BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TOM EDWARDS/RIVER RESCUE, Petitioner, v. PEORIA DISPOSAL COMPANY and THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondents.	)	PCB No. 2008-042 (Permit Appeal – Third Party)

POST-HEARING BRIEF OF
RESPONDENT PEORIA DISPOSAL COMPANY

NOW COMES Applicant/Respondent Peoria Disposal Company ("PDC"), by its undersigned attorneys. PDC maintains and renews its position, stated in its Motion to Dismiss filed on January 23, 2008, that the Illinois Pollution Control Board (the "Board") is without jurisdiction to entertain this appeal. Notwithstanding and without waiving the arguments set forth in the Motion to Dismiss, as and for its Post-Hearing Brief, PDC states as follows:

INTRODUCTION

In a third-party appeal of the issuance of a permit by the Illinois Environmental Protection Agency (the "Agency"), issued pursuant to the State of Illinois's authority under Part B of the Federal Resource Conservation and Recovery Act of 1976, Subtitle C, 42 U.S.C. §6921 *et seq.* (2007) ("RCRA"), the Board's inquiry is "whether the third party proves that the permit as issued will violate the Act or Board regulations." American Bottom Conservancy v. Illinois Environmental Protection Agency, *et al.*, PCB 06-171, 2007 WL 325720, *4 (January 26, 2007). None of the thirteen (13) bases for appeal stated by Petitioner Tom Edwards ("Mr. Edwards") in the "Amended Petition" he faxed to the Board on March 3, 2008, provides any basis whatsoever

for a finding that the permit at issue, Permit B-24R, will violate the Illinois Environmental Protection Act, 415 ILCS §5/1, *et seq.* (the "Act") or Board regulations. For this fundamental reason, in addition to numerous procedural defects, the Amended Petition should be denied and Permit B-24R should issue.

STANDARD OF REVIEW

As the Board is aware, "Section 39(a) of the Act (415 ILCS 5/39(a) (2004)) provides that the Agency has a duty to issue a permit upon proof that the facility will not cause a violation of the Act or Board regulations." American Bottom Conservancy v. Illinois Environmental Protection Agency, *et al.*, PCB 06-171, 2007 WL 325720, *4 (January 26, 2007). In a third-party appeal of the issuance of a permit by the Agency, the Board's inquiry is "**whether the third party proves that the permit as issued will violate the Act or Board regulations.**" Id. (emphasis added). The Board reiterated this standard in its March 6, 2008 Order in this case, citing Joliet Sand & Gravel, 163 Ill.App.3d 830, 833, 516 N.E.2d 955, 958 (3 Dist. 1987), and Prairie Rivers Network v. IPCB, IEPA and Black Beauty Coal Company, 335 Ill.App.3d 391, 401, 781 N.E.2d 372, 380 (4 Dist. 2002).

Pursuant to Section 705.212(c), "[a] petition for review must include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required in this Part; in all other respects, the petition must comport with the requirements for permit appeals generally, as set forth in 35 Ill. Adm. Code 105." 35 Ill.Adm.Code §705.212(c).

Further, "[t]he Board's review of permit appeals is limited to information before the Agency during the Agency's statutory review period, and is not based on information developed by the permit applicant, or the Agency, after the Agency's decision. *Prairie Rivers Network v.*

IEPA and Black Beauty Coal Company, PCB 01-112 (Aug. 9, 2001) *aff'd* at 335 Ill. App. 3d 391, 401; 781 N.E.2d 372, 380 (4th Dist. 2002); *Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987)." American Bottom Conservancy, PCB 06-171, 2007 WL 325720, *5. The Board again reiterated this standard in its March 6, 2008 Order.

Finally, as the Board stated in its March 6, 2008 Order in this case, "[a] permit appeal is not the proper forum for a citizen to generally challenge the Agency's performance of its statutory duties. *See, e.g.* Landfill Inc. v. PCB, 74 Ill. 2d 541, 387 N.E.2d 258, 265 (1978)." (Order, 3/6/08, pg. 5).

FACTS

Mr. Edwards offered no sworn testimony at the hearing in this case, on April 16, 2008. Mr. Edwards's own statements were public comment, rather than testimony:

> HEARING OFFICER HALLORAN: Mr. Edwards, before you proceed, it's your choice not to be sworn to. So this is not under oath.
>
> MR. TOM EDWARDS: Sure. I will be putting it on paper for the brief. That will be under oath. And this two percent --
>
> MR. HALLORAN: Pardon me, sir, Mr. Edwards. Mr. Meginnes?
>
> MR. MEGINNES: If he is not being sworn to present testimony, then I'm assuming his comments will be considered as public comment and not as testimony for the record?
>
> HEARING OFFICER HALLORAN: That's my understanding. The Board will weigh it accordingly. If he is not being sworn in, it is considered, I believe, public comment.
>
> MR. MEGINNES: Thank you.
>
> HEARING OFFICER HALLORAN: Thank you, Mr. Meginnes.
>
> MR. TOM EDWARDS: It's okay with me. * * *.

(Transcript, pg. 11, line 24, through pg. 12, line 17).

Only one witness testified at the hearing in this case, namely, Mr. George Armstrong, P.E. (Transcript, pgs. 44-54). Mr. Armstrong was qualified, without objection, as "an expert on environmental engineering and on compliance with the Illinois Environmental Protection Act and regulations regarding landfills and hazardous waste management." (Transcript, pg. 47, line 11, through pg. 48, line 7). Hearing Officer Halloran further found that Mr. Armstrong was a credible witness. (*See* transcript, pg. 55, lines 22-24).

Mr. Armstrong rendered two (2) expert opinions in his testimony. First, Mr. Armstrong rendered an expert opinion that Permit B-24R as issued does not violate the Act or Board regulations:

> Q [by Ms. Nair for PDC] Were you familiar with the draft permit that was promulgated by the IEPA in this matter?
>
> A Yes.
>
> Q And have you familiarized yourself now with the final permit as issued?
>
> A Yes.
>
> Q Have you familiarized yourself with the changes between the draft permit and the final permit as issued?
>
> A Yes.
>
> Q Do you have an expert opinion regarding whether the permit as issued will violate the Illinois Environmental Protection Act or Board regulations?
>
> A Yes.
>
> Q What is that opinion?
>
> A **It is my professional opinion that the permit as issued will not violate the Illinois Environmental Protection Act or Board regulations.**

> Q Is that opinion based on your knowledge of the permit and your expertise in the fields of environmental engineering and compliance with the Illinois Environmental Protection Act and regulations regarding landfills and hazardous waste management?
>
> A Yes, it is.

(Transcript, pg. 51, line 19, through pg. 52, line 18; emphasis added).

