon Polhemus

Eldon Polhemus admitted in his deposition that his decision was based on contacts with opponents and his straw poll of the community's opinion regarding the Application. Polhemus admitted that he reviewed none of the evidence in the Record, and attended none of the hearings or meetings concerning the Application, other than the final special meeting of the County Board on May 3, 2006. (Polhemus, Dep. 7, 19/2-21/8).

Polhemus relied in part on the *ex parte* communications he received from his friend Tom Edwards:

> Q [by Ms. Nair] Do you consider Tom Edwards to be somebody who knows his way around a landfill, knows what's going on with landfills?
>
> A Yes.
>
> Q Do you think he is a knowledgable person when it comes to landfills?

A Yes.

(Id., 22/16-22).

> County Board member Eldon Polhemus: Well, I just wanted to mention that, and I think most of the Board feels the same way, we kid our friend [Tom Edwards] about his talks, and his speeches and his letters that he gives to us, but I know for one thing his information on this landfill deal that I received helped me to understand more of it and helped me to make a decision. So I thank you very much for what you have done for me, anyway.

(Exhibit 104, pg. 18, Transcript of Peoria County Board Meeting: May, 2006).

Polhemus was honest in his explanation that his decision was based on *ex parte* communications:

> Q [by Ms. Nair] Did you believe you were to rely on those findings of fact in coming up with your decision?
>
> A No. I believed if they met what my reasons were because the findings of fact really never meant anything to me until after the vote. After the vote was over, then I was -- I was satisfied that the findings of fact would match the reason to deny.
>
> Q So you had independent reasons?
>
> A Yes.
>
> Q What was your understanding for what information you should gather to come up with that decision, your independent reasons for denial?
>
> A I will tell you I make a lot of my decisions yes and no on important votes like that by the, what do you say, the information I acquire from these letters and things like that because I don't go out and go to parties and stuff like that.
>
> Q So by those letters, do you mean the letters that you were getting at your home from members of the public?
>
> A Yes.

> Q So it was your -- so you considered the information that you received at your home?
>
> A No. I -- the only way I considered the letters and that I got was I used it like a tally sheet. If I got 100 letters and 80 or 90 of them were against it, I felt that's the way the public felt, that's the way -- I was supposed to represent the public, too.
>
> We've had many decisions on different things, and my decision hasn't been wholly on letter count, but I consider that a good part of my reasoning.

(Polhemus, Dep. 7, 36/16-38/1, emphasis added; *see also* id., 10/16-19, 15/9-17). Regarding these letters and communications, Polhemus admitted that he filed nothing with the County Clerk during the proceedings on the Application, and threw all the materials away after the May 3, 2006 meeting. (Id., 11/2-9).

Based on the foregoing, it is clear that Polhemus was influenced by (and in fact, made his decision solely based on) the *ex parte* contacts he received during the proceedings on the Application, all of which he destroyed after the May 3, 2006 meeting. Therefore, the vote of Polhemus should be stricken, and in the event this matter is remanded, Polhemus should be barred from voting on the Application.

4. Tom O'Neill

Tom O'Neill first voted in favor of the Application on April 6, 2006, with the Committee of the Whole, and on May 3, 2006, voted against approval of the Application. (O'Neill, Dep. 4, 24/8-21). O'Neill admitted to the local newspaper that his vote against approval of the Application was based on the opinion of his constituents and significant public pressure between the votes. The article, titled "Constituents changed board member's vote" and published May 5, 2006, in the *Peoria Journal Star*, provides, in pertinent part, as follows:

> Thomas O'Neill was the only member of the 18-person Peoria County Board to switch his vote on expansion of the hazardous waste landfill at Pottstown.
>
> In a preliminary vote on April 6, O'Neill, a Democrat who represents the 17th District which includes the Bartonville area, voted to approve the expansion of the landfill, owned by Peoria Disposal Co.
>
> On Wednesday, he joined the board majority to oppose the expansion. It failed 12-6.
>
> O'Neill said Thursday that his first vote was based on the county's staff report, which recommended expansion with conditions, as well as "what the county had to lose."
>
> But "after that vote, I had so many phone calls and neighbors come to me and ask me what I was thinking," he said.
>
> "I probably would have voted 'yes' again but voted for the wishes of my constituents that put me in office."

(Dep. Exhibits Vol. II, Ex. 30).

During his deposition in this appeal, O'Neill claimed that he did not recall stating that he "probably would have voted 'yes' again but voted for the wishes of my constituents that put [him] in office," as he was quoted in the *Peoria Journal Star* article. (O'Neill, Dep. 4, 23/15-23). O'Neill admitted that he had received phone calls and visits from neighbors between the April 6, 2006, and May 3, 2006, meetings (id., 24/22-25/2, 25/17-26/3), but claimed that he did not consider such contacts in his vote on May 3, 2006. (Id., 27/10-23, 24/8-21, 24/22-25/2).

O'Neill further admitted that the only evidence in the Record he considered was part of one of the County Staff's reports (recommending approval of the Application with conditions). (Id., 27/20-23, 25/17-26/3, 26/13-27/5). Therefore, O'Neill had nothing on which to base his vote against approval of the Application, other than the communications received *ex parte* between April 6, 2006, and May 3, 2006.

O'Neill's protests in his deposition are beyond credulity. It is absolutely clear, based on the totality of the record, that O'Neill based his vote on the Application entirely on communications received *ex parte* between April 6, 2006, and May 3, 2006 (subsequent, incidentally, to the March 29, 2006, public comment cutoff). Those communications were primarily verbal, rather than written (though, in any case, O'Neill testified that he destroyed all documents he received during the proceedings on the Application (id., 19/3-12)), and therefore, the defects in the proceedings cannot be cured. O'Neill's vote should be stricken, and in the event this matter is remanded, O'Neill should be barred from voting on the Application.

5. Brian Elsasser

Brian Elsasser predetermined his position regarding the Application and performed his own factual research, outside of the Record, during the proceedings on the Application.

At the April 6, 2006 meeting, Elsasser cited an illness suffered by his father (caused by a product "totally different than anything that PDC puts in the ground") and his deceased brother's experiences as a medical doctor as the reasons for his vote recommending denial of the Application. (Tr. 4/6/06, 104/10-105/15, C13436; emphasis added). At his deposition, Elsasser again emphasized his father's illness as a major basis for his decision. (Elsasser, Dep. 1, 27/11-28/4). Also, Elsasser admitted that he expressed a position regarding the Application well prior to the closing of the Record on March 29, 2006. (Id., 22/18-21, 23/8-12). In addition, Kim Converse, leader of the opposition group PFATW, testified that Elsasser phoned her immediately before or after the April 6, 2006 vote of the Committee of the Whole, in order to get the telephone number of Cindy Herman, another opponent to the Application. (K. Converse, Dep. 20, 36/4-37/12).

Finally, and even more problematically, Board member Elsasser admitted at his deposition that he performed independent factual research on crucial factual issues in the case, outside the Record, during the proceedings on the Application. Elsasser contacted Dean Faulkner of the Illinois American Water Company in March of 2006, "just trying to get an idea of what his opinion was on where the aquifer was really located at." (Elsasser, Dep. 1, 25/6-26/7). Elsasser called the Illinois Environmental Protection Agency, because he "was still confused about the PM and the PM10 test, and they finally clarified the fact that your license does not require you to be a specific level for the PM10 test but only for the particular matter." (Id., 26/13-22). His rationale for going outside the Record on at least these two occasions was his purported duty to be self-informed:

> Q [by Mr. Mueller] Am I correct that you believed that it was appropriate to supplement whatever you heard from your constituents and at the public hearing with whatever own research you felt it necessary to do?
>
> A Any time you have to decide on something, I need to have the full understanding of what's going on.

(Id., 26/1-7).

Based on the foregoing, it is clear that Elsasser considered and relied upon evidence outside the Record in reaching his decision in this case. In addition, a disinterested observer would conclude that Elsasser was biased against PDC and the Application. Therefore, Elsasser's vote should be stricken, and in the event this matter is remanded, Elsasser should be barred from voting on the Application.

6. Michael Phelan

At his deposition, Michael Phelan testified that he considered "the evidence and the facts" in reaching his decision on the Application:

> Q [by Mr. Mueller] Now, was it your understanding that your decision was to be based only on the evidence that came in at the public hearing?
>
> A The evidence and the facts, yes.
>
> Q Well, what's the difference between the evidence and the facts?
>
> A I don't know. I can't answer that. That was -- the facts were the term that Mr. Atkins used when explaining the rules of the Peoria County Board. We used facts. I guess you're using evidence.
>
> Q Could you gather facts from sources other than the public hearing?
>
> A I don't recall that, that part of what could be used and what couldn't be used coming up. I don't recall Mr. Atkins and the State's Attorney's office advising us on that particular item.
>
> Q Well, was it your belief that you could gather facts from sources other than the public hearing?
>
> A Yes. In general, yes.

(Phelan, Dep. 6, 8/23-9/20; emphasis added). The "facts" gathered by Phelan included information from "more than 100" letters (id., 10/22-11/6), "dozens" of emails (id., 13/8-15), and dozens of telephone calls (id., 13/19-21). Phelan further testified that he did not file the communications he received from opponents during the proceedings on the Application, and that he destroyed the documents so received after the May 3, 2006 meeting. (Id., 22/21-23/12).

In addition, Phelan clearly did not understand his role in the proceedings, or that he was not to consider *ex parte* communications in reaching his decision:

> Q [by Mr. Mueller] Let me ask it a different way. It was your understanding that you could listen to members of the public and get their input and opinions on the siting application?
>
> A I don't believe I had an understanding that I was to take their testimony into account on the facts, but I do -- the way I

understood the process that the public was allowed to weigh in on this.

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

A Both.

(Id., 7/21-8/7; *see also* id., 7/3-16).

Based on the foregoing, it is clear that Phelan considered *ex parte* contacts in his consideration of the Application (which communications have been destroyed), and that he did not understand his role in the proceedings. Therefore, Phelan's vote should be stricken, and in the event this matter is remanded, Phelan should be barred from voting on the Application.

7. Philip Salzer

Philip Salzer considered information conveyed outside the Record. First, he relied on the opinion of his fellow County Board member G. Allen Mayer (a member of the opponent group, the Sierra Club) as to substantive analyses of the Application:

Q [by Mr. Mueller] What was the purpose of your call?

A I had a question about the hydraulically connected, hydraulically connected the -- to the Sankoty.

* * *

Q [by Mr. Mueller] So you wanted to check that piece of information out, and you called Mr. Mayer?

A I wanted to know what was meant by this hydraulically connected -- how it was hydraulically connected to the landfill.

* * *

Q [by Mr. Mueller] Well, the parts that he [Board member Mayer] explained that you did understand, can you relate that to us?

A Well, that basically the Sankoty aquifer what I understood was our drinking water was still hydraulically connected, and there could be a danger to it.

(Salzer, Dep. 8, 26/9-12, 27/3-7, 28/13-18 (regarding a conversation in March of 2006); *see also* id., 29/18-30/13). Moreover, Salzer knew when he asked Mayer about the aquifer that Mayer was opposed to the Application:

> Q [by Mr. Mueller] * * *. So my question to you is, didn't you know that he [Board member Mayer] was by that point strongly opposed to this expansion?
>
> A I assumed.
>
> Q Then why would he be the guy that you would ask for technical advice after all he's just a lawyer like me, he doesn't know much? Why would you ask him for technical advice when you could have figured that he's going to tell you, of course it will pose a danger to the drinking water?
>
> A I asked him probably because I'm closer to him from the standpoint of the Democrat party and we attend some meetings together, so forth.

(Salzer, Dep. 8, 29/18-30/6).

Second, Salzer admitted in his deposition that he actually considered opponent information received *ex parte*. While he distinguished between credible and "crackpot" communications, Salzer did believe that the information received from members of the public outside the hearing and the Record could and should be considered in rendering a decision on the Application. (Id., 13/5-12, 12/9-13/4, 17/21-18/1, 17/1-20). Salzer testified that he destroyed some of the communications he received *ex parte*. (Id., 46/24-47/8).

