

ILLINOIS POLLUTION CONTROL BOARD  
December 21, 2007

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

ORDER OF THE BOARD (by N.J. Melas):

On June 7, 2006, petitioner, Peoria Disposal Company (PDC), filed a petition for review of the Peoria County Board's (County) alleged failure to take action by May 3, 2006, on a pollution control facility siting application. The Board accepted the petition for hearing on June 15, 2006.

On November 6, 2006, the County moved for leave to supplement the record on appeal (Mot.), filed the three documents it requests leave to incorporate into the record, and filed a second amended index.

On November 16, 2006, PDC responded in opposition to the County's motion for leave to supplement (Resp.). On November 30, 2006, the County moved for leave to file a reply (Reply). PDC responded in opposition to the County's motion for leave to file a reply on December 6, 2006 (Obj.). The Board grants the County's motion for leave to file a response and accepts that response.

For the reasons set forth below, the Board grants the County's motion for leave to supplement the record. The Board, however, orders the County to file a clean copy of one of the three documents, or explain why the Board should accept the filed version, by January 5, 2007.

**STATUTORY AND REGULATORY BACKGROUND**

Section 40.1(a) of the Act provides:

In making its orders and determinations under this Section the Board shall include in its consideration the written decision and reasons for the decision of the county board . . . the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used by the county board . . . in reaching its decision. 415 ILCS 5/40.1(a) (2004).

Section 107.304(a) of the Board's regulations concerning petitions for review of pollution control facility siting decisions provides:

The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process. . . . 35 Ill. Adm. Code 107.304(a).

### **MOTION TO SUPPLEMENT THE RECORD**

The County moves the board to supplement the record with three documents that were not filed due to inadvertence. Mot. at 2. The County identifies the documents as: (1) the supplemental staff report for the Peoria Disposal Company application for local siting approval which was presented by County staff at the April 6, 2006, subcommittee meeting (Supplemental Staff Report); (2) proposed findings of fact prepared by the County staff for consideration by and distributed to the County prior to the April 6, 2006 committee meeting (April 6 Proposed Findings); and (3) a one-page sheet of findings of fact generated by County staff at the May 3, 2006 County Board meeting incorporating one change decided and made by the County at that meeting (Findings Page).

The County contends that the first two documents were reviewed by the local siting authority during the proceedings and should be incorporated into the record. The Findings Page, argues the County, documents the one change made to the proposed findings of fact at the May 3, 2006 meeting, and should also be made part of the record. Mot. at 3. The County asserts that supplementing the record with these documents is fair, appropriate, and necessary and will not cause prejudice to either party or the public. The County included a second amended index of the record "should the Board grant this motion." *Id.*

In response, PDC did not object to supplementing the record with the Supplemental Staff Report. PDC objects to incorporating the April 6 Proposed Findings and the Findings Page into the record, arguing the documents were not properly included in the record, the documents were never available to PDC or the public prior to filing this petition for review, and the motion for leave is grossly untimely and prejudicial to PDC. Resp. at 2-3.

PDC contends that under Section 107.304 of the Board's procedural rules, the record must contain evidence presented to or relied upon by the local siting authority. The April 6 Proposed Findings and the Findings Page, however, were reviewed and discussed by the siting committee, not the County Board. Resp. at 3; citing 35 Ill. Adm. Code 107.304(a). PDC reasons that these two documents, therefore, do not belong in the record. *Id.* at 3, 4.

PDC next asserts that the April 6 Proposed Findings and Findings Page were never placed into the record at any time prior to PDC's filing of this petition. Resp. at 5. Further, contends PDC, the County seeks to supplement the record with tables and calculations, pages C139653-58, not included with the April 6 Proposed Findings. PDC claims these pages were not part of the record available to PDC or the general public. According to PDC, the County has provided no foundation or explanation for these pages in the motion to supplement. Resp. at 6.