Second, Mr. Armstrong rendered an expert opinion that none of the points raised in Mr. Edwards's Amended Petition provides a reasonable basis for a finding that Permit B-24R as issued would violate the Act or Board regulations:

> Q [by Ms. Nair for PDC] Have you reviewed the documents submitted by Petitioner, Mr. Tom Edwards, to the Pollution Control Board on March 3rd, 2008?
>
> A Yes.
>
> Q * * *. Have you reviewed the 13 bases stated for Mr. Edwards' request for review of the permit in his amended position?
>
> A Yes.
>
> Q Do you have an expert opinion regarding whether any of the bases stated in Mr. Edwards' amended position provide a reasonable basis for a finding that the permit as issued will violate the Illinois Environmental Protection Act or Board regulations?
>
> A Yes.
>
> Q What is that opinion?
>
> A **It is my professional opinion that Mr. Edwards' amended petition provides no reasonable basis for finding that the permit as issued would violate the Illinois Environmental Protection Act or Board regulations.**
>
> Q Is your opinion based on your knowledge of the permit, the amended petition and your expertise in the fields of environmental engineering and compliance with the Illinois Environmental Protection Act and regulations regarding landfills and hazardous waste management?

A Yes.

(Transcript, pg. 52, line 19, through pg. 54, line 1; emphasis added).

Mr. Edwards did not cross-examine Mr. Armstrong.

ARGUMENT

1. The points raised in the Amended Petition are not proper bases for review of Permit B-24R.

First, it is clear that none of the points listed in Edwards's Amended Petition, even if demonstrated with evidence, "proves that the permit as issued will violate the Act or Board regulations." American Bottom Conservancy, PCB 06-171, 2007 WL 325720, *4; *see also* Order, 3/6/08, pg. 4, *citing* Joliet Sand & Gravel, 163 Ill.App.3d 830, 833, 516 N.E.2d 955, 958 (3 Dist. 1987), and Prairie Rivers Network v. IPCB, IEPA and Black Beauty Coal Company, 335 Ill.App.3d 391, 401, 781 N.E.2d 372, 380 (4 Dist. 2002). Permit B-24R is included in the Record filed by the Agency as Document 133.[1]

Points 1, 6, 11 and 13 (discussed below in greater detail) are not within the scope of permit issuance or review. Points 2-5, 7-10 and 12 request that the Agency mandates additional testing, and do not state that Permit B-24R as issued would violate the Act or Board regulations. Mr. Edwards is apparently seeking either changes to the law of permit issuance and Agency oversight (points 1, 6, 11 and 13) or amendment of Permit B-24R to provide for gratuitous additional testing, without stating the basis for same (points 2-5, 7-10 and 12). Neither of these requests poses a proper issue for permit review.

[1] Where applicable, citations to the Record filed in this case by the Agency will reference materials by "Document Number," pursuant to the "BOL Imaged Document Index" filed with the Record.

Second, points 1, 6, 11 and 13 in Mr. Edwards's Amended Petition are not properly considered in permit issuance or review:

1(A): This appears to be an impermissible challenge to Agency oversight.

1(B): Closure is not presently at issue.

1(C) & (D): These comments are not true under Permit B-24R.

6: In addition to admitting to trespassing at PDC's facility, this point is irrelevant to Permit B-24R. It appears that Mr. Edwards has a gripe with the Division of Air Pollution Control for the Agency, not the Division of Land, which issued Permit B-24R.

11: This concerns a portion of the facility that was properly closed, pursuant to the Act and Board regulations, many years ago.

13: It is unclear what conclusions should be drawn from Mr. Edwards's comment herein. This does not appear to be a criticism of any particular aspect of Permit B-24R.

Finally, "Mr. Edwards represents that he presented testimony at a public hearing on the draft permit and the same material as a written public comment." (Order, 3/6/08, pg. 4). The scope of that oral and written public comment strictly delineates the permissible scope of this appeal. If a point was not raised in oral or written public comment, it **cannot** be the subject of an appeal. "A petition for review must include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing)...." 35 Ill. Adm. Code §705.212(c).

Mr. Edwards made very limited comments at the public hearing on February 28, 2007, in this case. (*See* Doc. 71, transcript of public hearing). Of Mr. Edwards's written public comments,

three were submitted during the public comment period. (*See* Doc. 69, 79, 83). Mr. Edwards submitted four additional written public comments after the close of the public comment period on March 30, 2007. (*See* Doc. 98, extending the public comment period to May 31, 2007, as to Mr. David Wentworth only). However, even taking into account Mr. Edwards's improperly submitted public comments sent on May 6, 2007 (Doc. 102), June 18, 2007 (Doc. 120, 121), and July 16, 2007 (Doc. 128), of the thirteen points listed in Mr. Edwards's Amended Petition, it appears that the following were never raised in public comment or at the public hearing: 1(A), 1(C), 2, 3, 4, 5, 7, 10, 11, 12, 13.

For the foregoing reasons, Mr. Edwards's Amended Petition should be denied in its entirety, without any need to inquire as to the substantive bases for same.

2. As a substantive matter, none of the points raised in the Amended Petition or the Brief proves that Permit B-24R as issued will violate the Act or Board regulations.

For numerous procedural reasons (in addition to the reasons stated in PDC's Motion to Dismiss filed on January 23, 2008), Mr. Edwards's Amended Petition should be denied, without any need to inquire as to the substantive bases for same. Nevertheless, and without waiving the objections in Section 1, *supra*, or the objections in the Motion to Dismiss, PDC herein presents evidence and substantive analysis regarding each of the points stated in Mr. Edwards's Amended Petition, and proves that **none** of the points demonstrates that Permit B-24R, as issued, will violate the Act or Board regulations.

PDC notes that Mr. Edwards raised additional arguments for the first time in his Brief filed in this case (which was apparently received by the Board on May 5, 2008, Mr. Edwards's deadline for filing same, at 10:54 p.m., by facsimile). Mr. Edwards subsequently, on May 7,

2008, faxed a "supplement" to the Brief to the Board (the "Supplement"), which was also placed in the file by the Clerk. Clearly, both documents (most clearly the Supplement) are untimely filed and should be stricken. Also, **Mr. Edwards served neither the Brief nor the Supplement on PDC or the Agency**, and Mr. Edwards failed to file a proof of service with either document. Pursuant to 35 Ill.Adm.Code §101.302(f), all filed documents must be served on other parties to the case ("[a]ll documents filed must be served..."), and pursuant to 35 Ill.Adm.Code §101.304, proof of service of a given document is to be filed at the time such document is filed. However, again in the interest of efficiency, PDC addresses the new arguments raised in the Brief and the Supplement herein. Finally, on May 7, 2008, the final day for filing of public comment, Ms. Joyce Blumenshine filed public comment on behalf of the Heart of Illinois Sierra Club ("HOI"), which is also addressed herein.

At the hearing, PDC offered undisputed expert testimony (1) "that the permit as issued will not violate the Illinois Environmental Protection Act or Board regulations" (transcript, pg. 52, lines 10-12), and (2) "that Mr. Edwards' amended petition provides no reasonable basis for finding that the permit as issued would violate the Illinois Environmental Protection Act or Board regulations" (transcript, pg. 53, lines 14-18). Mr. Edwards offered no sworn testimony whatsoever.

