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Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

RE: Peoria Disposal Company v. Illinois Environmental Protection Agency ("IEPA")
PCB No. 08-25 (Permit Appeal - Land)
Public Comment for Class 3 Permit Modification Request to Develop and Operate a Residual Waste Landfill

Dear Members of the Board:

Please be advised that we represent Peoria Families Against Toxic Waste and the Sierra Club, Heart of Illinois Group, regarding numerous issues relating to Peoria Disposal Company's PDC No. 1 Landfill. Peoria Disposal Company ("PDC") has now filed a Class 3 Permit Modification Request in which it seeks to rename the PDC No. 1 Landfill as the "PDC No. 1 Residual Waste Landfill" and evade local siting authority for expansion. The IEPA denied the request, and PDC has appealed to this Board. On behalf of Peoria Families Against Toxic Waste, and the Sierra Club, Heart of Illinois Group, we respectfully request that the Board affirm the IEPA's denial of the Class 3 Permit Modification Request to Develop and Operate a Residual Waste Landfill.

This letter supplements public comment made by letter dated March 7, 2007 and submitted to the IEPA.

PDC's Class 3 Permit Modification Request encompasses the identical site and facility which PDC proposed to expand during the "Application for Local Siting Approval of a Pollution Control Facility" filed with the Peoria County Board (as the local siting authority) on or about November 9, 2005. The proposed expansion submitted to the Peoria County Board consisted of "a vertical and approximately 8.2 acre horizontal expansion of the existing landfill (see Figure 1-1.) ... provide[ing] an additional 2,471,000 cubic yards of airspace (cyas) or 2,224,000 tons of capacity." The "facility" contemplated by PDC in the Class 3 Permit Modification matter presently before the Board was the identical "facility" for which expansion approval was overwhelmingly denied by the Peoria County Board in May 2006. This fact is further borne out by reviewing the transcript of the Class 3 Permit Modification Request PDC Environmental Management Facility public meeting held

on Friday, January 26, 2007 in the cramped hallways of PDC Laboratories, Inc. The January 26, 2007 hearing transcript reveals that in PDC's own words, this is the same expansion area proposed in the siting application; the Class 3 Permit Modification Request is the exact same *permit* request if PDC had won local siting authority from the Peoria County Board (January 26, 2007 transcript pages 9, 53; R01401, 01445).

During the January 26, 2007 public hearing, at which approximately 69 members of the public attended (R01387-91), PDC representatives also candidly acknowledged that a similar, previous Class 3 modification request which had been made to the Agency had been denied by the Agency (January 26, 2007 transcript, pp. 49-51; R01441-43). PDC was also confronted with the fact that the conditions PDC proposed during the local siting hearing were only added to get its way with the Peoria County Board, not because it was interested in protecting Peoria County citizens (January 26, 2007 transcript, pp. 62-64; R01454-56). Finally, at the January 26, 2007 public hearing, PDC readily acknowledged the truth of one of the main reasons why the Peoria County Board overwhelmingly rejected the local siting expansion application: that the uppermost aquifer, the aquifer of concern, is connected to the San Koty aquifer (January 26, 2007 transcript, p. 74; R01466).

At the January 26, 2007 public hearing, Ron Edwards, Vice President of Operations of PDC, in answering a question from a member of the public about PDC's treatment process producing a chemically new end product and whether PDC could "sell it," stated: "No. It continues to be a waste. It's, obviously, something that has to be managed as a waste. It couldn't be recycled, it couldn't be reclaimed, and it certainly couldn't be sold." (R01411).

PDC appealed the decision of the Peoria County Board denying its expansion application request to this Board. This Board, on June 21, 2007, affirmed the decision of the Peoria County Board. See *Peoria Disposal Company v. Peoria County Board*, IPCB Case No. 2006-184 (Siting Appeal).

