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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

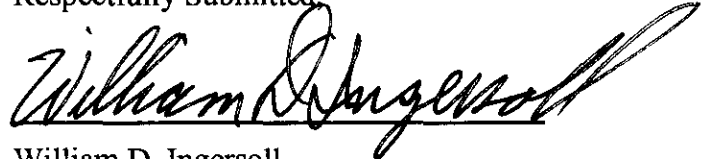
IN THE MATTER OF)
)
RCRA DELISTING ADJUSTED) AS 08-10
STANDARD PETITION OF PEORIA) (Adjusted Standard – Land)
DISPOSAL COMPANY) (Waste Delisting)
)

NOTICE OF FILING

To: Brian Meginnes Claire Manning
Janaki Nair Brown, Hay & Stephens, LLP
Elias, Meginnes, Riffle & Seghetti, P.C. 205 S. Fifth Street, Suite 700
416 Main Street, Suite 1400 Springfield, Illinois 62701
Peoria, Illinois 61602-1611

PLEASE TAKE NOTICE that on this date I filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO CERTAIN COMMENTS RELATING TO REQUESTS FOR ADDITIONAL PUBLIC HEARING.

Respectfully Submitted



William D. Ingersoll
Manager, Enforcement Programs

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: August 28, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF)	
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RCRA DELISTING ADJUSTED)	(Adjusted Standard – Land)
STANDARD PETITION OF PEORIA)	(Waste Delisting)
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSE TO CERTAIN COMMENTS RELATING TO
REQUESTS FOR ADDITIONAL PUBLIC HEARING

The Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, William D. Ingersoll, Manager, Enforcement Programs, and for the benefit of the Illinois Pollution Control Board (“Board”), hereby submits a response to certain comments accompanying requests for an additional public hearing. To wit, the Illinois EPA states as follows:

The Board intends to consider multiple requests for an additional public hearing in this case at its September 4, 2008 meeting. Illinois EPA takes no position on whether these requests should be granted, but rather leaves the matter entirely to the sound discretion of the Board. However, Illinois EPA is now responding to certain comments made in conjunction with two of these requests to allow the Board to consider a full record before making its decision.

The issue to which Illinois EPA is responding is first noted at the end of Public Comment #6, beginning with the phrase, “The legal council (sic) for the IEPA...” This comment cites the activities of Assistant Counsel Michelle Ryan during the public comment period of the August 18, 2008 hearing in Peoria as a partial basis for the request for an additional hearing. The public commenter claims that these activities evidence “the apparent lack of seriousness the State IEPA has toward public comments...”. Three days later, in Public Comment #18, this public

commenter recharacterized these activities as “clearly demonstra[ting] the contempt that IEPA has toward public comments.”

Initially, Illinois EPA would like to note that Ms. Ryan is not the attorney of record in this matter, rather, Mr. Ingersoll is. Ms. Ryan was specifically requested to attend the hearing in this case to assist Mr. Ingersoll in his role as the Respondent’s attorney.

As this Board is already familiar, Illinois EPA is a strong supporter of the right of the public to participate in matters that concern them to the fullest extent allowed by law. As is evident from the transcript and Hearing Report, Illinois EPA chose not to make any objections during the public comment period, nor any request to limit the amount of public comment allowed, nor was any member of the public prevented from giving comments or otherwise interrupted or impeded in any way by the activities of any the representatives of Illinois EPA present at the hearing. One fact that is not evident from the transcript is that all of the Illinois EPA representatives at the hearing were present at counsel table throughout the entire hearing and only left the room during breaks allowed by the Hearing Officer. Illinois EPA did not intend to communicate anything but respect for the Board, the public, and the hearing process by its participation in the hearing.

Public Comment #18 further claims that Ms. Ryan’s activity “undermines those individuals who rely upon the IEPA to protect public health and safety.” The logic underlying this assertion is unclear, and it is not enlightened by reviewing oral or multiple written comments from this public commenter, none of which address the substance of the Petition. Illinois EPA filed a Recommendation in this matter prior to hearing, following a full technical review of the Petition and supporting documentation. Nothing occurring during the hearing could have impacted upon Illinois EPA’s role in evaluating the Petition, providing a rationale for its

Recommendation, and providing the Board with information relevant to the Board's consideration of the Petition. *See* 35 Ill. Adm. Code 104.416.