For the convenience of the Board, PDC below reprints Mr. Edwards's points raised in the Amended Petition, the new points raised for the first time in the Brief and the Supplement (which are clearly improperly pled), and the public comments of HOI, and responds to each, one at a time.

A. Amended Petition Point 1(A), Brief Point 2, HOI Point I

> Amended Petition Point 1(A): "From its 1987 beginning PDC's permit was for 2.63 million cubic yards of toxic waste to be put on its hilltop disposal site. That

limitation still stands. But both PDC and IEPA are saying that limit has not yet been reached after 20 years of dumping via what was *originally* a 10-year permit. That must be impossible. In tonnage, 2.63 million cubic yards of toxic waste, according to an expert, is equivalent to 900,000 tons, given the loose, even fluffy nature of much or most toxic waste. (It comes in trucks from up to15 states.) Something is amiss. We need far better oversight."

Brief Point 2: **Illegal volume change: Original volume capacity limit for waste in the new (post 1987) part of the landfill was originally set at 1.84 million cubic yards, but was upped by PDC and EPA to 2.63 million cubic yards in 2002. [Permit page V-1]. that is a *huge* 43% increase. Public hearings are required for major changes. One was not held, making that expansion illegal.**

b. Moreover, when the total capacity of the seven (7) cells of this part of the landfill are added, they total 2.87 million c.y., considerably more than the stated 2.63 million c.y. total permitted limited cited on the same page.

*c. Also, **PDC** has evidently **exceeded** even the 2.63 total volume limit.*

The above all needs outside review and investigation.

HOI Point I: "We question the capacity of this landfill and how PDC obtained an increase in total landfill capacity from the 1,847,200 cubic yards printed on Page V-1, Section V Landfills, of the 1987 permit [footnote omitted], to the capacity of 2,638,580 cubic yards currently listed as capacity on Page V-1, Revised October 2007 of the permit application [footnote omitted]. * * *."

Mr. Edwards cites, without identification, to "an expert" who has calculated that the facility permitted maximum capacity of 2.63 million cubic yards should have been reached after disposal of 900,000 tons of waste. The "expert" cited by Mr. Edwards has apparently used a standard waste density of 680 pounds per cubic yard, which is on par with the unit weight of 606 pounds per cubic yard (3.3 gate cubic yards being equal to one (1) gate ton) used by the Agency for municipal solid waste ("MSW"). (*See* the Agency's "Instructions for Payment of the Solid Waste Management Fee," pg. 3, and instructions for "Nonhazardous Solid Waste Management and Landfill Capacity in Illinois: 2006"). However, the density of the waste received by PDC does not at all correspond with MSW densities, and is more on the order of 1.11 cubic yards per ton (1,800 pounds per cubic yard). (PDC Landfill 2006 Annual Capacity Report, submitted to the Agency, dated February 27, 2007).

PDC will continue to landfill to the lines and grades established in Permit B-24R, which precludes any increase of capacity beyond what was authorized by the permit prior to its renewal. The initial 1987 permit utilized a calculation termed "net" disposal volume rather than calculated airspace capacity. (Initial permit application, dated May 8, 1987, Section I, page I-8). "Net" disposal volume is calculated as receipt of inbound waste, only without daily and intermediate cover volume included. In contrast, calculated airspace capacity (the basis for the current capacity figure) is determined by calculating the volume within the lines and grades of the landfill plans. PDC's permit modification submittal of August, 2002, provided a design report which calculated the actual airspace of the original 1987 permit capacity. (Design Report – Proposed Reconfigured Landfill, August 5, 2002). The waste disposal capacity calculations were performed using the digital terrain model (DTM) software, AutoDesk Land Development Desktop Version 3 (LDD). (Id., pg. 1). The design report was prepared by George L. Armstrong, a Professional Engineer registered in Illinois (who testified as an expert in the hearing in this case), and was reviewed and validated by the Agency's permit section. (Permit B-24-M-56, dated December 18, 2002).

The Agency issued Permit B-24-M-56 on December 18, 2002, which permit included the revised capacity figures. Permit B-24-M-56 was not appealed. Permit B-24R does not provide for any increase in the maximum capacity of the landfill. (*See* the Agency's Response to Public Comments, Doc. 131, pg. 44, noting that "[t]he capacity constraints PDC has had via the original 1987 permit and under which it continues to operate, via the 2007 renewed RCRA permit, are those originally established under the 1987 permit"). Therefore, Permit B-24R does not violate the Act or Board regulations.

B. Amended Petition Point 1(B), HOI Point VI

> Amended Petition Point 1(B): "The much extended, and also modified permit, was last to expire in 2006. But EPA summarily extended that deadline to 2009. We need to focus on closure. PDC's landfill is the *only* one in the nation that sits directly over, *or* even close to a city's water supply aquifer -- and also immediately upwind of the air a city must breathe."
>
> HOI Point VI: "* * *. We ask the Illinois Pollution Control Board's consideration for stronger protections for our community and our aquifer, and that the Agency be required to set a date certain for closure of the Waste Stabilization Plant, waste storage silos, and other temporary storage areas, within two years after the final landfill waste cell closure. * * *."

The expiration date of the existing permit was stayed in accordance with Section 10-65(b) of the Illinois Administrative Procedures Act. (5 ILCS 100/10-65(b)). Further, the Agency has the power to grant continuation of an existing permit, as long as (a) a renewal application has been filed at least 180 days prior to the expiration of the effective permit and (b) "[t]he permittee has submitted a timely application pursuant to 35 Ill. Adm. Code 703.181 (RCRA) ... that is a complete (pursuant to Section 702.122) application for a new permit...." (35 Ill. Adm. Code §702.125(a); *see also* 35 Ill. Adm. Code §703.125, setting the time period for filing of a new application). PDC filed its application for renewal on May 7, 1997, more than 180 days prior to the expiration of the effective permit. (*See* transcript, pg. 51, lines 2-10; application (Doc. 1-12)). Therefore, the fact that the extensions of the original permit were granted by the Agency does not cause Permit B-24R to violate the Act or Board regulations.

C. Amended Petition Point 1(C)

> Amended Petition Point 1(C): "The disposal area was originally permitted for 64 acres. That has been expanded by the EPA to 75 acres, *ignoring* the original cubic yard limitation."

Mr. Edwards has incorrectly calculated the disposal area. Permit B-24R does not permit an expansion of the facility from 64 acres to 75. The original permit area was 90 acres of which

74.1 acres were permitted for land disposal. (Permit 24 (the originally issued permit), dated November 4, 1987, pg. V-1). Permit B-24R authorizes only **64 acres** for land disposal due to the modification submitted in August 2002, which **reduced** the disposal acreage. (*See* Permit B-24-M-56, dated December 18, 2002; Permit B-24R (Doc. 133), pg. V-1). Therefore, no increase in the initial acreage has been permitted. Permit B-24R does not provide for any increase in the maximum acreage of the landfill, and therefore does not violate the Act or Board regulations.

D. Amended Petition Point 1(D)

> Amended Petition Point 1(D): "A height limitation is evidently still in effect. But PDC has requested permission to go up another 45 feet (5 stories) higher than the 4 to 5 stories high it already is. That would make it, *by far*, the highest hill in that area."