Finally, Salzer appears to have predetermined his position regarding the Application, without regard to the evidence. (Pearson, Dep. 5, 21/3-11; *see also* Dep. Exhibits Vol. II, Ex. 25, pg. 5, "I'm 67. Do I want to Be Remembered as one Who Caused this?").

Based on the foregoing, it is clear that Salzer considered *ex parte* contacts in his consideration of the Application, and that he did not understand his role in the proceedings.

Moreover, Salzer appears to have prejudged the Application. Therefore, Salzer's vote should be stricken, and in the event this matter is remanded, Salzer should be barred from voting on the Application.

8. Lynn Scott Pearson

Lynn Scott Pearson admitted that she thought she was supposed to consider information gleaned from *ex parte* communications:

> Q [by Mr. Mueller] And you also said that you waited to make up your mind until you had read everything that you could get your hands on; is that right?
>
> A Everything that was presented to me, yes.
>
> Q And that would include all of the e-mails that you got?
>
> A Oh, yes.

(Pearson, Dep. 5, 24/2-9; emphasis added; *see also* id., 24/16-25/14). Pearson admitted receiving "75 or 80" emails (id., 9/21-10/4), "[p]robably somewhere around 50" letters (id., 11/5-7), and "around maybe 40-plus" telephone calls (id., 16/9-18) during the proceedings on the Application. Pearson destroyed the letters she received (id., 13/1-7), and disclosed no documents in discovery in this appeal.

Pearson further testified that she received communications from Joyce Blumenshine, the Chair of HOI Sierra, in person, during the proceedings on the Application, and that she credited Ms. Blumenshine's opinion regarding the Application because of her affiliation with HOI Sierra. (Id., 32/7-9, 31/22-32/6).

Based on the foregoing, it is clear that Pearson considered *ex parte* contacts in her consideration of the Application, and that she did not understand her role in the proceedings.

Therefore, Pearson's vote should be stricken, and in the event this matter is remanded, Pearson should be barred from voting on the Application.

What sets this case apart from some others where bias and prejudice are alleged is that in this case, the bias and prejudice of six (6) County Board members is proven directly through their own admissions. The evidence in this case is not circumstantial, and PDC is not asking that any "inferences" be drawn. Six (6) County Board members, by their own words, did not perform their statutory duty to make an impartial decision based only on the evidence. The only explanation is that the systematic barrage of *ex parte* contacts, initiated and sponsored by PFATW and HOI Sierra, was so pervasive that County Board members came to believe that it was a legitimate part of the process.

C. The proper remedy for the gross unfairness of the proceedings on the Application is approval of the Application or, if the Application is remanded, payment of PDC's costs incurred in the previous proceedings on the Application.

Once the Pollution Control Board inevitably determines that the proceedings on the Application were fundamentally unfair, the Board will be made to determine whether remand or reversal of the County's decision is appropriate under the circumstances. It is clear in this case that reversal is mandated. If these proceedings are, however, remanded, the Board should require the County to pay PDC's costs incurred in the previous proceedings on the Application, as PDC should not be compelled to pay twice for one fair hearing.

Based on the relevant case law, the purported decision of the County must be reversed. In Southwest Energy Corp. v. Illinois Pollution Control Bd., the Fourth District Appellate Court affirmed the ruling of the Pollution Control Board finding that a tour of the relevant facility by some City Councilors during the proceedings on a siting application mandated reversal on fundamental fairness grounds, "because the incinerator opponents were not given equal access to

information obtained by the council members." 275 Ill.App.3d 84, 95, 655 N.E.2d 304, 311, 211 Ill.Dec. 401, 108 (4 Dist. 1995) (emphasis added). Therefore, the Court found that "[i]t is irrelevant to that decision whether the tour caused the council members to prejudge the siting application." Id.; *see also* SPILL, *et al.* v. City of Madison, PCB 96-91, 1996 WL 154321 (IPCB, March 21, 1996). In this case, PDC was given no access to the information given by opponents to Board members *ex parte*.

This case is the "perfect storm" of fundamental unfairness. The gravity of the *ex parte* communications (the content, the sheer volume, the unrelenting frequency, and the premeditated nature of same) is absolutely mind-boggling. There are no reported cases reflecting anything like the magnitude of the *ex parte* communications in this case. The *ex parte* contacts in fact influenced the County's decision – half the Board members who voted against approval of the Application admitted that they considered *ex parte* communications in making up their minds on the Application. The parties making the improper contacts, namely, PFATW, HOI Sierra and other opponents, got precisely what they wanted from the County. While PDC was contemporaneously aware that some *ex parte* communications had occurred during the proceedings on the Application, PDC had no idea of the volume of the communications, had no way of knowing the content of same, and had no opportunity to respond to same (especially as to the hundreds of contacts that occurred after the public comment cutoff on March 29, 2006). *See* City of Rockford, *supra*, 1987 WL 56379, *16; *see also*, Waste Management of Illinois, *supra*; Fairview Area Citizens Taskforce, *supra*.

Clearly, given (1) the degree of unfairness in this case, (2) the total failure of the County Board to understand its role or the importance of avoiding and disclosing *ex parte* communications, and (3) the persistent failure of the County Board to disclose *ex parte*

communications and the destruction of documents subsequent to the May 3, 2006 meeting, vacation of the County's purported decision and remand for new proceedings would not serve a useful purpose. In this case, the County's "action was so patently not quasi-judicial that the limited first aid available under remand is incapable of rehabilitating the record to the point where the record can support a proper decision." Concerned Citizens for a Better Environment v. City of Havana and Southwest Energy Corporation, PCB 94-44, 1994 WL 394683, *1 (IPCB, July 21, 1994) (Order on motion for reconsideration). The County claims to have exercised its best efforts to ensure the fairness of the proceedings on the Application previously, yet the County permitted over 1,000 (provable) written *ex parte* contacts to occur with County Board members, and failed utterly to instruct the County Board members as to their proper roles in the process. The rampant destruction of *ex parte* documents since the May 3, 2006 hearing would, in any case, make it impossible to cure or negate the impact of such documents.

In the event that this matter is remanded for new proceedings on the Application, PDC requests that it be awarded its costs incurred in the previous proceedings on the Application, and in this appeal. The County created a process for adjudication of the Application that was manifestly inadequate to prevent *ex parte* communications. PDC has proven that more than 1,000 written communications were received by Board members and not disclosed to PDC during the pendency of the proceedings on the Application. In addition, PDC has proven that of the twelve (12) County Board members who voted against approval of the Application, six (6) believed they could consider the *ex parte* contacts they received in rendering their decisions on the Application, as set forth above. Finally, two (2) of the County Board members failed to disclose their membership in a registered opponent organization until the County Board meeting on May 3, 2006. Based on the foregoing, it would be a miscarriage of justice to require PDC to

pay the cost of two hearings regarding the Application, when it would be entirely the fault of the County that the second hearing be required.

The costs incurred by PDC in the first hearing that would be duplicative of costs incurred in a hearing on remand are reasonably estimated to be $505,865.95. On June 28, 2006, the County billed PDC $242,092.66 (after crediting PDC the $50,000 filing fee previously paid), for County Staff review reimbursement for 2005, engineer and legal expenses incurred from November 14, 2005, through June 28, 2006, and other hearing-related expenditures. A copy of County invoice no. CoAdm06282006, dated June 28, 2006, is attached herewith as Exhibit 1. On August 1, 2006, the County billed PDC $41,534.03, for County Staff review reimbursement for 2006 and other miscellaneous expenses. A copy of County invoice no. CoAdm08012006, dated August 1, 2006, is attached herewith as Exhibit 2. PDC incurred $222,239.26 in expert and other costs related specifically to the hearing (*i.e.*, not including preparation of reports submitted with the Application). An accounting prepared by PDC is attached herewith as Exhibit 3. Therefore, the total amount that should be paid to PDC by the County if this case is remanded for a new hearing is $505,865.95.

III. THE PURPORTED DECISION OF THE COUNTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND WAS OTHERWISE IMPROPER UNDER THE LAW.

As detailed in PDC's Motion for Summary Judgment (415 ILCS §5/39.2(e)) and the Memorandum in Support thereof, filed on November 20, 2006, and in PDC's Reply in Support of its Motion for Summary Judgment (415 ILCS §5/39.2(e)), filed on December 28, 2006, the County Board did not take final action on the Request for Local Siting Approval, neither approving nor denying the Application. Additionally, the County never issued, to this day, a decision "in writing, specifying the reasons for the decision" as required by law and regulations.

Instead, the County offers, in this appeal, what it calls the "Record and Transcript of Peoria County Board's Decision and Findings" (C13710-48), consisting of (1) a recommended Resolution for approval of the Application (not acted upon by the County Board), (2) an undated transcript of the May 3, 2006 County Board meeting, (3) four pages bearing handwritten notes, possibly taken by the County Clerk during the May 3, 2006 County Board meeting, and (4) the "Recommended Findings of Fact" filed with the County Clerk on April 27, 2006, which were not adopted as written. The transcript of the May 3, 2006 meeting was not actually approved and adopted by the County Board until its meeting on June 8, 2006, the day after PDC filed its Petition for Review in this case and the 36th day after the May 3, 2006 meeting; the minutes of the June 8, 2006 meeting were not submitted by the County to the Pollution Control Board in this appeal. Nonetheless, and without waiver of the arguments in its Motion for Summary Judgment (415 ILCS §5/39.2(e)), *supra*, PDC will for purposes of this argument, treat those "Recommended Findings of Fact" as actual findings made by the County Board in support of its purported denial of the Application on substantive siting Criteria i, ii and iii, and its imposition of special conditions as to Criterion v, with one caveat: the Recommended Findings of Fact as to Criterion ii were amended by oral motion at the May 3, 2006 meeting. The "amended" Recommended Findings of Fact will form the basis for PDC's analysis, below.

The findings for Criteria ii and iii, with the exception noted above, were prepared by the County Staff and represent essentially one of three sets of alternative proposed findings prepared by the staff. The County Staff, which has the only technically qualified people involved in the process at the County's end, actually recommended approval with certain conditions and prepared a set of findings consistent with that recommendation. Accordingly, the findings

ultimately used by the County Board do not represent the recommendation of its technically qualified staff.

The findings of fact on Criterion i are the handiwork of Board member G. Allen Mayer, the secret, undisclosed member of the Sierra Club, a registered party opponent during the siting proceedings. (*See* Tr. 4/6/06, 127-33, C????).

A. The causes for the County Board's failure to weigh the evidence properly.

With respect to all three of the disputed criteria, PDC's conclusions were unrebutted by other sworn testimony. In the case of Criteria i and iii, no witnesses other than PDC's experts testified. The opposition groups did offer Charles Norris, a geologist, to testify on Criterion ii, but as will be explained in detail in the specific argument on that Criterion, Norris' testimony, in anticipation of vigorous cross-examination, was cautious and restrained. He questioned a few of the specific findings in PDC's comprehensive site investigation, but he never challenged the conclusions of any of PDC's experts that the facility was so designed, located and proposed to be operated that the public health, safety and welfare would be protected. Interestingly, in post-hearing written comment, Norris, no longer under oath or subject to cross-examination, did a "one-eighty," disavowed his previous sworn testimony, and replaced it instead with reckless allegations about contaminants from even the highly-engineered portion of the facility leaking into the environment. Therefore, the expert conclusions of all of PDC's expert witnesses on these three disputed Criteria were unrebutted by competent, sworn evidence.

The County Board is not free to disregard the absence of credible evidence in making its decision. The County Board is not free to base its decision on speculation or unreliable or incompetent evidence. In order to rule against the Applicant on any of the substantive siting criteria, the County Board must find competent rebuttal or impeachment evidence in the record.

Industrial Fuels & Resources, Inc. v. Illinois Pollution Control Board, 227 Ill.App.3d 533, 592 N.E.2d 148, 169 Ill.Dec. 661 (1 Dist. 1992). Once the Applicant makes a prima facie case on a Criterion, the burden falls to opponents to rebut that case. Claims by the opponents, contrary to the Applicant's conclusions, are insufficient if not supported by competent evidence.

In addition to its systematic program of improper political influence, the opposition groups substituted speculation, hysteria and generic anti-landfill rhetoric for site-specific scientific evidence. The opposition case truly is described as a tale "full of sound and fury, signifying nothing."