In *Town & Country Utilities, Inc. v. The Illinois Pollution Control Board*, 225 Ill. 2d 103 (2007), the Illinois Supreme Court highlighted the importance placed by the General Assembly on local siting authority as follows:

> All waste permitting is governed by title X of the Act (415 ILCS 5/39 through 402 (West 2002)). Generally, an applicant for a new pollution control facility must apply to the Agency to receive a permit. 415 ILCS 5/39(a) (West 2002). In 1981, the legislature amended the Act to require local government siting approval as a precondition to the issuance of an Agency permit. Pub. Act 82–682, eff. November 12, 1981; 415 ILCS 5/39(c) (West 2002). Prior to this amendment, commonly known as Senate Bill 172, this court had ruled that zoning ordinances of non-home-rule units of local government related to facilities governed by the Act were preempted by the Act. *County of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494 (1979); see also *City of Elgin v. County of Cook*, 169 Ill. 2d 53,

> 64 (1995). Senate Bill 172 overruled that decision and made clear that all units of local government, home rule and non-home-rule alike, have "concurrent jurisdiction" with the Agency in approving siting, subject to the criteria in section 39.2. *City of Elgin*, 169 Ill. 2d at 64; Pub. Act 82–682, eff. November 12, 1981; 415 ILCS 5/39.2(c) (West 2002).

Town & Country, 225 Ill 2d at 107-108.

The *Town & Country* Court also set forth the general rules regarding statutory construction, as follows:

> The fundamental principle of statutory construction is to ascertain and give effect to the legislature's intent. *Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 215 Ill. 2d 219, 237-38 (2004); *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503-04 (2000). The language of the statute is the most reliable indicator of the legislature's objectives in enacting a particular law. *Alternate Fuels, Inc.*, 215 Ill. 2d at 238. We give statutory language its plain and ordinary meaning, and, where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. *Alternate Fuels, Inc.*, 215 Ill. 2d at 238. We must not depart from the plain language of the Act by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. *Alternate Fuels, Inc.*, 215 Ill. 2d at 238. Moreover, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Alternate Fuels, Inc.*, 215 Ill. 2d at 238.

Town & Country, 225 Ill 2d at 117.

Besides Sections 39(c) and 39(h), the definitional statutes at issue in the instant case include:

> **Sec. 3.330. Pollution control facility.**
> (a) "Pollution control facility" is any waste storage site, sanitary landfill, *waste disposal site*, waste transfer station, *waste treatment facility*, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act.
> The following are not pollution control facilities:
> (1) (Blank);
> (2) waste storage sites regulated under 40 CFR, Part 761.42;
> (3) sites or facilities used by any person

> conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, *for wastes generated by such person's own activities*, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;
> * * * * *
> 415 ILCS 5/3.330 (emphasis added).

> **Sec. 3.205. Generator.** "Generator" means any person whose act or process *produces* waste.
> 415 ILCS 5/3.205 (emphasis added).

> **Sec. 3.505. Treatment.** "Treatment" means any method, technique or process, including neutralization, designed to *change* the physical, chemical, or biological character or composition of any waste so as to neutralize it or *render* it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. *Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous*.
> 415 ILCS 5/3.505 (emphasis added).

In *Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 215 Ill. 2d 219 (2004), the Illinois Supreme Court was faced with determining whether a facility was a recycling center or a pollution control facility. In construing the definitional sections of the Act, and in finding the facility was the former, the Court stated:

> The comparison of AFI's facility to the statutory definitions for "recycling center" and "pollution control facility" reinforces this interpretation. Under the Act, " 'recycling center' means a site or facility that accepts only segregated, nonhazardous, nonspecial, homogenous, nonputrescible materials, such as dry paper, glass, cans or plastics, for subsequent use in the secondary materials market." 415 ILCS 5/3.375 (West 2002).
>
> By contrast, a "pollution control facility" is "any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District

> Act." 415 ILCS 5/3.330 (West 2002). The aim of AFI was not to store, landfill, dispose, transfer, treat, or incinerate waste. Rather, AFI shreds the plastic materials that have already been "triple rinsed" by Tri-Rinse, Inc., and sells the chips to Illinois Power. While AFI's facility does not neatly fit into the category of "recycling center" because it does more than simply "accept" materials, AFI's facility retained more characteristics of a "recycling center" than a "pollution control facility," chiefly because it handles "materials" rather than "waste."

Alternate Fuels, 215 Ill. 2d at 240-41.

