

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

APR 20 2007

STATE OF ILLINOIS  
Pollution Control Board

PEORIA DISPOSAL COMPANY,

)

Petitioner,

)

v.

)

PCB 06-184

)

(Pollution Control Facility Siting Appeal)

)

PEORIA COUNTY BOARD,

)

Respondent.

)

)

**PETITIONER'S RESPONSE IN OPPOSITION TO OBJECTION TO  
PETITIONER'S EXHIBITS TO BRIEF AND MOTION TO STRIKE**

**NOW COMES** Petitioner, Peoria Disposal Company (hereinafter "PDC" or "Petitioner"), by its attorneys, Brian J. Meginnes and George Mueller, and as and for its Response in Opposition to the Objection to Petitioner's Exhibits to Brief and Motion to Strike (the "Motion to Strike"), filed by Respondent, the Peoria County Board (the "County"), states as follows:

1. PDC filed its Brief on February 16, 2007. The Brief includes three Exhibits:

a. Exhibit 1 is an invoice dated June 28, 2006, generated by the County, requesting payment of \$242,092.66 for "[r]elated expenses to the PDC Landfill Siting Application Review..." by PDC, and a cover letter sent therewith.

b. Exhibit 2 is an invoice dated August 1, 2006, generated by the County, requesting payment of \$41,534.03 for "[r]elated expenses to the PDC Landfill Siting Application Review..." by PDC, and a cover letter sent therewith.

c. Exhibit 3 is a table prepared by PDC, summarizing and approximating the costs incurred by PDC in technical consultants and experts,

during the proceedings on the Application before the Board (not including attorneys' fees or costs incurred by PDC itself), in the amount of \$222,239.26.

2. The Exhibits were submitted with the Brief in conjunction with PDC's request that the Board award PDC its costs incurred in the first, failed hearing, that would be again incurred in a second hearing, if this matter were to be remanded to the County by the Pollution Control Board for a second hearing based on the failure of the County to provide a fundamentally fair hearing. Referring to Exhibits 1, 2 and 3, PDC states that 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 over \$500,000. (See Brief, pgs. 83-86).

3. Along with its responsive Brief, on April 6, 2007, the County filed the Motion to Strike. Therein, the County states that "Exhibits 1, 2 and 3 to PDC's brief are not part of the certified record or the evidentiary record from the Board's hearing, and therefore are not appropriate to reference or include with its brief" and that "Exhibits 1, 2 and 3 are not valid evidence in this appeal, and should be stricken from the record of these proceedings." (Motion to Strike, ¶¶9 & 11).

4. PDC agrees that the documents attached to the Brief as Exhibits 1, 2 and 3 do not have evidentiary value because they were not submitted to the Pollution Control Board prior to the filing of the Brief (though PDC does question why the County's own invoices and letters to PDC (Exhibits 1 and 2) were not included in the certified Record filed by the County in this appeal). However, the invoices, being County documents, are certainly probative and reliable. PDC included same for

illustrative purposes and to put the County on more detailed notice of the relief it is seeking.

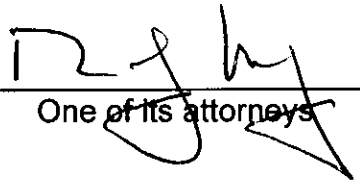
5. Clearly, if the Pollution Control Board awards PDC its costs (in lieu of simply reversing the purported decision of the Peoria County Board and deeming the Application approved), PDC will be required to prove up such costs with specificity and sworn testimony in a supplementary proceeding before the Pollution Control Board.

6. Nevertheless, PDC objects to and opposes the Motion to Strike. The Pollution Control Board should be able to consider Exhibits 1, 2 and 3, without affording the Exhibits undue evidentiary weight.

**WHEREFORE**, Petitioner, Peoria Disposal Company, prays that this Board deny the Objection to Petitioner's Exhibits to Brief and Motion to Strike filed by Respondent, the Peoria County Board, 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

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**GEORGE MUELLER, P.C.**  
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907-0377b

## AFFIDAVIT OF SERVICE

The undersigned, being first duly sworn upon oath, states that copies of the Response in Opposition to the Objection to Petitioner's Exhibits to Brief and Motion to Strike 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 19th day of April, 2007, before 5:00 p.m., with all fees thereon fully prepaid and addressed as follows:

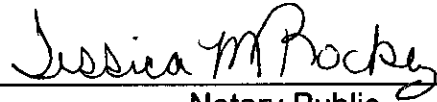
Mr. William Atkins  
Assistant State's Attorney  
Peoria County  
324 Main Street, Room #111  
Peoria, IL 61602

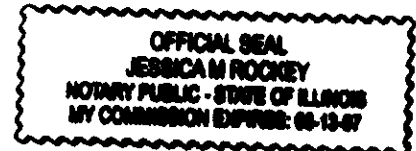
Ms. Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P. O. Box 19274  
Springfield, IL 62794-9274  
(217) 524-8509 - Telephone  
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\_\_\_\_\_  
Brian J. Meginnis, Esq.

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this 19th day of April, 2007.

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

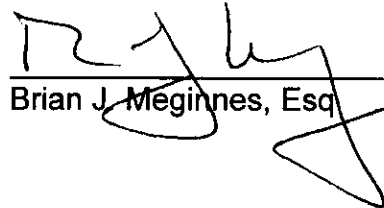


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**AFFIDAVIT OF FILING**

The undersigned, being first duly sworn upon oath, states that ten (10) copies of the Response in Opposition to the Objection to Petitioner's Exhibits to Brief and Motion to Strike of Petitioner, Peoria Disposal Company, will be filed with the Illinois Pollution Control Board via Federal Express, overnight delivery, sent on the 19th day of April, 2007, sent before 5:00 p.m.

  
\_\_\_\_\_  
Brian J. Meginnnes, Esq

Subscribed and sworn to before me, a Notary Public, in the Peoria County, Illinois, this 19th day of April, 2007.

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