The obvious next question then becomes why the County Board purports to have denied PDC's Application in the absence of competent evidence rebutting PDC's conclusions? In addition to the obvious answer that the County Board was driven by an overwhelming barrage of improper prejudicial *ex parte* contacts, an additional explanation can be gleaned from the findings of the County Board itself, findings which suggest that the County adopted speculation, rhetorical questions and unsubstantiated fears as evidence, with far-reaching ramifications.

1. The County imposed an impossible burden of proof.

First of all, the County Board held PDC to an impossible burden of perfect proof and absolute assurances. For example, on Criterion i (the "need" Criterion), the first three somewhat redundant findings in support of the conclusion that the facility is not necessary to accommodate the waste needs of the area it is intended to serve, criticize PDC's expert witness, Sheryl Smith, for using 2001 hazardous waste generation data rather than 2003 data, which allegedly shows a "significant decline" in hazardous waste generation rates from 2001 to 2003. The facts are that the 2001 data was the most recently available data at the time Ms. Smith prepared her report, and that the 2003 data was not released until November or December of 2005 (Tr. 2/23/06, 187;

C7504), while the Application was filed on November 9, 2005. The "significant decline" in reported hazardous waste generation is 16,000 tons, and represents only about 0.73% of the 2.2 million ton capacity shortfall painstakingly documented by Ms. Smith.

With regard to Criterion ii, a major finding in support of the conclusion that the facility is not so designed, located and proposed to be operated that the public health, safety and welfare will be protected is that "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." This finding is so vague that it is almost impossible to rebut, but it is also not true. Dr. David Daniel testified that the HDPE component of the liner system would slowly degrade over hundreds to thousands of years, but that the recompacted clay liner would actually improve in function over that time and would be present and functional even a thousand years from now. (Tr. 2/22/06, 111; C7387). Combining this with the testimony of Charles Norris, the opposition's only expert, that leachate from a landfill substantially cleans up over time to the point where it is no longer harmful, leads to the inescapable conclusion that there is no long-term threat regardless of the more fundamental concern of whether it is even appropriate for the County to require a 100% assurance of safety into perpetuity.

The IEPA requires demonstration through appropriate modeling that releases from a facility will not impact groundwater for an additional one hundred years after the post-closure care period. PDC's groundwater impact assessment conclusively demonstrated the absence of a negative impact for 500 years after post-closure care. Somehow this number was still insufficient for the County, and somewhere along the way, the relevant timeframe for the County's evaluation of the safety of PDC's design and engineering became eternity. This is an impossible requirement.

2. The County elevated speculation to the level of fact.

In addition to requiring PDC to meet impossible and unreasonable burdens of proof, the County Board also unfairly and improperly elevated unsupported speculation regarding future harm and future impacts to the level of competent evidence that rebutted PDC's conclusions. For example, with regard to Criterion ii, the County found that 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." Again, this statement is so vague as to be almost incapable of rebuttal, but by far the more important observation is that these statements are factually untrue and unsupported by any evidence. The two local doctors who testified did indicate that Peoria had relatively high cancer rates, but refused to link the same to PDC or any other specific cause or activity. They also testified that some of the substances disposed of by PDC pose known health risks when ingested by humans. None of this testimony, however, provides any support for the County's findings, because these two doctors (who were admittedly completely unfamiliar with even the general principles of PDC's design and operation) were unable to identify an exposure pathway by which materials disposed of at the PDC landfill are ingested by people. Nonetheless, the doctors, and the unsophisticated County Board, found this unspecified, undocumented risk unacceptable.

In Criterion iii, the County Board's findings are all either speculative or irrelevant and are generally characterized by the completely unsubstantiated and undocumented assumption that proximity alone equates to impact. Additionally, the County Board seems to assume that any impact equals a failure of proof on the part of PDC when, in fact, the statute only requires PDC to prove that its facility is so designed and located as to minimize impact.

The last common thread in the County's purported negative decision on Criteria i, ii and iii is that the County frequently responded to unrebutted expert testimony with its own analysis, analysis that generally did not address any testimony or evidence and, worst of all, analysis that was so vague that it could not justify the conclusion reached. A specific discussion of the evidence and the County's findings on each Criterion will further demonstrate this pattern.

B. Criterion i: The facility is necessary to accommodate the waste needs of the area that it is intended to serve.

Because PDC receives three separately identifiable waste streams, it presented three unique needs analyses to the County Board. These identified a service area for each waste stream (hazardous waste, manufactured gas plant remediation waste and non-hazardous process waste) and documented a capacity shortfall during the proposed service life of the expansion for each waste stream. PDC has an absolute right to define its own service areas. Metropolitan Waste Systems, Inc. v. Illinois Pollution Control Board, 201 Ill.App.3d 51, 558 N.E.2d 785, 146 Ill.Dec. 822 (3 Dist. 1990), *appeal denied*, 135 Ill.2d 558, 564 N.E.2d 839, 151 Ill.Dec. 384 (1990). This single point of law renders all of the extensive public comment that Peoria should not receive hazardous waste from remote areas irrelevant.

PDC's approach to documenting significant need in the form of disposal capacity shortfalls in each of its three waste streams was fairly conventional. Sheryl Smith, a waste planner of significant experience, testified that she used past waste generation data to project future generation volumes and that she subtracted from these volumes the existing disposal capacity reasonably available. This included both disposal capacity within the respective service areas and disposal capacity outside the service areas, but still deemed reasonably available. She also factored in source reduction, recycling, incineration and other technologies which had the capability of reducing shortfalls. In the areas of hazardous waste and non-hazardous process

waste, the analysis demonstrated significant shortfalls, even with the proposed expansion. In the case of manufactured gas plant remediation waste, the analysis was even easier; the service area for this waste stream is the State of Illinois and PDC is the only facility within the state that receives this waste. As of June, 2005, ninety-two (92) manufactured gas plants throughout Illinois remain to be remediated (Tr. 2/21/06, 120; C7297), and none of that waste has anywhere to go if PDC's expansion is not granted.

Other than the usual and expected public comments about Chicago garbage and out-of-state waste, there was no other testimony on this issue. Nonetheless, the County made 14 separate findings in support of a conclusion that the facility is not necessary to accommodate the waste needs of the area it is intended to serve. These are listed below, with PDC's response after each:

1. Applicant failed to use the most recent USEPA data on hazardous waste generation.

Response: This is untrue. Sheryl Smith's report contained the 2001 data which was the most recent available at the time the report was prepared. The 2003 data was released in November or December of 2005, while the Application was filed on November 9, 2005.

2. USEPA data from 2003 reported in 2005 shows a significant decline in hazardous waste generation rates in their hazardous waste service area.

Response: A 16,000 ton decline can hardly be considered significant when the total projected hazardous waste shortfall is 2.2 million tons (a decline of 0.73%).

3. 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.

Response: That is the same 16,000 ton reduction that represents 0.73% of the total projected shortfall, in only the hazardous waste component of the total.

4. Applicant's expert Smith testified that there are a decreasing number of hazardous waste landfills in both the service area and the nation.

Response: Common sense suggests that this would increase the need for the PDC expansion.

5. 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 $100.00 per ton to an average of $80-85.00 per ton.

Response: This is irrelevant. Absent additional evidence, the relationship between price and need is totally speculative.

6. While not subject to cross-examination, Applicant's statement about price is deemed reliable as a statement against interest.

Response: Absent evidence of what market forces are acting on price, this conclusion is completely unjustified.

7. A decrease in price during a time period when the number of hazardous waste landfills is decreasing suggests decreasing demand for disposal capacity.

Response: This is the third finding on the same hearsay newspaper article on which PDC's Vice-President, Ron Edwards, was never cross-examined. The relationship between the statement and the issue of need remains speculative and unexplained.

8. 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.

Response: Agreed. Ms. Smith took this into account in projecting her 2.2 million ton shortfall. "Gradual" as used in this finding is more accurately thought of as "minimal."

9. Daniel was qualified by Applicant as a national expert on hazardous waste and landfill design and technology.

Response: Agreed (though the County Board seemed to forget this when completely disregarding Dr. Daniel's testimony in ruling on Criterion ii).

10. In her report, Applicant's expert Smith assumed a constant rate of hazardous waste generation in the service area from 2001 until 2029.

Response: Absent evidence of whether there will be a further gradual decline or an increase, this would seem the most prudent assumption. The most recently documented decline in generation has a less than minimal effect on the total projected capacity shortfall. This finding also addresses only one of the waste streams disposed of at PDC, and the capacity shortfall in each of them.

11. However, the evidence provided by USEPA 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.

Response: It indicates a minimal reduction that does not impact the end result of the analysis and does not even address the two other waste streams which PDC receives.

12. An annual reduction in hazardous waste generation in the service area of between one and two percent and therefore, consistent with the USEPA data, would reduce the capacity shortfall that Applicant's expert Smith estimated in her report for hazardous waste by hundreds of thousands or even millions of tons.

Response: The finding itself admits that there will still be a shortfall, which means that there is a need for the facility. Nothing in the Record supports the speculation that hazardous waste reduction could reduce the shortfall by millions of tons.

13. 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.

Response: She did supply her 20+ years of experience and expertise, her professional credentials and her knowledge in the area, which is more than any other witness supplied. The fact that the County refers to unrebutted testimony by a qualified, credible expert witness subjected to cross-examination an "assumption" is typical of the County's unscientific method of analyzing the evidence. This type of finding, which is seen over and over, is why the County's decision is against the manifest weight of the evidence.

14. The 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 of the service area.

Response: Ms. Smith testified that she considered all of these factors to the extent that she deemed them, based upon her expertise, relevant or necessary. In the absence of actual evidence to the contrary, who is to say that this is not full consideration and, even if it is not full consideration, who is to say that a more full consideration would change the outcome. The capacity shortfall over the next 20+ years for hazardous waste is enormous, and that fact remains undisputed.

The County Board made no findings of fact whatsoever with regard to the need for the expansion to accommodate the capacity shortfalls in the other two waste streams which PDC presently receives, manufactured gas plant remediation waste and non-hazardous process waste. Based upon this alone, the County's finding that the facility is not necessary is against the manifest weight of the evidence.

C. Criterion ii: The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

It is not necessary to restate and resummarize the extensive evidence presented by PDC in support of this Criterion. The Statement of Facts earlier herein only scratches the surface in identifying the wealth of evidence presented by PDC. The Application consists of thousands of pages, the majority of which are devoted to this Criterion. PDC called five expert witnesses who testified regarding various aspects of this Criterion. The total of their testimony is well over 700 pages. Each of these witnesses was compelling in his own way, but perhaps the most persuasive and compelling was Dr. David Daniel. He is currently a University President, formerly Dean of the College of Engineering at the University of Illinois, and now Chairman of the specially appointed committee of civil engineers studying the reasons for the levee failure in New Orleans. Dr. Daniel is, without question, the foremost expert in the United States on solid waste disposal technology and engineering. Dr. Daniel is not a company employee. Dr. Daniel is not a "hired gun." Dr. Daniel peer-reviewed the engineering and geologic aspects of the proposal and concluded, without reservation, that the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. (Tr. 2/22/06, 121, 122; C7487-88).

Perhaps the most important factor ignored by the County in its consideration of this Criterion is that the facility has been operating continuously, and has not had a single violation of a State or Federal law or regulation in thirteen (13) years. (Tr. 2/21/06, 78; C7287). In fact, the PDC No. 1 Landfill has the best record in the hazardous waste disposal industry, nationwide. (Id.) In the case of Industrial Fuels & Resources/Illinois, Inc., *supra*, mere compliance with minimum governmental regulations, coupled with a good plan of operations, was held to show satisfaction of Criterion ii:

> [T]he undisputed fact is that all governmental minimum standards have been met and exceeded and that the facility will employ state-of-the art technology to ensure safe levels of emissions in the ordinary operation of the plant. Nothing indicates that Industrial's controls and procedures, safety features, training of personnel, or security systems are substandard or create a significant safety hazard.