Permit B-24R does not provide for any increase in the maximum height of the landfill, and therefore does not violate the Act or Board regulations.

E. Amended Petition Point 2

> Amended Petition Point 2: "Overall, virtually all required data collection and reporting is left by the EPA for PDC to do itself, then send reports to EPA. EPA must take more direct responsibility."

The Agency has the authority to perform as much of the required data collection and reporting as it desires. The function of a permit is not to mandate actions on the part of the Agency, rather, it is to impose operating conditions on the permittee (PDC). The Agency can inspect the PDC No. 1 facility whenever it so chooses. Section 702.149 of the Illinois Administrative Code provides as follows:

> A permittee must allow an authorized representative of the Agency, upon the presentation of credentials and other documents as may be required by law, to do any of the following:
>
> a) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

> b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
>
> c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
>
> d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the appropriate Act, any substances or parameters at any location.

(35 Ill. Adm. Code §702.149). Moreover, Standard Condition Number 12 of Permit B-24R specifically authorizes the Agency to sample or monitor the groundwater monitoring wells for the purposes of assuring permit compliance, essentially repeating 35 Ill. Adm. Code §702.149. (*See* Permit B-24R (Doc. 133), pg. VIII-2). Therefore, the fact that Permit B-24R does not require the Agency to perform more of the required data collection and reporting does not violate the Act or Board regulations.

F. Amended Petition Point 3, Brief Points 1 and 10

> Amended Petition Point 3: "Until now collection of test samples from the present 21 monitoring wells has been, normally, done jointly by PDC with an EPA representative present on a quarterly basis. (There are 25 such well sites listed, but 4 are reported as never installed.)
>
> **However**, it is PDC that tells EPA on what day to be there for drawing samples. EPA itself needs to better assure the representiveness of the sample contents"
>
> Brief Point 1: **Independent inspections and testing direly needed**: EPA's permit plus virtually the entire responsibility on PDC for monitoring, testing, and reporting on its *own* landfill and performance rather than vice versa. EPA inspectors say they visit the landfill once, occasionally twice, a month. In effect, the EPA is having, the "permittee" inspect himself. In contrast, the City of Peoria has inspectors on the job checking road and sidewalk projects the entire 8-hour work day.
>
> Brief Point 10: **Taking & testing groundwater samples**: PDC sets the day, time and means for collecting samples, not the EPA. Also, the bulk of the testing of the samples is reportedly given over by the EPA to PDC, which PDC also does in its own Peoria lab.

Although PDC notifies the Agency when samplers will be on site to collect samples to give the Agency an opportunity to collect duplicate ("split") samples for its own analysis, the Agency determines whether it will collect split samples. PDC is required to certify that the samples from the groundwater monitoring wells are "representative." (*See* 35 Ill. Adm. Code §702.150(a), providing that "[s]amples and measurements taken for the purpose of monitoring must be representative of the monitored activity"). The Agency has the authority to perform "surprise" inspections of the PDC No. 1 facility pursuant to 35 Ill. Adm. Code §702.149, *supra*. The Agency can additionally collect groundwater samples from the monitoring wells on its own, without PDC's assistance, at its option. (Id.) As above, Permit B-24R does not mandate actions on the part of the Agency, rather, it imposes operating conditions on PDC. Therefore, the fact that Permit B-24R does not require the Agency to take additional steps to "assure the representativeness of the sample contents" does not violate the Act or Board regulations. (*See also* the discussion in subsection 2(J), below).

G. Amended Petition Point 4, Brief Point 3, HOI Point II

> Amended Petition Point 4: "Collection of samples from test wells, formerly done quarterly, are now to be collected semi-annually, *and* a number only annually. (Even EPA protested this change.) Leaks into our aquifer could go on for half a year without being detected under this arrangement. Continued quarterly monitoring is a vital safeguard."
>
> Brief Point 3: **Reinstate quarterly monitoring for leaks, problems.** Testing of water samples from monitoring wells, now done quarterly, is proposed to instead be collected semi-annually and a number only annually. Leaks could then go on 6 to 12 months without discovery, greatly hindering leak detection and increasing pollution. **Continued quarterly monitoring, at the least, is a vital safeguard.** Even more so after landfill closure, as problems worsen over time.
>
> HOI Point II: "On Page VI-5, Revised October 2007 of the RCRA Part B Permit, letter E, Monitoring Parameters, [footnote omitted] the newly issued operating permit allows a change to semi-annual detection monitoring of up-gradient and point of compliance wells. This is not protective of public health and safety. We

ask that monitoring be required quarterly, as in the previous operating permit. * * *."

Regarding point 4, the PDC No. 1 landfill is currently in "detection monitoring," meaning that groundwater samples collected over the life of the facility have not detected any statistically significant increases in constituents that are attributable to the landfill. (*See* discussion in subsection 2(K), below). The relevant regulations require semi-annual monitoring: "A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring." (35 Ill. Adm. Code §724.198(d)). Therefore, the fact that Permit B-24R requires semi-annual monitoring rather than more frequent monitoring does not violate the Act or Board regulations.

In any case, the groundwater monitoring requirements for hazardous waste treatment, storage, and disposal facilities are just one aspect of the RCRA hazardous waste management strategy for protecting human health and the environment from accidental releases of hazardous constituents. Detection monitoring is phase one of the groundwater monitoring program. (*See* discussion in subsection 2(K), below). Under this phase, facilities monitor groundwater in order to detect and characterize any releases of hazardous constituents into the uppermost aquifer. Groundwater samples are collected from the monitoring wells and analyzed for specific indicator parameters and other waste constituents or reaction products that indicate that a release might have occurred. At the PDC No. 1 facility, samples are collected from the point of compliance (*i.e.*, wells downgradient of the waste management unit) and are compared to the background samples taken from the upgradient wells. (*See* 35 Ill. Adm. Code §724.198). These groundwater samples are analyzed to determine if a statistically significant increase in the levels of any of the monitored constituents has occurred.

Given that groundwater in the Upper Aquifer travels less than 10 feet per year, semi-annual monitoring is appropriate. (PDC Landfill 2006 Annual Groundwater Flow Evaluation Report, submitted to the Agency, dated June 21, 2007). Because the downgradient property boundary for the PDC No. 1 facility is more than 250 feet from its point of compliance, semi-annual monitoring will identify the quality of groundwater more than 20 years before such groundwater would travel past the PDC property boundary.

H. Amended Petition Point 5, Brief Point 1

> Amended Petition Point 5: "EPA says an inspector regularly visits the landfill site. But those visits are only once, maybe twice, a month, and are only visual. This procedure is **not** spelled out in the permit. During city highway-sidewalk construction, inspectors are constantly present.!"
>
> Brief Point 1: **Independent inspections and testing direly needed**: EPA's permit puts virtually the entire responsibility on PDC for monitoring, testing, and reporting on its *own* landfill and performance rather than vice versa. EPA inspectors say they visit the landfill once, occasionally twice, a month. In effect, the EPA is having, the "permitee" inspect himself. In contract, the City of Peoria has inspectors on the job checking road and sidewalk projects the entire 8-hour work day.