In the instant case, PDC's current operations and contemplated operations of the proposed Residual Waste Landfill retain more characteristics of a pollution control facility than a generator, chiefly because PDC handles and treats the waste of others rather than generating it. PDC's proposed Residual Waste Landfill would only accept waste "treated" by PDC in its waste stabilization facility. In this context, PDC *changes* the character of the waste (415 ILCS 5/3.505), it does not *produce* waste (415 ILCS 5/3.205). That PDC increases the mass of the waste in the treatment process does not alter the analysis - the sole purpose for adding reagents is to get it so it can be disposed of in the landfill, not to produce a new product for some other beneficial use or for sale. In fact, in the Stipulated Statement of Facts, Joint Exhibit 1, Paragraphs 21 through 35 are dedicated to the "treatment" performed by PDC in its Waste Stabilization Facility. The word "treatment" or its equivalent is used multiple times in these paragraphs. Unlike AFI in *Alternate Fuels*, the ultimate aim of PDC is to store, landfill and dispose of waste; PDC does not sell the waste treated in its Waste Stabilization Facility to any entity. See statement of Ron Edwards of PDC, R01411).

PDC attempts to bootstrap the modified definition of generator from Section 39(h) of the Act in an attempt to escape application of the "pollution control facility" definition. Section 39(h), regarding waste stream authorizations, states in pertinent part: "For purposes of this subsection (h), the term "generator" has the meaning given in Section 3.205 of this Act, *unless*: (1) the hazardous waste is treated, incinerated, or partially recycled for reuse prior to disposal, in which case *the last person who treats,* incinerates, or partially recycles the hazardous waste prior to disposal is the generator; . . . " 415 ILCS 5/39(h)(emphasis added). The "last to treat" exception under Section 39(h) is self-limiting and applies for purposes of subsection (h) only. 415 ILCS 5/39(h). According it its plain and ordinary meaning without departing from its plain language dictates the "last to treat" exception applies only to Section 39(h), and not as a part of Section 39(c) or Section 3.330. See *Town & Country*, 225 Ill 2d at 117; *Alternate Fuels, Inc.*, 215 Ill. 2d at 238. Bootstrapping the "last to treat" carve-out contained in Section 39(h) back into the main definition of "generator" under the Act renders the carve-out meaningless. Had the General Assembly wanted the definition of "generator" to include the "last to treat" concept, it would have put that language in Section 3.205 itself, and thereby not have relegated it to specific waste stream authorizations (as it did in Section 39(h)).

In addition, there would be no limit to what PDC (or any similar operator) could do should PDC's interpretation of generator be found controlling. Such an interpretation would open the door for anything that came out of the Waste Stabilization Facility, not just the specific waste stream contemplated by PDC in its modification request. For example, dusty non-hazardous MGP remediation waste could be "treated" in the Waste Stabilization Facility by getting it wet, and thereby making it "safer for transport" to the landfill. Under its interpretation, PDC would be the last to treat the MGP waste and would deem itself to be the generator of MGP remediation waste and could dispose of as much as it wanted at its Residual Waste Landfill immune from the jurisdiction of the local siting authority. Likewise, liquid waste (hazardous and non-hazardous) could be solidified in the Waste Stabilization Facility such that PDC would be the last to treat. (In fact, this is exactly what PDC proposes to do; see Joint Exhibit 1, Para. 32-35). Both examples show the absurdity of PDC's position when it is taken to its logical extremes. It is conceivable that 100% of the types of waste PDC Landfill No. 1 takes in could and would still be taken in and disposed of in the proposed Residual Waste Landfill - all PDC would have to do is some form of minimal "treatment" in its Waste Stabilization Facility. Such a result could not be intended by the General Assembly and would create a loophole in the environmental regulatory regime. See *People ex. rel. Madigan v. Dixon-Marquette Cement, Inc.,* 343 Ill. App. 3d 163, 173-74 796 N.E.2d 205, 212, 277 Ill. Dec. 490 (2003). Even more absurd is the fact that PDC attempted to get away with it in the face of the siting denial by the local siting authority, the Peoria County Board.

For these reasons and the others set forth herein, the decision of the IEPA to deny the modification request should be affirmed. Thank you for your consideration.

Very truly yours,

Peoria Families Against Toxic Waste and Sierra Club,
Heart of Illinois Group

**By, HASSELBERG, WILLIAMS, GREBE,
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David L. Wentworth II

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