227 Ill.App.3d at 547, 592 N.E.2d at 157, 169 Ill.Dec. at 670. Therefore, PDC may be said to have proven its case on Criterion ii, even without regard to the hundreds of pages of analysis submitted by PDC's various expert witnesses.

1. The theories of Charles Norris are not credible or supported by facts.

The credibility and expertise of Dr. Daniel stand in sharp contrast to the testimony of Charles Norris, an itinerant, self-employed geologist who admitted that he has given essentially the same stereotypical testimony about rapid preferred pathway migration of contaminants out of landfills at more than a dozen siting hearings in Illinois.

Mr. Norris' credibility is undermined by his obvious bias. He has expressed the same theories on behalf of citizens' groups opposed to landfill development or expansion over and over. However, on the only occasion when Mr. Norris was retained by a County conducting a siting hearing to be an "independent expert," he found that the proposed landfill site was geologically and hydrogeologically suitable for landfill development. In that case, in Wayne County, Mr. Norris endorsed the siting application and the proposed site, in spite of the facts that the application consisted of only one volume, and that the section in the application on hydrogeology was only two and one-half (2-1/2) pages, and that there were only five soil borings conducted, and that there were no hydraulic conductivity tests performed. (Tr. 2/24/06, 187-190; C7617-18).

Additionally, Mr. Norris' theories about rapid water flow through fractures and inter-connected sands are entirely unsupported by evidence. He conceded that the geologic characterization by PDC's expert team was "reasonably close." (Tr. 2/24/06, 228; C7627). His belief that the occasional sand stringers and lenses underneath the site are inter-connected is, therefore, pure speculation. His reliance upon the fact that the clay till is weathered as support for rapid water movement through the till ignores the fact that the weathered portion of the till is generally above the proposed bottom elevation of the landfill expansion.

On cross-examination, Mr. Norris was explicitly asked whether he was saying that any disposal unit at the PDC site, including closed units which are not the subject of the Application, are leaking. His unequivocal answer was, "no, I'm not." (Tr. 2/24/06, 209; C7622). What is truly shocking then is Mr. Norris' about-face on this issue, once he was no longer under oath and no longer subject to cross-examination. Anyone can spew reckless, untrue and unsupported garbage into the Record under the guise of public comment when they are not under oath, and that is exactly what Chuck Norris did. After he repudiated virtually all of his sworn testimony in his written public comment submission, he is the poster boy for why public comment should be given little, if any weight, compared to sworn testimony subject to cross-examination.

35 Ill.Adm.Code §101.628(b) mandates that public comment must be received and considered at this type of hearing, but cautions that,

> Written statements submitted without the availability of cross-examination, will be treated as public comment in accordance with sub-section (c) of this section and will be afforded less weight than evidence subject to cross-examination.

The principle that public comments are not entitled to the same weight as expert testimony submitted under oath and subject to cross-examination, and should instead receive a lesser weight, has been consistently endorsed by this Board. *See, e.g.*, City of Geneva v. Waste

Management of Illinois, Inc., *et al.*, PCB 94-58, 1994 WL 394691, *12 (IPCB, July 21, 1994); Donald McCarrell and Ann McCarrell v. Air Distribution Associates, Inc., PCB 98-55, 2003 WL 1386319, *3 (IPCB, March 6, 2003); Landfill 33, Ltd. v. Effingham County Board and Sutter Sanitation Services, Stock & Co. v. Effingham County Board and Sutter Sanitation Services, PCB 03-43 & PCB 03-52, 2003 WL 913440, *8 (IPCB, February 20, 2003).PDC filed a critique of Mr. Norris' written public comment in which it pointed out the numerous places where Mr. Norris, in order to support his new and wild allegations of leakage from the facility, decided to abandon the truth altogether. For example, Mr. Norris incorrectly identified a large volume of leachate as having been removed from the unit C1 secondary leachate collection system, when the volume that he referenced is actually the total of the leachate removed from both the primary and secondary leachate collection systems. It serves no further purpose in this Brief to identify all of the other places in his written public comment where Mr. Norris was either intentionally, or otherwise, "mistaken" on the facts. His written statement is impeached in its entirety by his sworn testimony. Nothing in the sworn testimony supports the County's finding that the facility is not so designed, located or proposed to be operated that the public health, safety and welfare will not be protected.

2. No other competent evidence was presented by the opponents.

The opposition groups called no witness to comment on the facility design, a critical and complex component of a modern hazardous waste facility. PDC proposed what is essentially a triple composite liner system for the horizontal expansion. The only sworn testimony that even arguably addressed the design was that of Timothy Montague, a graduate student and anti-landfill "researcher" who gave a generic presentation comparing the disposal of treated and stabilized solid waste at PDC to the open dumping of bulk liquid toxins at Love Canal. Even

though Mr. Montague was unfamiliar with the design components of the PDC facility, or even the design standards for a hazardous waste landfill, he did "opine" that all engineered systems would eventually fail because of the second law of thermodynamics by which everything will eventually "spontaneously break apart and diffuse into the universe." (Tr. 2/27/06, 246; C7837). (Mr. Montague was, however, unable to name the scientist who discovered the second law of thermodynamics (primarily, Sir Isaac Newton) on cross-examination. Tr. 2/27/06, 246; C7838.)

The testimony of Mr. Montague represents everything that is wrong with the opposition presentation in this case. Mr. Montague's comments were generic in nature, they were based upon problems and health impacts resulting from open dumping prior to government regulation of waste disposal, and they were made without knowledge of PDC's engineering and without knowledge of PDC's waste receipt and disposal practices. They were comments based upon fear, and irrational fear at that.

The same fear was expressed by Dr. Vitas and Dr. Zwicky, the two local doctors who also could not articulate a single scenario in which such fear might become reality. However, combined with the relentless *ex parte* lobbying of the organized citizens' groups, these fears rose in the estimation of the County Board to the level of evidence sufficient to find against PDC.

Heavily relied upon by the opposition groups and apparently heavily credited by the County Board was the unsworn, written public comment of G. Fred Lee, a well-known, internet-based, landfill opponent. Lee's comments lack the reliability of sworn testimony subject to cross-examination. They are also for the most part generic rather than site-specific, representing a recycling of the four themes that characterize <u>all</u> of his presentations and commentaries.

Lee's first theme is that State and Federal landfill regulations are inadequate to protect the public. Of course, Lee failed to identify <u>any</u> specific regulation that is inadequate or to

otherwise detail this allegation. Any decision by the County Board that accepts this proposition is inherently against the manifest weight of the evidence, and against the entire regulatory structure in this state.

In making his argument, Lee demonstrated his ignorance of the Application by repeatedly referring to the inadequacy of subtitle D regulations. These regulations address non-hazardous solid waste disposal while subtitle C regulations, which are much more stringent, regulate hazardous waste disposal. Mr. Lee, obviously, did not read PDC's Application. Equally disturbing, Lee referenced other articles as some sort of substantive support for his conclusions, but these articles are not learned treatises or peer-reviewed journal articles by other authors. Instead, they are nothing more than his and his wife's earlier written presentations.

Lee's second theme is that all containment systems will eventually fail. Again, he provided no support, other than his own other earlier writings. Mr. Lee again sited no scientific evidence but instead referenced two of his previous articles, *Flawed Technology of Subtitle D Landfilling of Municipal Solid Waste*, (Lee and Jones-Lee, p.9) and *Superfund Site Remediation by Landfilling* (Lee and Jones-Lee, p.5). His expressed opinion in those articles that clay liners have a "finite period of time over which they can be effective" is directly contradicted by the sworn testimony of Dr. David Daniel, an eminent engineer and recognized expert in the field.

Mr. Lee's third point is that a thirty year period of post-closure care for a landfill is inherently inadequate. Again, he failed to explain why he takes issue with the regulatory agencies that have set this standard and, again, he failed to provide any scientific evidence in support of his assertion.

Mr. Lee's last theme, again stated as an article of faith rather than as a scientifically provable conclusion, is that leachate that leaves a landfill will pose a threat forever. This

unsupported and unsworn assertion by Lee was certainly a factor in the decision of the County Staff and PDC to develop a workable Perpetual Care Fund that would protect the facility for as long as the wastes conceivably pose a threat, and theoretically, until the end of the earth. Nonetheless, Mr. Lee's assertion is incorrect and contradicted by all of the sworn evidence in the record. Both Dr. Daniel and Dr. Barrows discussed at length the process by which sorption or attenuation will remove any metals from leachate as fluids pass through the thick layer of clay underlying the site, as well as the processes of biodegradation as leachate travels through soil and groundwater, breaking down complex organics into simple, benign molecules. Even Mr. Norris acknowledged that this process will occur, so that in time, leachate from the facility no longer poses a threat.

3. PDC's Perpetual Care Fund proposal guarantees long-term safety.

When confronted with the realization that the County Board wanted a guarantee that the expanded PDC landfill would be safe for all eternity, PDC offered and the County Staff accepted the concept of a Perpetual Care Fund which would pay for maintenance, repairs and monitoring from the end of the statutory post-closure care period into perpetuity. This answers the question at page 10 of Mr. Lee's report of, "who will be responsible for the ad-infinitam post-closure care that will be needed for this landfill?" Once again, Mr. Lee's report demonstrates that he had no knowledge of the facts of this particular case.

In one of its post-hearing submittals, PDC advised the County that guaranteeing that the expanded facility would not pose a threat "forever" exceeded the scope of a reasonable timeframe during which the safety of the proposed facility should be judged. The County Staff correctly pointed out that, "the County Board cannot impose conditions upon approval or make a

decision on the Application which is inconsistent with applicable laws and regulations." (Supp. Staff Report, p. 8; C139563).

PDC's confidence that the site will not pose a future threat within any relatively foreseeable timeframe is based upon the extensive site characterization which makes the site understandable and predictable, the state-of-the-art engineering in the design and the groundwater impact assessment, which shows no impact whatsoever for the 500 year period during which potential impact was modeled. None of these facts was rebutted by any of the opposition witnesses and even Charles Norris, the opposition's only technically qualified expert, did not challenge any of these conclusions while he was still under oath and subject to cross-examination. PDC acquires further confidence from the fact that this facility has been permitted at multiple levels on multiple occasions, signifying regulatory approval and agreement with its site characterization and engineering concepts.

If Dr. Barrows' groundwater impact assessment showed no measurable impact on groundwater quality 50 feet from the facility boundary 500 years after closure, one can be more than reasonably confident that there will be no impact at the nearest municipal water supply well, which is some 8,000 feet down-gradient, in the foreseeable future. PDC acknowledged that the uppermost aquifer, approximately 100 feet under the bottom of the proposed excavation, is hydraulically connected to the Sankoty aquifer, which serves as a major regional source of drinking water. However, the fact of the hydraulic connection alone does not support the bare conclusion by opposition groups that expansion of the facility threatens the Sankoty aquifer. Given the fact that the groundwater impact assessment showed no measurable impact 50 feet from the facility at 500 years, combined with the fact that groundwater at the site moves at 10 feet per year, combined with the further fact that the nearest domestic down-gradient well in the

Sankoty aquifer is 3,000 feet distant and the nearest municipal well down-gradient in the Sankoty is 8,000 feet distant, any conclusion that the Sankoty aquifer is threatened by the expansion is against the manifest weight of the evidence.

In light of the foregoing, a Perpetual Care Fund at this site is unnecessary and redundant. Nonetheless, to calm the hysteria generated by the opposition group's *ex parte* pressure on County Board members, PDC agreed to the County Staff's recommendation of a $3,375,000 perpetual care fund and suggested that the same be funded over a proposed 12 year service life on a slightly scaled down expansion where there would be no vertical expansion over existing trench C1. This equates to approximately $1.88 per ton of waste expected to be received at the facility, a figure actually higher than the $1.50 per ton calculated as necessary by the County Staff. The $5.00 per ton funding figure imposed by the County Board as a special condition on Criterion v has no basis anywhere in the evidence or the Record, and its sudden genesis at the April 6, 2006, meeting of the County Board represents nothing more than intent to impose a confiscatory tax.

4. The County's findings of fact.

A review of the specific so-called findings of the County Board on Criterion ii demonstrates that the best of them are based on pseudo-science and the worst are based upon irrational fear and speculation.