As above, Permit B-24R does not mandate actions on the part of the Agency, rather, it imposes operating conditions on PDC. The Agency has authority to implement its inspection procedures and intervals in accordance with the Act and regulations and is not bound by PDC's permit conditions. (35 Ill. Adm. Code §702.149, *supra*). The Agency has the authority to perform "surprise" inspections of the PDC No. 1 facility, and can inspect the facility as frequently as it sees fit. (Id.) Therefore, the fact that Permit B-24R does not require the Agency to perform additional inspections of the PDC No. 1 facility does not violate the Act or Board regulations.

I. Amended Petition Point 6, Brief Point 7, HOI Point V

Amended Petition Point 6: "EPA firmly asserts there is no air pollution from the site. HOWEVER, EPA was totally unaware that PDC has vents on the side to release gaseous fumes to the air. In an unauthorized visit, I found such vents, smelled their extremely acrid emissions, and reported their location to the EPA. (To his credit, when I told the EPA inspection manager he acknowledged he was unaware of the vents and asked me where they were.)

EPA has said there is some dust around where the waste hauling trucks unload, says it is captured, and that elsewhere on the site any dust pollution is inconsequential.

BUT new research elsewhere shows gaseous toxic air pollutants from such landfills are very consequential to unborn babies and older people."

Brief Point 7: **Air pollution: The denied reality**: The IEPA has long been saying there is no air pollution from the PDC landfill. But its closest monitor is 4.5 miles away on a bank building roof. **And recent detailed studies (noted above) in New York State, New Jersey, and the European Union show air pollution to be a major health problem for people living in the vicinity of toxic waste landfills.** In an unauthorized visit into the PDC landfill last year I found behind a knoll a cluster of pipes 12 to 15 inches in diameter sticking up 7 or more feet out of the ground. A whiff of the fumes they were venting sent me reeling backwards. I reported this to an IEPA inspector of the site. He replied that he and the EPA were unaware of any air pollution or vents for emissions on PDC's site, and asked me where the vents were. I trust he reported this vital knowledge to higher-ups. Other air pollutants from the site are certainly being dispersed by PDC elsewhere. **This needs to be thoroughly and publicly investigated by the *federal* EPA, which has suzerainity over the site.**

Public Comment Point V: "* * *. HOI requests, as does Mr. Edwards, that the IPCB direct the Agency to require additional air monitoring. We ask that air monitoring be done at the perimeter of the landfill, and in adjacent neighborhoods. We would like to see regular reporting, and constant monitoring during winds. We ask that restrictions on dumping during high wind conditions be added. * * *."

There is no general requirement in the Act or Board regulations that a permit issued by the Division of Land address air pollution with the exception of compliance with 35 Ill. Adm. Code §§724, Subparts AA, BB, and CC. (35 Ill. Adm. Code §§724.930-991). The PDC No. 1 facility is exempt from these Subparts because PDC does not operate any of the processes subject to Subpart AA or accept the types of wastes which would render Subparts BB or CC

applicable. (*See* the Agency's Response to Public Comments (Doc. 131), pg. 25). Land and air are dealt with separately under the Act and Board regulations. Therefore, the fact that Permit B-24R does not address air pollution does not violate the Act or Board regulations.

In any case, PDC has an air permit for the PDC No. 1 facility, namely, the Lifetime Operating Permit issued by the Agency, Division of Air Pollution Control, on April 24, 2002, entered as PDC Exhibit 2 at the hearing in this case. Mr. Edwards's assertion that there is air pollution emanating from the site is simply incorrect. As the Agency noted in its Response to Public Comments, "[t]his landfill represents a very small source of air emissions and has a negligible effect on air quality." (Agency Response to Public Comments (Doc. 131), pg. 36). PDC is required to monitor and report its air emissions in accordance with the Clean Air Act and its permits, which are enforced by the Agency's Division of Air Pollution Control. PDC is in full compliance with its air permits monitoring and reporting requirements. (*See* the Agency's Response to Public Comments (Doc. 131), pgs. 22-23).

J. Amended Petition Point 4, Brief Point 10

> Amended Petition Point 7: "The EPA has the bulk of the test well samples analyze by PDC's own laboratory, I have been advised. This is a rather incestuous arrangement. Independent testing is needed."
>
> Brief Point 10: **Taking & testing groundwater samples**: PDC sets the day, time and means for collecting samples, not the EPA. Also, the bulk of the testing of the samples is reportedly given over by the EPA to PDC, which PDC also does in its own Peoria lab.

Permit B-24R is silent as to which laboratory should conduct the required groundwater analysis. There is no requirement in the Act or Board regulations that testing of groundwater samples be performed by a laboratory that is not affiliated with an operator. In fact, there is no requirement in the Act or Board regulations that requires that testing of groundwater samples be performed by a laboratory at all – PDC could, under the Act and Board regulations, perform its

own groundwater analysis in-house. Therefore, the fact that Permit B-24R does not require that groundwater sample analyses be performed by a laboratory other than PDC Laboratories, Inc. (the "Lab") does not violate the Act or Board regulations.

The Board regulations provide, in part, that "[t]he permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of its permit. Proper operation and maintenance includes ... adequate laboratory and process controls, including appropriate quality assurance procedures." (35 Ill. Adm. Code §702.145). Although the Board regulations do not require that a laboratory perform groundwater sample analysis, PDC has elected to use a laboratory that is certified by the State of Illinois. The Lab is certified, as is evidenced by its Environmental Laboratory Accreditation issued by the Agency's Environmental Laboratory Accreditation Program, entered as PDC Exhibit 3 at the hearing in this case.

In addition, Permit B-24R requires that "[l]aboratory methods must be those specified in Test Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, or an equivalent method as specified in the approved Waste Analysis Plan." (Doc. No. 133, pg. VIII-3). During every groundwater sampling event, personnel from the Agency may be on-site to obtain "split" groundwater samples from the facility. (*See* 35 Ill. Adm. Code §702.149(d)). These split groundwater samples are collected by personnel from the Lab under the on-site direction and observation of the Agency's personnel. The wells from which the groundwater is to be collected for split sampling are chosen by the Agency's personnel. The collected split samples are transported by the Agency's personnel to the Agency's own environmental analytical laboratory under the Agency's chain-of-custody protocol. The Agency compares PDC's reported test results

to its own lab's test results to determine whether or not the results are consistent. The Agency has never reported any significant inconsistencies between the results by the two labs.

Finally, in addition to the split sampling with the Agency, the Lab is required by its contract with PDC to randomly select a well from which a duplicate sample is collected. The duplicate sample is submitted to a third-party NELAC-certified laboratory under proper chain-of-custody protocol. A different well is chosen for each duplicate sampling event. The duplicate samples are analyzed in accordance with the latest version of applicable U.S. Environmental Protection Agency ("USEPA") SW-846 methods, and are compared with the Lab's results to confirm the integrity of the Lab's data. (*See* SW-846 online[2]).