Finally, PDC argues that supplementing the record with the April 6 Proposed Findings and Findings Page at this late date is untimely and prejudicial to PDC. Resp. at 7. PDC states

that the parties have completed discovery. Supplementing the record with these two documents, argues PDC, would mandate a reopening of discovery. *Id.* at 9. PDC requests that the Board deny the County's motion to for leave to supplement. *Id.* at 10.

In reply, the County contends that despite PDC's claim that it was "totally unaware" of the April 6 Proposed Findings and the Findings Page, PDC actually questioned Ms. Karen Raithel, on behalf of the County, about the April 6 Proposed Findings during her deposition. Reply at 2. The County contends that PDC was well aware of both documents during the proceeding and has had ample opportunity to question any and all deponents about them.

The County claims that copies of the April 6 Proposed Findings were distributed to the public at the start of the April 6, 2006 committee meeting. The County states that the April 6 Proposed Findings were referenced twice in PDC's response to the committee of the whole vote, filed April 27, 2006. Reply at 2; citing C13461-13488. The County asserts that the April 6 Proposed Findings document was used by the board members as clearly evident from the transcripts of the April 6, 2006 meeting. For these reasons, the County contends including these documents in the record on appeal will cause PDC no prejudice or delay. Reply at 3.

PDC objects to the County's reply due to several misstatements of fact. Obj. at 1. PDC admits that it received a copy of proposed findings of fact on April 6, 2006, but that the document received by the public was not identical to the document the County now seeks to incorporate into the record. PDC states the April 6 Proposed Findings contains handwritten notations that did not appear in the handout distributed to the public, includes page C139649 which was not included in the handout distributed to the public, and includes pages C139653 through C139658 (showing charts pertaining to perpetual care) which also was not included in the handout distributed to the public. *Id.* at 3-4. PDC also contends the two documents were formatted differently. For these reasons, PDC moves the Board to deny the County's motion for leave to supplement the record on appeal.

### **BOARD ANALYSIS**

Because the parties do not agree to supplement the record on appeal, the Board must consider whether the documents the County requests to incorporate is "information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process." 35 Ill. Adm. Code 107.304(a). PDC does not object to incorporating the Supplemental Staff Report. PDC does object to incorporating the April 6 Proposed Findings and the Findings Page. The County's motion, on the other hand, states that both documents were reviewed and relied upon by the siting committee. The Board finds that all three documents were presented to the local siting authority during the hearing process and grants the County's motion for leave to supplement the record. The Board, however, requests that the County file a clean copy of the April 6 Proposed Findings with the Board.

PDC specifically objects to incorporating the version of the April 6 Proposed Findings that the County filed along with the motion to supplement on November 6, 2006. PDC claims that the April 6 Proposed Findings includes handwritten notations that were not in the version of the proposed findings distributed to the public at the April 6, 2006 committee meeting. The

County attached an affidavit of Ms. Karen Raithel to its November 30, 2006 reply. Ms. Raithel's affidavit stated that a copy of the version of the April 6 Proposed Findings handed out to the public at the April 6, 2006 committee meeting was attached to her affidavit. The Board finds no document attached to her affidavit.

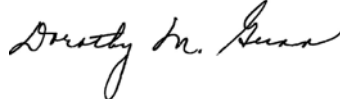
The Board orders the County to file a clean copy of the April 6, 2006 Proposed Findings or explain why the Board should accept the version including handwritten notes. Pursuant to Section 107.304(a), the County must file the version of the document presented to the siting authority during the local hearing process. Because hearing is scheduled to take place January 8 through 11, 2007, the Board allows the County 14 days from the date of this order, or until January 5, 2007, to file a clean copy or an explanation.

### **CONCLUSION**

The Board grants the County's motion for leave to supplement the record and incorporates the Supplemental Staff Report and Findings Page into the record. The Board orders the County to file a clean copy of the April 6 Proposed Findings, or an explanation of why the Board should accept the version including handwritten notes, by January 5, 2007. For purposes of administrative efficiency and accurate reference at hearing, the Board also orders the County to file an amended index reflecting any changes in pagination.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 21, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board