1. There is evidence that the existing landfill may already be leaking into the aquifer.

Response: This is contradicted by the testimony of all of PDC's witnesses, by the County Staff report and also by the sworn testimony of Charles Norris. This statement is true only to the extent that anyone considers Norris' about-face during the public comment period to be evidence. Moreover, the finding is further rebutted by the fact that the IEPA has only ever required "detection" monitoring at the PDC No. 1 Landfill, rather than "compliance" or "corrective action" monitoring, and the "groundwater is in full compliance with the IEPA and U.S. EPA permit standards." (Tr. 2/22/06, 50 (Liss), C7372).

2. 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.

Response: The existing facility is not leaking; there was an issue as to chloride levels in one well, down-gradient of closed unit C1. PDC's explanation regarding these chloride levels and the fact that they were naturally occurring is unrebutted and is based upon sound scientific principles. The bromide/chloride ratio, according to expert witness Kenneth Liss, ruled out leachate as the source of high chloride levels in any monitoring well. Moreover, PDC was prepared to accept as a condition of approval the County Staff's recommendation that there be no vertical expansion over unit C1 which had a double composite rather than a triple composite liner system and which is the unit upgradient of the only monitoring well at which the County Staff was unwilling to conclusively rule out the facility as a possible source of chloride. The County Staff, to its credit, realized that their conclusion was not evidence and that their ultra-conservative approach placed an impossible burden on PDC as reflected in the comments of staff attorney, David Brown, on April 3, 2006, when he said, "the IEPA has concluded that these things haven't come from the facility. And I think that the County staff has applied a higher standard for that determination." (Tr. 4/3/06, 78; C13373). In any event, abandonment of vertical expansion over unit C1 renders the point moot from a public health, safety and welfare perspective.

3. 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.

Response: This statement is only true as to the HDPE component of the liner system, and really represents the County Board members' expression that they want a guarantee of no liner failure for all eternity, and the County Board's complete disregard for the fact that natural processes will render leachate harmless at "some time in the future."

4. When those liners fail, leachate will begin migrating through the site, and will eventually reach the groundwater under the site.

Response: If this happens 10,000 years from now, the leachate will undoubtedly be harmless. Again, this is nothing but the vaguest speculation.

5. The groundwater aquifer located under the site is, by the Applicant's own expert's testimony, hydraulically connected to the Sankoty aquifer which is the primary drinking water aquifer for the area.

Response: This type of statement, once again, demonstrates the County Board's pattern of completely unsupported speculation that there will be a threat or an impact. Proximity to a drinking water aquifer (in this case, not that close a proximity at all) is not inherently bad.

6. If the drinking water wells for the area are contaminated, the cost of replacing the water supply will be enormous.

Response: This again assumes that drinking water wells will be contaminated when there is absolutely no evidence to that effect.

7. The risk of contamination of the area's drinking water is not worth the short-term economic benefits of allowing the expansion of the landfill.

Response: The statement fails to quantify the risk because there is certainly no evidence which quantifies or even positively identifies such risk. Denial of an application, based upon a negligible and unquantified risk is against the manifest weight of the evidence.

8. The old areas of the site are not constructed to modern regulatory standards and present unreasonable risks to the public.

Response: The old areas of the site are not part of the Application. Nonetheless, PDC offered, with its Perpetual Care Fund, to use those monies also for care of closed units which are not part of the siting process. Additionally, Dr. Daniel suggested that even these units pose no threat.

9. The location of a hazardous waste disposal site over the aquifer is against the stated policy of the Peoria County Board.

Response: This is a non-evidentiary consideration and provides further proof that the decision is against the manifest weight of the evidence.

10. The design of trench C1 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.

Response: There is no evidence that the double composite liner system under trench C1 is inferior. Dr. Daniel pointed out that modern disposal technology has not changed much over the past 20 years because it is a demonstrated, proven technology but occasionally there will be minor advances as people figure out how to "build a better mousetrap." (Tr. 2/22/06, 100; C7384). This finding also ignores the fact that the County staff and PDC were in agreement that there would be no vertical expansion over unit C1.

11. The testimony of opponent's 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 of other contaminants migrating into the groundwater from the glacial till.

Response: Fissures, weathering and sand seams are the mantra chanted by Mr. Norris at every landfill hearing where he testifies. In this case, he was unable to identify any of these features in any of the soil borings, and he also did not take issue with the accuracy of the Applicant's site characterization from a technical perspective. More importantly, Norris did not testify that there were leachate releases, carefully avoiding that statement while he was under

oath and subject to cross-examination. He only speculated about releases when he mailed in his public comment from a thousand miles away.

12. 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 direct conflict with the testimony of applicant's experts, and in support of Mr. Norris' testimony.

Response: These wells are up-gradient of the facility so the subject contaminant is not from the facility. There is no evidence how long the contaminant had been at either location, so it is impossible to estimate contaminant travel time based upon these monitoring results.

13. The increased levels of chlorides in the monitoring well down-gradient of trench C1 also suggest the same conclusions.

Response: The PDC facility is located on what is essentially an uneroded mound and the witnesses all agreed that, while it is substantially separated from the uppermost aquifer by a thick unit of impermeable clay till and by a thick unit of unsaturated sand, at multiple locations near the facility (including up-gradient locations), this uppermost aquifer recharges from and is actually exposed to the ground surface. Therefore, other manmade sources of chloride such as road salt have easy access to the aquifer. Additionally, no one disputed the natural presence of chlorides in the brackish groundwater above the Pennsylvanian bedrock.

14. 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.

Response: Again, this is pure speculation as the finding fails to enlighten what these questions are. Obviously, once again the County Board assumes that proximity equals impact.

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

Response: Again, proximity does not equal impact..

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

Response: This is more of the same speculation driven by fear rather than by science. No pathway is identified by which these adverse health affects might occur.

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

Response: Since the medical community could not identify a pathway for exposure and since the two doctors who testified were unaware of the details of the siting application, a statement such as this proves that the County Board caved into political pressure in making its decision.

18. 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.

Response: PDC's witnesses testified that there would be no pathways of potential exposure and, thus, no adverse health effects on the citizens of the community. In a sense, this finding chastises PDC for being unable to disprove a negative. Nonetheless, the thousands of pages of results of soil borings, laboratory tests, permeability testing and all of the other testing performed at this site by PDC represent the data, studies and reports to which this finding might be referring.

19. 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.

Response: This finding is pure speculation and totally disregards the evidence that waste will remain contained and will not have any impact on groundwater. Moreover, this finding disregards the testimony that the treatment of hazardous waste to land disposal regulatory standards generally makes it less potentially harmful than municipal solid waste, as evidenced by a comparison of hazardous waste facility leachate with municipal solid waste facility leachate.

20. 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.

Response: This has already been fully addressed in the response to other findings.

21. Applicant and opponents agree that protection of the groundwater is the primary concern at the proposed facility.

Response: If this statement is really true, the Application would not have been denied. As evidenced by its strong compliance record and history of employing liner systems that exceed regulatory standards, PDC is committed to the protection of groundwater quality. PDC cannot, however, affirm whether the opponents truly understand actual versus mythical threats to groundwater quality.

22. 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.

Response: This is not true. The opponents offered assumption and speculation, while PDC offered unrebutted scientifically-valid conclusions.

23. One area of concern for the County Staff was the groundwater impact assessment conducted by PDC's experts Dr. Barrows and Ken Liss.

Response: Kenneth Liss did not prepare a groundwater impact assessment. The County Staff did not quarrel with the results of Dr. Barrows' work, although they had some difficulty understanding all of his methodology.

24. 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.

Response: Actually, the groundwater impact assessment conducted by Dr. Barrows far exceeds that historically required by the IEPA for landfill permit applications.

25. 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.

Response: That is not a bad thing.

26. 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.

Response: Actually, the flux through the liner system that was predicted by the H.E.L.P. Model (which conservatively assumed significant deterioration of the geomembrane) was so small that Dr. Barrows based his modeling on only a single composite liner conservatively disregarding the fact that the facility has a triple composite liner.

27. 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.

Response: Dr. Barrows' conclusion that the facility would not have any impact for at least 500 years on groundwater 50 feet from its boundary was unchanged. To the extent that Dr. Barrows' conclusion are unrebutted they do not require verification by anyone. It is also disingenuous that the County Board would make a finding relative to the County Staff's inability to verify a conclusion due to time constraints, but disregard entirely the County Staff's recommendation that the facility be approved with conditions.

28. 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.

Response: This is a perversion of the County Staff's report, which clearly states that it was concerned only with unit C1 and that conditioning approval to preclude expansion over that unit completely addresses the issue.

29. 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.

Response: That testimony is unrebutted.

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

Response: Mr. Norris is incorrect, as Mr. Liss pointed out that, while he worked at the IEPA in a regulatory capacity, the agency had abandoned TOX levels as a reliable monitoring parameter, particularly in the areas with high naturally occurring chlorides.

31. 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.

Response: PDC had suggested and the County Staff had agreed to removal of the surface impoundment, and replacement of same with free-standing leachate storage tanks, as a condition of approval. (*See* Tr. 2/21/06, 89; C7289). Moreover, the Application clearly states that, upon approval of the expansion, PDC would replace the surface impoundment with a double-wall aboveground storage tank. (Application, pgs. 2.3-13-14; C245-46, and drawings S-4, S-6 and S-7; C263, C265 and C266). Inclusion of this "finding" suggests a lack of understanding of PDC's proposed design.

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

Response: It is easy to question anything. No evidence exists that these units are not safe. Moreover, these inactive units are not part of the Application.

33. "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 that only with the imposition of numerous special conditions could criterion two be satisfied."[3]

Response: This is in effect a finding that PDC had proven its case, because PDC had agreed to accept the conditions in the County Staff report. (In fact, PDC had proposed most of the conditions itself during the hearing). With this finding by the County, a vote against siting approval subject to these conditions is conclusively against the manifest weight of the evidence.

[3] Tr. 5/3/06, 42/16-23; C13722. This finding was added by oral motion at the May 3, 2006 meeting.

D. Criterion iii: The proposed facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

As pointed out in the introduction to this section of the brief, there were no witnesses presented by the opponents to rebut the expert testimony offered by Gary DeClark, a licensed real estate appraiser and Chris Lannert, a landscape architect and land use planner of vast experience. Even the findings made by the County Board on this Criterion offer no clue as to why there was a purported denial, other than the County's blind, unsupported assumption that proximity of any kind alone equates to impact. A look at the handful of findings made by the County Board is illustrative.

1. Surrounding land uses are a mix of open space, agriculture, industrial and residential.

Response: Agreed.

2. 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.

Response: Unfortunately, the County did not quantify this statement. The evidence is that the site is virtually invisible to surrounding land uses now, and that it will be virtually invisible to surrounding land uses after expansion as well.

3. A significant portion of the residential property is in relative close proximity to the proposed facility.

Response: This was true before the proposed expansion. PDC is only required to minimize incompatibility. Proximity does not equate to incompatibility. This finding completely ignores PDC's agreement to the proposed condition requiring berms on the eastern side of the property to provide additional sound and visual screening.

4. A 45 foot increase in vertical height of this landfill will have a noticeable and demonstrable effect on surrounding residential properties.

Response: There is no such evidence in the record. The evidence is that the site will still be virtually invisible from most residential areas. Additionally, the visibility of a portion of a vegetated slope does not equate to incompatibility. Lastly, the absence of vertical expansion over unit C1 means that the overall height increase of the facility occurs in the areas furthest

removed from residential properties. The County Staff correctly concluded that, "If C-1 is not vertically expanded, then the impact of the expansion should largely be mitigated." (Supp. Staff Report, 26; C139581).

5. 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.

Response: This statement does not necessarily equate to incompatibility, given the proposed end use plan of passive open space. Nonetheless, the visible impact is admittedly minimal and further mitigated by not expanding over unit C1 and PDC's agreement to accept berming as a condition of approval.

6. 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.

Response: This finding suggests that the facility is not particularly visible and has minimal, if not zero impact on the surrounding areas. An eight (8) acre expansion, given the existence of the substantial buffers around the facility, is negligible in terms of increasing any impact. In fact, it was apparent from the testimony at the public hearing that the neighbors of the facility are not bothered by the proposed expansion: "It should be noted that few owners or occupants of the residences within close proximity to the east boundary of the proposed facility commented during the public comment portion of the public hearing. Most of the commentary and questions regarding compatibility was from individuals living a mile or more away from the facility." (Staff Report, pg. 44; C12138).