Through the above-described processes, the Lab routinely confirms its data by reference to the Agency's laboratory and to a third-party NELAC-certified laboratory. These methods of confirmation are approved by the Agency and by the USEPA. There is no basis, whatsoever, for any implication that the Lab is not correctly analyzing groundwater samples from the PDC No. 1 facility.

K. Amended Petition Point 8

> Amended Petition Point 8: "The federal EPA authorizes 843 toxic chemicals to be put in this landfill. Yet still another, unauthorized and worrisome PCBs, have been reported there, too. But just semi-annual checking for only 24 chemicals is mandated under the revised permit"

Mr. Edwards admits that Permit B-24R requires analysis of 24 compounds in the groundwater monitoring samples collected pursuant to Permit B-24R. In fact, Permit B-24R requires analysis of 24 hazardous constituents and 9 additional parameters on a semi-annual basis, and 58 constituents and 9 parameters on an annual basis. (Permit B-24R (Doc. 133), pgs. VI-6 to VI-8).

[2] http://www.epa.gov/SW-846/main.htm.

PDC is in the "detection monitoring" program authorized by the regulations:

> Groundwater parameters monitored in the uppermost aquifer below the facility indicate that, at the present time, no groundwater impacts have occurred. Therefore, a Groundwater Detection Monitoring Program meeting the requirements of 35 Ill. Adm. Code 724.1198 shall be implemented at the facility.

(Doc. 133, pg. VI-1; *see also* 35 Ill. Adm. Code §724.198). Only those facilities that can demonstrate that no impacts to groundwater have occurred are allowed to operate in the detection monitoring program. (*See* discussion of higher intensity "Compliance Monitoring" in the Agency's Response to Public Comments (Doc. 131), pgs. 19, 31, 35-36). PDC has more than 25 years of experience with monitoring and reporting groundwater quality at its facility. (*See* historical groundwater monitoring reporting to the Agency, beginning in 1983). Thousands of parameter analyses have occurred including analysis of the entire 40 CFR Appendix IX list of hazardous constituents. (Id.) Based on the 25 plus years of groundwater quality monitoring, and the fact that PDC is in detection monitoring, the Agency selected appropriate parameters for the routine detection monitoring program. Again, the parameter selection is consistent with Illinois law and regulation. The Agency may at any time require modification of Permit B-24R to include additional parameters should the Agency determine it is necessary to protect human health and the environment. (*See* Permit B-24R, §VI(K)). Therefore, the fact that Permit B-24R requires analysis of groundwater monitoring samples for 33 parameters semiannually and 67 parameters annually does not violate the Act or Board regulations.

L. Amended Petition Point 9

> Amended Petition Point 9: "The 843 allowable hazardous chemicals are preponderantly volatile, i.e., will evaporate into the air, we are informed. We need better surveillance and controls."

The Act and Board regulations concerning monitoring for particular constituents takes into account the volatility of certain of those constituents. As the Agency correctly noted in its Response to Public Comment, PDC may not accept hazardous waste requiring treatment prior to disposal that cannot be treated through the inorganic waste stabilization processes used at the facility. (Agency Response to Public Comments (Doc. 131), pg. 23). Because the PDC No. 1 facility is not designed to treat hazardous organic wastes, PDC is prohibited from receiving hazardous organic wastes that need treatment for organic constituents prior to disposal. As required by the conditions in Permit B-24R, an incoming hazardous waste therefore will have an average volatile organic chemical concentration of less than 500 parts per million by weight, or 0.05%. (*See* id., pgs. 23-24). Also, disposal of these wastes has been factored into the air permit for the PDC No. 1 facility issued by the Agency, Division of Air Pollution Control. (PDC Ex. 2). Therefore, the fact that Permit B-24R does not require additional, gratuitous surveillance and controls to account for the alleged volatility of certain constituents at the facility does not violate the Act or Board regulations.

M. Amended Petition Point 10, Brief Point 9, HOI Point III

> Amended Petition Point 10: "Testing for highly toxic and very volatile mercury has not been included in EPA monitoring, though it is permitted in the landfill. Is this because it quickly volatilizes into the air? It needs to be banned. (Lead, too, is a concern; Europe's landfills ban it.)"
>
> Brief Point 9: **Test for and prevent escape of very volatile & highly toxic mercury**. Only 2% by weight of extremely toxic mercury is allowed in the present and proposed permit. But for a 5-ton load of waste, 2% would amount to 200 pounds – a whale of a lot. But because only grab samples from the top of any incoming load are tested, and loads may be left sitting out for weeks or months after arrival, any mercury would have volatilized into the city's air. Its actual quantities are, therefore, **unaccountable**.
>
> HOI Point III: "HOI asks specifically, as Mr. Edwards does, that monitoring and testing for mercury pollution be required. The current Operating Permit states in several locations [footnote omitted] that wastes cannot be accepted with over 2%

> of mercury by weight, yet there is no monitoring well testing for mercury. Considering that up to 2% of weight of wastes can be mercury, testing should be required. The lack of mercury testing seems to be a distinct disconnect between hazardous waste going into the landfill, and adequate monitoring to protect the public health and safety."

Mercury is not banned from land disposal in the United States or in the State of Illinois. The Agency has appropriately conditioned Permit B-24R to protect human health and the environment in regard to mercury. Special Condition X.E.1 of Permit B-24R states that PDC "cannot receive wastes at the stabilization facility if the waste contains over 2% (by weight) of mercury." (Permit B-24R (Doc. 133), pg. X-3). Further, PDC voluntarily imposed a restriction in its Waste Acceptance Criteria, which are part of the approved Waste Analysis Plan for the PDC No. 1 facility. Condition number 8 of the approved Waste Analysis Plan restricts PDC from accepting any metallic mercury at its facility. (Application for renewal permit, vol. 1 (Doc. 1, pg. 116 of 407), Appendix C-1, pg. 2, item 8 ("Metallic mercury will not be accepted")). Further, PDC does monitor emissions from its waste stabilization facility and reports the emissions in its annual Toxic Release Inventory ("TRI"). (USEPA Toxic Release Inventory Database[3], PDC 2006 Report[4]). The value of mercury reported in PDC's 2006 TRI was 0.000001 pounds.[5] Therefore, the fact that Permit B-24R does not itself completely bar disposal of mercury at the PDC No. 1 facility does not violate the Act or Board regulations.

N. Amended Petition Point 11, Brief Point 8

> Amended Petition Point 11: "The "barrel trench," i.e., toxic waste buried in 1,000s of metal barrels: It is highly unlikely that not one barrel isn't disintegrating

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[3] http://www.epa.gov/tri/

[4] http://oaspub.epa.gov/enviro/tris_web.dcn_details?tris_id=61615PRDSP4349W (links to reports from 1998 through 2006)

[5] See Section 5 of PDC's 2006 TRI form pertaining to mercury compound emissions into the air: http://oaspub.epa.gov/enviro/tri_formr_partone.get_thisone?rpt_year=2006&dcn_num=1306204247593&ban_flag=Y. The USEPA rounded down the total emissions from 0.000001 pounds to zero (0) pounds.