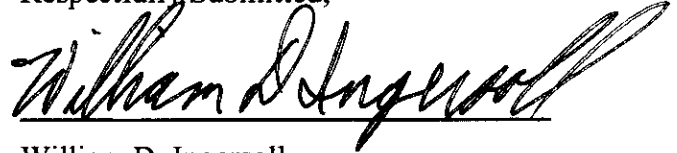
Further, Public Comment #18 asserts that "it is clear that the IEPA was not listening or paying attention" at the hearing, and that this forms a basis for a second hearing, to "ensure proper procedure and input." Again, no public commenter nor any Party was prevented from participating fully in the process by the actions of any representative of Illinois EPA, nor does the transcript note any inappropriate disruption of the hearing, so it is not clear what "input" this public commenter believes was impeded, nor which required "procedure" was not followed. Further, the activities of one representative of Illinois EPA cannot be imputed to the other two representatives present who were not engaging in such activity. Most importantly, however, is that the claim that Illinois EPA was "not listening or paying attention" is false.

As indicated previously, Ms. Ryan was requested to attend this hearing to assist counsel of record, and she satisfied her job duties as assigned. Throughout the entire hearing, including the three hours of public comment, Ms. Ryan communicated to Mr. Ingersoll her observations, her knowledge of the applicable law and relevant facts, and experience in dealing with this facility on other matters. For example, Ms. Ryan noted that one public commenter was quoting an inapplicable and irrelevant section of the Board regulations well before Petitioner's attorney made a formal objection on this point. Far from being "oblivious to the concerns of the public," (*see* Public Comment #20, p. 3), Ms. Ryan is very familiar with the PDC facility, including the public's stated concerns, by virtue of having been recently involved in three prior hearings where oral and written public comment was received about the site, either by Illinois EPA or the Board. It was this experience that counsel of record intended to draw upon in asking her to assist at the hearing on August 18. Ms. Ryan has worked for Illinois EPA and the Peoria Region for 14

years, and her performance over that time has warranted Illinois EPA placing its trust in her abilities.

In conclusion, Ms. Ryan's activities during the August 18 hearing do not form the basis for scheduling an additional hearing in this matter. It has become clear only since the hearing ended that these activities were offensive to anyone participating in the hearing. At no point on August 18 did anyone indicate to Illinois EPA that Ms. Ryan's activities prevented them from participating fully in the process, nor did anyone request (either during the hearing or a break) that her activities cease. This fact alone indicates that this concern is a distraction from the relevant matters involved in this case. Although there are many other issues that may be considered in making the determination of whether to grant the requests for a second hearing, Illinois EPA is not addressing those here, but leaves them to the Board's judgment.

Respectfully Submitted,

A handwritten signature in black ink, reading "William D. Ingersoll", written over a horizontal line.

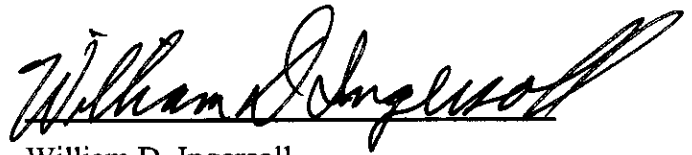
William D. Ingersoll
Manager, Enforcement Programs

Illinois Environmental Protection Agency
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P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: August 28, 2008

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument entitled ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO CERTAIN COMMENTS RELATING TO REQUESTS FOR ADDITIONAL PUBLIC HEARING are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



William D. Ingersoll
Manager, Enforcement Programs

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: August 28, 2008

PROOF OF SERVICE

I hereby certify that I did on the 28th day of August, 2008, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO CERTAIN COMMENTS RELATING TO REQUESTS FOR ADDITIONAL PUBLIC HEARING

To: Brian Meginnes	Claire Manning
Janaki Nair	Brown, Hay & Stephens, LLP
Elias, Meginnes, Riffle & Seghetti, P.C.	205 S. Fifth Street, Suite 700
416 Main Street, Suite 1400	Springfield, Illinois 62701
Peoria, Illinois 61602-1611	

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid

To: John Therriault, Acting Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



William D. Ingersoll
Manager, Enforcement Programs

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