7. A 45 foot increase in vertical height of this landfill will have a noticeable visual impact on surrounding residential properties.

Response: *See* finding 4, *supra.* Making essentially the same finding a second time does not change the fact that there is no evidence in the Record to support the finding.

The foregoing review of the County Board's speculations about impact, phrased in the guise of findings of fact, conclusively demonstrates that there is no evidence which rebuts the conclusions of PDC's witnesses, Gary DeClark and Chris Lannert, the only two experts to offer any testimony on this Criterion. The decision of the County Board on Criterion iii is clearly against the manifest weight of the evidence.

E. Criterion v: The imposition of a $5.00 per ton surcharge as a condition of approval of siting Criterion v is against the manifest weight of the evidence.

As and for its argument regarding County's improper imposition of a $5.00 per ton surcharge as a condition of approval of siting Criterion v, PDC adopts and incorporates the arguments made in PDC's Motion for Partial Summary Judgment (Criterion v) and Memorandum of Law in Support thereof, filed on September 8, 2006, and in PDC's Reply in Support of Motion for Partial Summary Judgment (Criterion v), filed on October 16, 2006.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Peoria Disposal Company, prays that this Board approve the Application, or award the alternative relief described herein, and award Petitioner, Peoria Disposal Company, such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

PEORIA DISPOSAL COMPANY

By: _____
One of its attorneys

George Mueller
GEORGE MUELLER, P.C.
Attorney at Law
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500 - Telephone
(815) 431-1501 - Facsimile

Brian J. Meginnes
ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.
Attorneys at Law
416 Main Street, Suite #1400
Peoria, IL 61602-1153
(309) 637-6000 - Telephone
(309) 637-8514 - Facsimile

907-0020.4

AFFIDAVIT OF SERVICE

The undersigned, being first duly sworn upon oath, states that copies of the Brief of Petitioner, Peoria Disposal Company, will be served upon the following persons by enclosing same in separate envelopes, addressed as follows, and sending same via Federal Express, overnight delivery, from Peoria, Illinois, on the 15th day of February, 2007, before 5:00 p.m., with all fees thereon fully prepaid and addressed as follows:

Mr. William Atkins
Assistant State's Attorney
Peoria County
324 Main Street, Room #111
Peoria, IL 61602

Ms. Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274
(217) 524-8509 - Telephone
webbc@ipcb.state.il.us

Mr. David A. Brown
Black, Black & Brown
Attorneys at Law
101 South Main Street
P. O. Box 381
Morton, IL 61550
(309) 266-9680 - Telephone
(309) 266-8301 - Facsimile
dbrown@blackblackbrown.com

Brian J. Meginnes, Esq.

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this 14th day of February, 2007.

OFFICIAL SEAL
JESSICA M ROCKEY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06-13-07

Notary Public

George Mueller
GEORGE MUELLER, P.C.
Attorney at Law
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500 - Telephone
(815) 431-1501 - Facsimile

Brian J. Meginnes
ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.
Attorneys at Law
416 Main Street, Suite #1400
Peoria, IL 61602-1153
(309) 637-6000 - Telephone
(309) 637-8514 - Facsimile

AFFIDAVIT OF FILING

The undersigned, being first duly sworn upon oath, states that ten (10) copies of the Brief of Petitioner, Peoria Disposal Company, will be filed with the Illinois Pollution Control Board via Federal Express, overnight delivery, sent on the 15th day of February, 2007, sent before 5:00 p.m.

Brian J. Meginnes, Esq.

Subscribed and sworn to before me, a Notary Public, in the Peoria County, Illinois, this 14th day of February, 2007.

Notary Public

OFFICIAL SEAL
JESSICA M ROCKEY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06-13-07

George Mueller
GEORGE MUELLER, P.C.
Attorney at Law
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500 - Telephone
(815) 431-1501 - Facsimile

Brian J. Meginnes
ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.
Attorneys at Law
416 Main Street, Suite #1400
Peoria, IL 61602-1153
(309) 637-6000 - Telephone
(309) 637-8514 - Facsimile

APPENDIX

A: Excerpts: Brief of the Illinois Pollution Control Board prepared by the Attorney General in Case Nos. 101619 and 101652, Town & Country Utilities, Inc., and Kankakee Regional Landfill, LLC, Petitioners/Cross-Respondents-Appellees, v. Illinois Pollution Control Board, Respondent/Cross-Respondent-Appellant, and County of Kankakee and Edward D. Smith, State's Attorney of Kankakee County, Respondents/Cross-Petitioners-Appellants, pending before the Illinois Supreme Court.

George Mueller
GEORGE MUELLER, P.C.
Attorney at Law
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500 - Telephone
(815) 431-1501 - Facsimile

Mr. Brian J. Meginnes
ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.
Attorneys at Law
416 Main Street, Suite #1400
Peoria, IL 61602-1153
(309) 637-6000 - Telephone
(309) 637-8514 - Facsimile

Nos. 101619 & 101652 (consolidated)

IN THE
SUPREME COURT OF ILLINOIS

TOWN & COUNTRY UTILITIES, INC. and KANKAKEE REGIONAL LANDFILL, INC., Petitioners/Cross-Respondents - Appellees, v. ILLINOIS POLLUTION CONTROL BOARD, Respondent/Cross-Respondent-Appellant, and COUNTY OF KANKAKEE and EDWARD D. SMITH, STATE'S ATTORNEY OF KANKAKEE COUNTY, Respondents/Cross-Petitioners-Appellants.	) Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-03-0025.) There heard on direct administrative review of a decision of the Illinois Pollution Control Board, Nos. 03-31, 03-33, 03-35.

BRIEF OF ILLINOIS POLLUTION CONTROL BOARD

LISA MADIGAN
Attorney General
State of Illinois

GARY FEINERMAN
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Illinois Pollution Control Board.

BRETT E. LEGNER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2146

ORAL ARGUMENT REQUESTED

II. The plain language of the Act requires the court to review the Board's final administrative decision, not the interim decision of the local siting authority.

The appellate court erroneously held that, on judicial review, it was to review the City's decision, not the Board's decision, under the manifest weight of the evidence standard. Order at 11 (A11). That holding is contrary to both the plain statutory language of the Act requiring that the Board's decision be reviewed under the manifest weight of the evidence standard and the rationale requiring the Board's participation in the landfill siting process. Indeed, as the foregoing Statement of Facts demonstrates, there are a number of very technical issues raised by Town & Country's application that require the analysis of the technically-qualified Board, and the court on review must accord deference to the Board's technical expertise.

It is a fundamental aspect of statutory construction that the court will give effect to the plain, unambiguous language of a statute. *In re Christopher K.*, 217 Ill. 2d 348, 364, 841 N.E.2d 945 (2005). By its plain language, the Act establishes that, on judicial review, the appellate court reviews the final decision of the *Board* to determine whether that decision was against the manifest weight of the evidence. . 415 ILCS 5/41(a) (2004) (A104) ("Any party . . . may obtain judicial review[] by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was served upon the party affected by the order or other final Board action complained of . . . ."); 415 ILCS 5/41(b) (2004) (A104) ("Any final order of the Board under this Act shall be based solely on the

evidence in the record of the particular proceeding involved, and any such final order for permit appeals, enforcement actions and variance proceedings, shall be invalid if it is against the manifest weight of the evidence . . . ."). Under the clear statutory scheme, the court does not review the decision of the local siting authority.

Title X of the Act governs the issuance of permits. 415 ILCS 5/39 - 5/40.2 (2004). Among other things, the permitting process encompasses the issuance of permits for the development and construction of new pollution control facilities, such as the one proposed by Town & Country in the instant case. 415 ILCS 5/39(c) (2004). Pursuant to the Act, no permit for the development or construction of a new pollution control facility may issue unless the applicant has received siting approval from the governing body of the county or municipality where the facility will be located. *Id.*; 35 ILL. ADMIN. CODE § 107.106.

Section 39.2 sets forth the procedures and criteria for siting approval by the local siting authority. 415 ILCS 5/39.2 (2004) (A95-A96). That section requires the local siting authority to hold a public hearing and issue a written decision. 415 ILCS 5/39.2(d), (e) (2004) (A97-A98). If all of the criteria are satisfied, the authority may grant the siting application. 415 ILCS 5/39.2(a) (2004) (A95-A96).

The local siting authority's decision may be reviewed by the Board upon request by the siting applicant or third parties meeting statutory requirements. 415 ILCS 5/40.1 (2004) (A102-A103). In undertaking this review, the Board is to make its decision "based exclusively on the record" before the local siting authority.

415 ILCS 5/40.1(a), (b) (2004) (A102-A103). The Board is not to reverse the local siting authority's decision unless that decision is against the manifest weight of the evidence. *File v. D & L Landfill, Inc.*, 219 Ill. App. 3d 897, 901, 579 N.E.2d 1228 (5th Dist. 1991).

The Board's decision may be judicially reviewed. 415 ILCS 5/41 (2004) (A104). As noted above, the Act specifies that the judicial review is of the *Board's* decision, not the decision of the local siting authority: it provides that any party adversely affected "by a final order or determination of the *Board*" may obtain, directly in the appellate court, review of the "order or other final action . . . ." 415 ILCS 5/41(a) (2004) (A104) (emphasis supplied). The Board's administrative regulations summarize the process: "Pursuant to section 40.1 of the Act, a decision of a unit of local government to site or deny siting of a new pollution control facility is reviewable by the Board. The decision of the Board is appealable to the Illinois appellate court." 35 ILL. ADMIN. CODE § 107.106.

The Act also sets forth the standard of review to be employed in reviewing the Board's decision: "Any final order of the *Board* under this Act shall be based solely on the evidence in the record of the particular proceeding involved, and any such final order for permit appeals, enforcement actions and variance proceedings, shall be invalid if it is against the manifest weight of the evidence." 415 ILCS 5/41(b) (2004) (A104) (emphasis supplied). As Justice Barry acknowledged in his dissent, Order at 12-13 (A12-A13), the plain and unambiguous statutory scheme limits the scope of the court's review to the Board's final decision – not the decision

of the local siting authority – and requires the Board's decision to be upheld unless it was against the manifest weight of the evidence. 415 ILCS 5/40.1, 41 (2004) (A102-A105).

This Court has explained that judicial review under section 41 of the Act requires the appellate court to determine whether the Board's decision is against the manifest weight of the evidence. *Environmental Protection Agency*, 115 Ill. 2d at 70 ("The appellate court properly recognized that its duty under section 41(b) of the Act was to evaluate all the evidence in the record, and to determine whether the Board's findings that the evidence did not support the denial of the permits was against the manifest weight of the evidence.") (internal citation omitted). And, appellate court decisions have recognized the nature of judicial review of a siting decision. For instance, one court explained the system of review of local siting decisions as follows: "The standard of review to be exercised by both the Pollution Control Board and this court is whether, respectively, the decisions of the county board and Pollution Control Board are contrary to the manifest weight of the evidence." *File*, 219 Ill. App. 3d at 901. Thus, the court on judicial review "must determine whether the decision of the *Pollution Control Board* . . . is itself against the manifest weight of the evidence." *Id.* (emphasis supplied); *see also Turlek v. Pollution Control Bd.*, 274 Ill. App. 3d 244, 249, 653 N.E.2d 1288 (1st Dist. 1995) (holding that "[o]n review, we are to determine whether the Board's decision is against the manifest weight of the evidence").

This statutorily-mandated standard of review reflects the General Assembly's

understanding that the Board brings its expertise to bear when reviewing the local siting authority's decision and, as a result, the Board's decision is entitled to deference. Created by the Act, the Board is comprised of 5 "technically qualified" members. 415 ILCS 5/5(a) (2004). The Board is empowered by the General Assembly to enforce the provisions of the Act and to "determine, define and implement the environmental control standards applicable in the State of Illinois . . . ." 415 ILCS 5/5(b), (d) (2004). As the appellate court has explained, the Board "is a statutorily created agency designed to provide expertise in the consideration of whether a proposed waste disposal site is appropriate in a particular situation." *Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1034, 530 N.E.2d 682 (2nd Dist. 1988). Thus, on administrative review, it is necessary for the court "to have the benefit of the [Board's] expert consideration" of the siting criteria. *Id.* at 1035. If the Board's decision were not given deference, the importance of providing its expertise to the court would be completely undermined.