> from rust, which has or will leave 50,000 tons of toxic waste free in the soil just above the aquifer (as is the rest of the landfill) from which the Peoria area pumps most of its water."
>
> Brief Point 8: **Barrel trench: This needs an official public investigation! The metal barrels certainly must all be rusted away and their toxic contents loose.** This trench, reported as containing 35,000 cubic yards of waste, was in operation from 1986 to 1990. It must be venting pollutants to the air. **But** a groundwater monitoring well slated for installation *under* the barrel trench has yet to be installed 20 years later.

The "barrel trench" is a closed portion of the PDC No. 1 facility. Mr. Edwards presented no evidence that any of the containers in the unit are degrading. The disposal unit in question was properly constructed according to then-current regulations, was properly closed according to current regulations, and is currently under post-closure care. (Supplemental Permit No. 79-0123, dated January 11, 1979; Permit B-23-M-40, dated October 8, 1999, regarding acceptance of closure activities). As the containers of waste are in an anaerobic condition, it is reasonable to believe that they are intact. Further, the purpose of the containers was for shipping waste, not permanent containment. The containment function is served by the properly-constructed, operated, and closed unit. As the Agency correctly noted in its Response to Public Comment, the unit operated after RCRA became effective. (Agency Response to Public Comment (Doc. 131), pg. 48). The unit is addressed in the post-closure section of Permit B-24R. (Permit B-24R (Doc. 133), Section VII). Permit B-24R requires appropriate maintenance of the final cover, maintenance of the leachate collection systems, groundwater monitoring to identify releases to groundwater, and corrective action requirements should any problems arise in the future. (Id.) Therefore, the fact that Permit B-24R does not further address the "barrel trench" does not violate the Act or Board regulations.

O. Amended Petition Point 12

> Amended Petition Point 12: "All of the 5 barrel trench monitoring wells are listed in EPA's original permit as "upgradient". Doesn't this mean the groundwater is monitored going into the barrel trench rather than *after* it goes through? EPA says it now will require a "downgradient" well to be installed. When? Will this test for groundwater traveling *through* the barrel trench into the city's drinking water sources? Is one enough? Who will do the testing?"
>
> HOI Point IV: "While five upgradient monitoring wells exist for the Barrel Trench Area, and older parts of the landfill outside the C-Cells, there are not adequate downgradient monitoring wells for the older parts of the landfill. HOI is concerned that the Agency has not required as many downgradient monitoring wells for the older sections as up gradient monitoring wells. Additional downgradient test wells should be required to monitor the Barrel Trench, Part A, Part B, and the additional pre-regulation waste area on the west side of the site."

Permit B-24R provides a point of compliance for determining groundwater quality in conformance with law and regulation which includes monitoring of the closed landfill areas (including the "barrel trench") as well as the active landfill areas of the facility. (Permit B-24R (Doc. 133), pg. VI-2, Sections VI, VI-A, and VII). Further, the Agency imposed a condition in Permit B-24R requiring PDC to install an additional well between the "barrel trench" and the active Area C landfill units. (Permit B-24R (Doc. 133), pg. VI-3). This well will serve to provide an early indicator of groundwater quality immediately down-gradient of the "barrel trench." (*See* Agency Response to Public Comments (Doc. 131), pgs. 13, 27, 30, 51 ("due to the public's concern ... the [Agency] has required PDC to install another groundwater monitoring well specifically downgradient of Area 1, which contains the Barrel Trench unit")). PDC will be required to install the well once the issued permit becomes effective. (Permit B-24R (Doc. 133), pg. VI-3). There is nothing in the fact that Permit B-24R requires this additional well that violates the Act or Board regulations.

P. Amended Petition Point 13

> Amended Petition Point 13: "EPA says the flow rate of groundwater through the aquifer's porous sand and gravelly soil is only 6 feet per year! It doesn't give the source of that statistic. New and better data is direly needed from independent sources."

Mr. Edwards disputes the validity of data regarding the groundwater flow velocity beneath the PDC No. 1 facility. Mr. Edwards offered no technical data to dispute the flow velocity included in PDC's permit application. The Agency's Response to Public Comments references the most recent calculated flow velocity derived from an average of 8.03 feet per year in the northern portion of the facility and an average of 6.40 feet per year in the southern portion of the facility. (Agency Response to Public Comments (Doc. 131), pgs. 13, 18, 20). This flow velocity is based on site-specific data developed and certified by John R. Berry, an Illinois Registered Professional Geologist. (PDC Landfill 2006 Annual Groundwater Flow Evaluation Report, submitted to the Agency, dated June 21, 2007, pg. 3 and Table 6). The reported values also comport with historical flow velocity calculations developed and reported to the Agency. There is nothing in the fact that these groundwater flow velocity figures were used that violates the Act or Board regulations.

Q. Brief Point 4

> Brief Point 4: **Much leaking reported from landfill's new section by independent consultants. It must be solved.** Or it will be a constant, growing hazard for the Peoria area, as the landfill sits over its drinking water aquifer. **But none of this leaking was found or reported either by PDC or the IEPA.** A county hired engineering consultant found Cell No. 1 to be leaking. But a privately hired geo-hydrologist Charles Norris of Denver, CO, found that all seven cells of the newer part (built since 1987) of the landfill, all with liners to prevent leaking, **in fact do leak.** Even the newest ones with "double liners" are leaking, probably straight down through the bottom, he reported. (Therefore likely missing the monitoring wells.)

Mr. Edwards falsely asserts that landfill cells at PDC No. 1 facility are leaking. As previously stated, PDC No. 1 facility is in the detection monitoring program under RCRA. (Permit B-24-M-57, dated February 14, 2003, page VI-1; Permit B-24R (Doc. 133), page VI-1). This means that **no impact** is occurring to the groundwater from the facility. Further, no expert testimony exists that asserts PDC is having any impact on the groundwater. The references used in Mr. Edwards's Brief Point 4 are the same arguments used by opponents in PDC's siting appeal (PCB 2006-184, filed June 7, 2006) in which the Board itself ruled "the County's recommended finding that the 'landfill may already be leaking into the aquifer' is speculation rather than fact." (June 21, 2007 Board Opinion). No evidence exists that contradicts the conclusions of PDC, the Agency and the Board that no groundwater impact is occurring at the PDC No. 1 facility. There is nothing in the Record to show that Permit B-24R violates the Act or Board regulations.