Considering the Board's role in the context of the siting process as a whole, it is evident that the Board's decision – not the local siting authority's decision – should be reviewed under the manifest weight of the evidence standard. The initial decision is made by the local siting authority, but that authority is a lay body and there is no guarantee that it will have any expertise in the area. Similarly, there is no guarantee that the court on judicial review will have expertise in the technical matters concerning the siting of a pollution control facility. Therefore, the only stage in the siting process where technical expertise is guaranteed is the Board's

review of the local siting authority's decision, and the General Assembly required the Board's participation in the citing process for a reason. It is the Board's decision, then, that should be given deference by the court on judicial review. *See Granite City Div. of Nat'l Steel Co. v. Illinois Pollution Control Bd.*, 155 Ill. 2d 149, 166-67, 613 N.E.2d 719 (1993) (explaining that the court defers to Board determinations on matters within its special expertise and judgment).

Furthermore, administrative review under section 41(a) must conform with the Administrative Review Law, 415 ILCS 5/41(a) (2004) (A104), and that statute specifies that only "a final decision of any administrative agency" may be reviewed under its framework, 735 ILCS 5/3-102 (2004), and that the findings and conclusions on questions of fact by the agency issuing the final administrative decision are deemed prima facie true and correct, 735 ILCS 5/3-110 (2004). In this case, the final agency decision was issued by the Board. Thus, the scope of the instant action is circumscribed by the Administrative Review Law, which directs the court to review not the intermediate decision or findings of the local siting authority but only the Board's final decision and to deem its findings and conclusions prima facie true and correct. *See Merisant Co. v. Kankakee County Bd. of Review*, 352 Ill. App. 3d 622, 626, 815 N.E.2d 1179 (3rd Dist. 2004) (explaining that where the Administrative Review Law is adopted, that statute applies to govern review of a final agency decision); *Oleszczuk v. Department of Employment Sec.*, 336 Ill. App. 3d 46, 50, 782 N.E.2d 808 (1st Dist. 2002) (holding that review

under the Administrative Review Law is of the final agency decision, not an intermediate administrative decision or the decision of the circuit court).

Based on the plain language of the Administrative Review Law, the court has jurisdiction to review *only* the Board's decision – it does not have jurisdiction to consider the City's decision. A court reviewing the decision of an administrative agency is exercising special statutory jurisdiction, and where the Administrative Review Law has been adopted, the court's jurisdiction is defined in its entirety by the Administrative Review Law. *ESG Watts, Inc. v. Pollution Control Bd.*, 191 Ill. 2d 26, 30, 727 N.E.2d 1022 (2000); *see* 735 ILCS 5/3-104 (2004) (elaborating on the court's jurisdiction "to review final administrative decisions"). Here, the Act and the Administrative Review Law specify that jurisdiction on administrative review extends only to review of the Board's final decision, not review of the local authority's decision. That is the jurisdictional limit on the court's power to review this matter.

Given the clear statutory language, the appellate court's reliance below on *Concerned Adjoining Owners v. Pollution Control Bd.*, 288 Ill. App. 3d 565, 680 N.E.2d 810 (5th Dist. 1997), for the proposition that "[o]n review, the court is limited to a determination of whether the siting authority's decision was contrary to the manifest weight of the evidence," Order at 7-8 (A7-A8), is misplaced. Indeed, the *Concerned Adjoining Owners* court simply was wrong when it noted that the focus of the administrative review was the local siting authority's decision. This is

so for a number of reasons: (1) the Act states that judicial review is available of a final Board decision, not the final decision of the local siting authority; (2) the Act incorporates the Administrative Review Law, and that statute specifies that only a final decision of an administrative agency – here, the Board – may be judicially reviewed; and (3) to hold otherwise would ignore the Board's expertise in reviewing siting applications and would render meaningless the General Assembly's requirement that the Board review the local siting decisions, *see Cassens Transp. Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 524, 844 N.E.2d 414 (2006) (explaining that statutes must not be construed so as to render provisions meaningless or superfluous).

In reasoning that its review was of the local siting authority's decision and not the decision of the Board, the appellate court wrote that "[i]f an appellate court were to review both the local body and the [Board] under a manifest weight of the evidence standard, it might have to affirm two contradictory decision[s]." Order at 8 n.1 (A8). But the court on administrative review does not review *both* the Board's decision and that of the local siting authority. Instead, under the Act and the Administrative Review Law, it reviews *only* the Board's decision. 415 ILCS 5/41 (2004) (A104); 735 ILCS 5/3-110 (2004). Therefore, there is no possibility that the court would be called upon to affirm two contradictory decisions.

The appellate court also wrote: "The manifest weight of the evidence standard of review is applicable to a tribunal with an adjudicatory function that is called upon to weigh evidence. It is not applicable to a tribunal which reviews the

decision of an adjudicatory body." Order at 8 n.1 (A8). While that may be true as a general principle, the general principle is irrelevant in this case because the General Assembly, through the Act, explicitly provided the standard of review to be employed in this administrative review context. 415 ILCS 5/41(b) (2004) (A104).

While the local siting authority is given a significant role in the siting process, *see Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd.*, 160 Ill. App. 3d 434, 441, 513 N.E.2d 592 (2nd Dist. 1987), reviewing the decision of the Board, as opposed to the local siting authority, on judicial review does not minimize the importance of the local siting hearing. Because the local siting authority's findings of fact are taken as prima facie true and correct by the Board, those findings likely will be affirmed by the Board and would then be before the court on review. In other words, the deference the Board must give to the local authority's decision ensures that the local decision will have a meaningful effect on the outcome of the process.

Additionally, the local authority is responsible for compiling the record that will be before the Board and then the court on judicial review. In that way, the local siting authority plays an important role in the disposition of the matter because it marshals the evidence that will be used to decide the matter. Therefore, the role of the local siting authority is preserved in this process even though the judicial review is of the Board's, and not the siting authority's, decision.

And, in any event, the General Assembly clearly specified that judicial review is of the *Board's* decision, and that the Board's decision must be upheld unless it is

against the manifest weight of the evidence. 415 ILCS 5/41(a), (b) (2004) (A104). Thus, while the General Assembly gave the local authority an important role, it also provided the Board with a key role in the process and that role cannot be ignored on judicial review. But that is what the appellate court's decision did – it effectively cut the Board out of the process, in contravention of the unambiguous statutory language.

The statutory framework under the Act is similar to that created by the Human Rights Act. There, the Human Rights Commission must adopt the findings of fact of the Administrative Law Judge unless those findings are against the manifest weight of the evidence. 775 ILCS 5/8A-102(E)(2) (2004). However, pursuant to section 8-111(A)(2) of the Human Rights Act, the Human Rights Commission's findings are reviewed to determine if they were against the manifest weight of the evidence. 775 ILCS 5/8-111(A)(2) (2004). On judicial review, the court does not "pass upon the propriety of the Commission's determination that the findings of the ALJ were contrary to the manifest weight of the evidence," and instead only analyzes the Commission's findings under the manifest weight standard. *Pinnacle Ltd. Partnership v. Illinois Human Rights Comm'n*, 354 Ill. App. 3d 819, 827-28, 820 N.E.2d 1206 (4th Dist. 2004). Similarly, under the Act, the Board reviews the local siting authority's decision to determine if it was against the manifest weight of the evidence, but the court on judicial review examines only the final administrative decision of the Board, not the siting authority's decision that was reviewed by the Board.

Another similar situation was discussed by this Court in *Comprehensive Community Solutions, Inc. v. Rockford Sch. Dist. No. 205*, 216 Ill. 2d 455, 837 N.E.2d 1 (2005). There, this Court reviewed a decision of the Illinois State Board of Education that had affirmed the decision of a local school board. 216 Ill. 2d at 473, 477-78. Likewise in this case, this Court should review the decision of the Board that reversed the City's decision – in both cases, review of is of the final agency decision, not the initial local decision.

Thus, the appellate court misapplied the law holding that it was to review the decision of the local siting authority and not the decision of the Board. The plain language of the Act and the Administrative Review Law establish that judicial review is of the Board's decision, and that the decision is not to be reversed unless it is against the manifest weight of the evidence. The rationale behind that scheme is that the Board brings its expertise to the process with its review of the local decision, and the Board's expertise is to be given deference on judicial review.

III. The Board's determination that Town & Country did not satisfy criterion ii was not against the manifest weight of the evidence.

The Board's decision on criterion ii of section 39.2(a) of the Act is reviewed under the manifest weight of the evidence standard. 415 ILCS 5/41(b) (2004) (A104). The manifest weight of the evidence standard is deferential. The Board's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Abrahamson v. Illinois Dep't of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111 (1992). If the record contains

EXHIBITS

Exhibit 1: County invoice no. CoAdm06282006, dated June 28, 2006, with supporting documents

Exhibit 2: County invoice no. CoAdm08012006, dated August 1, 2006, with supporting documents

Exhibit 3: Accounting of PDC's expert costs from the hearings

George Mueller
GEORGE MUELLER, P.C.
Attorney at Law
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500 - Telephone
(815) 431-1501 - Facsimile

Brian J. Meginnes
ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.
Attorneys at Law
416 Main Street, Suite #1400
Peoria, IL 61602-1153
(309) 637-6000 - Telephone
(309) 637-8514 - Facsimile

County of Peoria

12549

INVOICE

County Administration Office
324 Main Street, Room 502
Peoria IL 61602

DATE:
June 28, 2006

INVOICE #
CoAdm06282006

Bill To:
Brian Meginnes
Elias, Meginnes, Riffle & Seghetti
416 Main St, Suite 1400
Peoria IL 61602

For:
Peoria Disposal Company

DESCRIPTION	AMOUNT
Related expenses to the PDC Landfill Siting Application Review - filed 11/14/05	242,092.66
Details of Expenses and Revenue are on a separate sheet.	
ENT'D JUL 13 2006	
001-00-0000-190010	
TOTAL	$ 242,092.66

Pay 7/27/06

Make all checks payable to **County of Peoria**
If you have any questions concerning this invoice, contact Karen Raithel at 672-6932.

OK to pay - RC 7/10/06

THANK YOU FOR YOUR BUSINESS!

Peoria Disposal Company (PDC) Landfill Siting Application Review

Filed November 14, 2005

EXPENSES

Outside Contract and Publication Charges (11/14/05 - 6/28/06)

Patrick Engineering (engineering services)	$5,508.00
Black, Black, and Brown (Legal services)	$3,250.00
Auditor's Office - postage	$90.95
Patrick Engineering (engineering services)	$17,889.94
Patrick Engineering (engineering services) - January	$45,766.88
Black, Black, and Brown (Legal services) - January	$1,884.00
Black, Black, and Brown (Legal services) - February	$21,482.00
Peoria Journal Star - Notice of public hearing	$113.88
Peoria Journal Star - Legal Notice of public hearing	$365.73
Rapid Print - copies (leachate collection data)	$535.60
Copies/Copier	$47.03
Meal for staff - 2/21/06	$31.56
Itoo Society (rental and meals)	$9,215.17
Alliance Reporting Service (transcripts)	$16,026.20
DHL Express - deliver evidence to cmte members	$211.50
Rapid Print - copies (evidence for public hearing)	$7,523.75
1.800.Conference (Conference call on 2/20/06)	$274.88
Patrick Engineering (engineering services) - Feb-March	$114,923.86
Black, Black, and Brown (Legal services) - March	$8,298.00
Itoo Society (rental and meals)	$1,403.00
Meal for staff - 3/17/06	$57.07
DHL Express - deliver materials to Patrick Engineering	$50.18
Postage for postcards - notice of reconvened hearing	$23.52
Kinko's - copies (Staff Report)	$1,898.56
Patrick Engineering (engineering services) - April	$10,728.93
Black, Black, and Brown (Legal services) - April	$15,798.00
Itoo Society (rental and meals)	$598.00
Alliance Reporting - Transcripts	$2,949.45
Patrick Engineering (engineering services) - May	$5,847.00
Prospect TV and Sound	$5,425.00
Binders and Tabs from Office Max	$130.58
1.800.Conference	$1,097.97
Total Outside Contract and Publication Charges	**$299,446.19**

Peoria Disposal Company (PDC) Landfill Siting Application Review

Filed November 14, 2005

EXPENSES

Peoria County Staff Charges (2005 only)

County Administration	$567.20
State's Attorney's Office	$148.38
County Clerk's Office	$130.29
Recycling & Resource Conservation	$98.60
Total Peoria County Staff Charges for 2005	**$944.47**

TOTAL SITING CHARGES (To date) **$300,390.66**

REVENUE

Receipts

Filing Fee from PDC to cover related expenses (11/9/2005)	$50,000.00
Overpayment of March 2006 Black, Black, and Brown invoice	$8,298.00

TOTAL REVENUE **$58,298.00**

AMOUNT PAYABLE TO PEORIA COUNTY

Total Siting Charges Less Revenue **$242,092.66**

PEORIA COUNTY
Recycling & Resource Conservation
Peoria County Courthouse
324 Main Street, Room 502
Peoria, Illinois 61602

June 28, 2006

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

Dear Mr. Meginnes:

Please find enclosed an invoice for the first installment for payment to Peoria County for reimbursement for expenses relating to the review of Peoria Disposal Company's pollution control facility siting application, filed in 2005. The total amount includes payments to contractors hired for legal and engineering services, charges to comply with Peoria County Code Section 7.5-31-49, venue rental, and staff review reimbursement. Please note that staff review hours are only for 2005. A report of all expenses and revenue is included in addition to copies of the invoices in the order they appear in the report.

The next installment will include Peoria County's staff review reimbursement for 2006 and any additional invoices received relating to the siting review. The third installment will address the expenses directly relating to certifying the record for the Illinois Pollution Control Board.

Should you have any questions about any of the documents contained in this packet, please call me at 672-6932.

Sincerely,

Karen Raithel

Karen Raithel

Enclosures: invoice, report, copies of invoices

Karen Raithel
Recycling Director
309/672-6932
kraithel@peoriacounty.org

Mary Akers
Recycling Inspector
309/495-5091
makers@peoriacounty.org

Fax #: 309/672-6054
www.peoriacounty.org

County of Peoria

INVOICE

County Administration Office
324 Main Street, Room 502
Peoria IL 61602

DATE:
August 1, 2006

INVOICE #
CoAdm08012006

Bill To:
Brian Meginnes
Elias, Meginnes, Riffle & Seghetti
416 Main St, Suite 1400
Peoria IL 61602

For:
Peoria Disposal Company

DESCRIPTION	AMOUNT
Previous Balance - from Invoice CoAdm06282006 - received payment 7/31/06	-
Related expenses to the PDC Landfill Siting Application Review - filed 11/14/05	41,534.03
Peoria County Staff charges	
TOTAL	$ 41,534.03

Make all checks payable to **County of Peoria**
If you have any questions concerning this invoice, contact Karen Raithel at 672-6932.

THANK YOU FOR YOUR BUSINESS!

PEORIA COUNTY
Recycling & Resource Conservation
Peoria County Courthouse
324 Main Street, Room 502
Peoria, Illinois 61602

August 1, 2006

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

Dear Mr. Meginnes:

Please find enclosed an invoice for the second installment for payment to Peoria County for reimbursement for expenses relating to the review of Peoria Disposal Company's pollution control facility siting application, filed in 2005. This invoice is for Peoria County staff review reimbursement. Please note that staff review hours are only for 2006; 2005 hours were included in the invoice dated June 28, 2006. The monthly expense report submitted to the Health & Environmental Issues Committee is included.

The amount for this invoice totals $41,534.03. We received payment on July 31, 2006 in the amount of $242,092.66. The third installment will address the expenses directly relating to certifying the record for the Illinois Pollution Control Board.

Should you have any questions about any of the documents contained in this packet, please call me at 672-6932.

Sincerely,

Karen Raithel

Karen Raithel

Enclosures: Expense Report originally dated 7/19/06 and revised 7/25/06

Karen Raithel
Recycling Director
309/672-6932
kraithel@peoriacounty.org

Mary Akers
Recycling Inspector
309/495-5091
makers@peoriacounty.org

Fax #: 309/672-6054
www.peoriacounty.org

OFFICE OF THE COUNTY AUDITOR

STEVE SONNEMAKER
COUNTY AUDITOR

Room G-02 Peoria County Courthouse
Peoria, Illinois 61602

Revised 7/25/06

To Health & Environmental Issues Committee

From Steve Sonnemaker, County Auditor

Re Landfill Siting Application Expense Reimbursement
(per section 7.5-48 Peoria County Code)

Date July 19, 2006

The following invoices have been submitted to the county auditor for payment since the last statement. Peoria Disposal Company (PDC) submitted a filing fee in the amount of $50,000 to cover expenses associated with the landfill siting application review. The filing fee was appropriated to the Recycling & Resource Conservation's budget to cover these expenses.

2006 Expenses
Submitted between 6/23/06 and 7/19/06

Peoria County Staff Charges

County Administration	$14,038.63
Recycling & Resource Conservation	$5,987.29
State's Attorney's Office	$1,798.56
IT Services	$2,518.37
County Clerk's Office	$1,011.66
Health Department	$587.15
Supervisor of Assessments	$2,835.15
Planning and Zoning	$9,744.00
Sheriff's Office	$3,213.22
Total Expenses for this month (6/23/06 - 7/19/06)	**$41,534.03**
Total 2006 Expenses approved by Cmte prior to 6/23/06	$272,707.30
Total 2006 Expenses incurred	$314,241.33
Total 2005 Expenses incurred	$27,683.36
Total PDC siting application expenses incurred	$341,924.69
Revenue - Filing Fee from PDC to cover related expenses	$50,000.00
Revenue - Additional Appropriation approved March 9, 2006	$150,000.00
Revenue - Additional Appropriation approved May 11, 2006	$100,000.00
Overpayment of March 2006 Black, Black and Brown invoice	$8,298.00
Balance remaining as of 7/19/06	($33,626.69)

Approval Signature

Patricia J. Hudelson
Committee Chairman

Date: July 26, 2006

PEORIA COUNTY
Recycling & Resource Conservation
Peoria County Courthouse
324 Main Street, Room 502
Peoria, Illinois 61602

August 24, 2006

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

Dear Mr. Meginnes:

Pursuant to your request for documentation supporting staff charges stated in Invoice Number CoAdm08012006, please find enclosed a report detailing Staff Reimbursement for time worked on the PDC Siting Application review.

Should you have any questions about this report, please call me at 672-6932.

Sincerely,

Karen Raithel

Karen Raithel

Enclosures: Staff Reimbursement report

Karen Raithel
Recycling Director
309/672-6932
kraithel@peoriacounty.org

Mary Akers
Recycling Inspector
309/495-5091
makers@peoriacounty.org

Fax #: 309/672-6054
www.peoriacounty.org

Expenses Related to Peoria Disposal Company's (PDC) landfill siting application review

Staff Reimbursement for time worked on project
For Year 2006

		With IMRF & FICA
Sheriff's Office		
Jonathan Quast	$322.32	$377.66
Harry Sweet	$500.50	$586.44
Ronda Guyton	$575.97	$674.86
Calvin Walden	$806.08	$944.48
Scott Schraeder	$222.32	$260.49
D Scott Husemann	$315.17	$369.28
Sheriff Total	**$2,742.36**	**$3,213.22**
Planning & Zoning Office		
Matt Wahl	$8,316.12	$9,744.00
P & Z Total	**$8,316.12**	**$9,744.00**
Supervisor of Assessments		
Dave Ryan	$2,249.00	$2,635.15
Supervisor Total	**$2,249.00**	**$2,635.15**
Health Department		
Don Cavi	$501.11	$587.15
Health Total	**$501.11**	**$587.15**
County Clerk's Office		
Megan Fulara	$857.61	$1,004.86
Janice Whitelow	$5.80	$6.80
County Clerk Total	**$863.41**	**$1,011.66**
IT Services		
Russell Haupert	$1,373.00	$1,608.74
Nancy Skillestad	$776.33	$909.63
IT Total	**$2,149.33**	**$2,518.37**
State's Attorney's Office		
Miranda Floyd	$1,535.00	$1,798.56
SAO Total	**$1,535.00**	**$1,798.56**
Recycling & Resource Cons		
Karen Raithel	$5,109.92	$5,987.29
Recycling Total	**$5,109.92**	**$5,987.29**
County Administration		
Jennifer Zinkel	$1,001.86	$1,173.88
Scott Sorrel	$2,712.32	$3,178.03
Patrick Urich	$8,267.24	$9,686.73
County Admin. Total	**$11,981.42**	**$14,038.63**
TOTAL Staff Reimbursement	**$35,447.67**	**$41,534.03**

SITING HEARING EXPENSES - Technical Consultants
PDC 1 Expansion Siting

Consultant / Vendor	Invoice No.	Invoice Date	Activities	Expense
PDC Technical Services	6776	1/4/2006	Prepare PowerPoint slides for hearing and project management.	$ 3,253.00
PDC Technical Services	6793	2/3/2006	Prepare PowerPoint slides and testimony for hearing. Assist subconsultants with slides. Meet with subconsultants and review draft PowerPoint slides, exhibits and testimony. Conduct mock hearing. Project management.	$ 16,513.00
Andrews Environmental Engineering	3848	2/14/2006	Prepare draft PowerPoint slides and testimony for hearing. Participate in mock hearing.	$ 13,396.00
PDC Technical Services	6807	3/2/2006	Final preparations for siting hearings, including revisions to PowerPoint slides and mock hearing. Attend and provide testimony at siting hearing. Project management.	$ 32,021.00
Vendors:				
ITOO Society			Building rental for mock hearing	$ 500.00
Corporate Express			Printer paper, color ink, and divider tabs for hard copy of PowerPoint slides	$ 258.26
Prospect TV and Sound			A/V equipment rental for mock hearing	$ 200.00
Ramada Inn			Room rental for mock hearing	$ 247.68
Reimbursed expenses - LAK & MNC			Dry mount drawings for hearing, and binders for PowerPoint slide hardcopies.	$ 239.98
Kinkos			Hardcopy of PowerPoint slides	$ 2,684.44
Shaw Environmental, Inc.	34592-R8-00565	3/17/2006	Peer review siting application and draft PowerPoint slides, and participate in mock hearing	$ 19,463.77
Andrews Environmental Engineering	4124	3/28/2006	Prepare final PowerPoint slides and testimony for hearing. Attend and provide testimony at siting hearing.	$ 34,096.37
PDC Technical Services	6828	4/4/2006	Review Supplemental Groundwater Quality Assessment Report, review and respond to public comment, review County Staff report, and project management	$ 11,299.25
Subconsultants				
Crawford, Bunte, Brammeier			Traffic consultant hearing preparation and testimony	$ 8,902.97
David E. Daniel			Expert witness hearing preparation and testimony	$ 10,664.51
Integra Realty Resources			Real estate consultant hearing preparation and testimony	$ 17,018.72
Andrews Environmental Engineering	4352	4/19/2006	Review County Staff report, prepare and submit Supplemental Groundwater Quality Assessment Report	$ 21,917.26
PDC Technical Services	6843	5/3/2006	Attend presentation by County Staff of their report, review Supplemental County Staff Report, review County's Proposed Findings of Fact and attend Siting Committee Meeting.	$ 5,296.25
Subconsultants				
Lannert Group			Land use compatibility consultant hearing preparation and testimony	$ 12,662.04
Golder Associates			Needs assessment and solid waste plan consistency consultant hearing preparation and testimony	$ 10,208.01
Andrews Environmental Engineering	4575	5/18/2006	Review Supplemental County Staff report and provide comments to PDC	$ 1,023.00
PDC Technical Services	6856	6/2/2006	Attend County Board meeting and project management	$ 373.75
			TOTAL EXPENSES:	**$ 222,239.26**