R. Brief Point 5

> Brief Point 5: **Pre-law, unlined section of landfill is ignored and likely leaking. Must be monitored**. PDC's landfill has been in operation 79 years, 58 years before the state began in 1987 requiring plastic liners, drains, etc. Because this older but larger section is "pre-law" the EPA does little if any inspection and monitoring of it.
> **(Love Canal, N.Y., had a pre-regulation landfill. Residents there went to Washington and pounded on Congressional doors to get action to relieve them of the pollution sickening their community. 750 homes were razed. It woke up EPA and the nation. Congress then set up a massive fund to help the host of other places with pre-law dumps. It quickly ran out of money.)**

Mr. Edwards's claim that the "pre-law, unlined section of landfill is ignored and likely leaking" is false. PDC operated a solid waste landfill unit from 1968 to 1979. This unit was properly permitted first through the Peoria County Health Department (1968) and then by the IEPA (1974). (Supplemental Permit No. 1974-36-DE, dated September 16, 1974). The units were properly closed according to then-current regulation. (Permit B-23-M-40, dated October 8,

1999, regarding acceptance of closure activities). As required by Permit B-24R, this unit (identified as a solid waste management unit) must be properly maintained for sufficient cover and vegetation throughout the life of Permit B-24R. (Permit B-24R (Doc. 133), pg. XI-1). Further, a Phase I RCRA Facility Investigation ("RFI") was performed to determine if any corrective action was required for the unit. (Facility Investigation Report, dated May 31, 1991 (Doc. 18)). Both the USEPA and the Agency have reviewed the RFI report and have concluded that no further action is necessary at this time beyond the permit requirements to maintain cover. (USEPA letter dated June 27, 1991; Permit B-24R (Doc. 133), pgs. XI-1, A.4). There is nothing in the Record to show that Permit B-24R would violate the Act or Board regulations in relation to this argument.

S. Brief Points 6 (first) and 12, HOI Point VI

> Brief Point 6 (first): **A dangerous location for people**. As stated above, Peoria is the nation's only metro area with a toxic waste landfill sitting over the city's main water source, and immediately upwind of a densely populated area. **Research in New Jersey and five European Union countries of communities near toxic waste landfills showed significantly higher rates of birth defects, premature births and in New York State a 15% higher rate of strokes. Air pollutants from landfills are the main suspect. Peoria Co reports a very high infant mortality rate.**
>
> Brief Point 12: **Why is this landfill for toxic waste located right in the heavily populated area when there are over 100,000 acres of former stripmine land in the 4-county Peoria area, and much more elsewhere? The IEPA says the legislature has given it no authority to take into account "location," only operation rules, and that location is up to the land owner and local officials.**

This is not a landfill siting or location case. Permit B-24R is necessary to provide for the proper operation, monitoring, closure, and post-closure care of an already existing RCRA facility. The location of the facility does not constitute a violation of the Act or Board regulations.

T. Brief Point 6 (second)

Brief Point 6 (second): **Peoria County has by far the highest chemical Toxic Release Inventory of any county in Illinois, 4.3 times higher than Cook County's (Chicago), and 16th highest in the nation, according to a 2002 USEPA survey. In the survey PDC's toxic releases were over 21 times higher than the next highest in the county, which was ADM's ethanol plant.**

The Toxic Release Inventory (or "TRI," as defined above) is a required report which is submitted to the USEPA for the purpose of inventorying toxic "releases," which means **all** toxic substances treated, disposed of, or stored by any person. (USEPA TRI Database, Basic Information[6]). The TRI does not distinguish between lawful treatment, storage and disposal of wastes (such as PDC conducts), and uncontrolled, illegal discharges of chemicals into the environment. PDC is properly and lawfully land disposing of wastes and properly reports its calculated volumes to USEPA. Therefore, the TRI for Peoria County, Illinois, includes all the wastes properly disposed of at the PDC No. 1 facility. The TRI does not support a finding that Permit B-24R violates the Act or Board regulations.

U. Brief Point 11

Brief Point 11: **Problem reporting**: The EPA permit gives PDC 30 days to report any problems it may find, even breakdowns in the landfill. That is an inordinate length of time.

Section IX of Permit B-24R, titled "REPORTING AND NOTIFICATION REQUIREMENTS," provides detailed reporting and notification requirements of the regulated systems at the PDC No. 1 facility. (Permit B-24R (Doc. 133), pgs. IX-1 to IX-9). These reporting and notification requirements range from immediate notification to 180-day notification depending on the issue. The inclusion of specified reporting and notification intervals does not support a finding that Permit B-24R violates the Act or Board regulations.

[6] http://www.epa.gov/tri/triprogram/whatis.htm

V. Brief Point 13

Brief Point 13: **The public hearing held by the county board two years ago on PDC's landfill was the longest (6 days and evenings) and most attended in county history. The county board voted 12 to 6 not to issue a new operating permit.**

Previously a Circuit Court ruling in Chicago held that any increase in original landfill capacity, up, down, or sideways, is expansion.

As previously stated, PDC has not requested an expansion with this permit renewal and the Agency has not granted an expansion in Permit B-24R. The Agency is charged with the issuance of RCRA Part B permits in Illinois. The siting hearing does not support a finding that issuance of Permit B-24R constitutes a violation of the Act or Board regulations.

CONCLUSION

Based on the foregoing, it is clear that Mr. Edwards has not "prove[n] that the permit as issued will violate the Act or Board regulations." American Bottom Conservancy, PCB 06-171, 2007 WL 325720 at *4; *see also* Joliet Sand & Gravel, 163 Ill.App.3d at 833, 516 N.E.2d at 958, and Prairie Rivers Network, 335 Ill.App.3d at 401, 781 N.E.2d at 380, cited by the Board in its March 6, 2008 Order. As above, the undisputed expert testimony in this case (which is the only testimony offered at the public hearing), provides (1) "that the permit as issued will not violate the Illinois Environmental Protection Act or Board regulations," and (2) "that Mr. Edwards' amended petition provides no reasonable basis for finding that the permit as issued would violate the Illinois Environmental Protection Act or Board regulations." (Transcript, pg. 52, lines 10-12, and pg. 53, lines 14-18). In any case, the Amended Petition itself is so fundamentally flawed that it should be denied for the reasons stated in Section 1, *supra*, and in the Motion to Dismiss, without even consideration of the substantive discussion in Section 2, *supra*.

WHEREFORE, for all the foregoing reasons, PDC respectfully requests that the Board deny the relief sought in the Amended Petition filed by Mr. Edwards, and award PDC such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

PEORIA DISPOSAL COMPANY,
Respondent

Dated: May 19, 2008

By: _____
One of its attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TOM EDWARDS/RIVER RESCUE, Petitioner, v. PEORIA DISPOSAL COMPANY and THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondents.	)	PCB No. 2008-042 (Permit Appeal – Third Party)

NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that (1) the Post-Hearing Brief of Respondent Peoria Disposal Company was filed electronically with the Clerk of the Illinois Pollution Control Board on May 19, 2008, and (2) the Post-Hearing Brief of Respondent Peoria Disposal Company was served on the Petitioner and on Respondent The Illinois Environmental Protection Agency by sending copies of same via U.S. Mail, First Class, postage prepaid, from Peoria, Illinois, before 5:00 p.m. on the 19th day of May, 2008:

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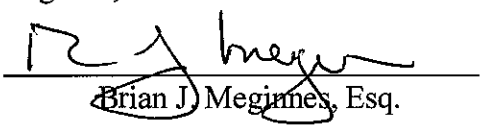

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