

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEORIA DISPOSAL COMPANY,

Petitioner,

v.

PEORIA COUNTY BOARD,

Respondent.

PCB 06-184

(Pollution Control Facility Siting Appeal)

STATE OF ILLINOIS  
Pollution Control Board

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**  
**(415 ILCS §5/39.2(e))**

NOW COMES Petitioner, Peoria Disposal Company, (hereinafter "PDC" or "Petitioner") by its attorneys, Brian J. Meginnes and George Mueller, and as and for its Reply in support of its Motion for Summary Judgment pursuant to 415 ILCS §5/39.2(e), and responding to the Response to Motion for Partial Summary Judgment (415 ILCS §5/39.2(e))<sup>1</sup> (the "Response"), and the Memorandum of Facts and Law in support thereof ("Resp. Memo.") filed by the Peoria County Board (the "County Board"), states as follows:

**INTRODUCTION**

In its Response, the County Board makes two key admissions. First, the County Board admits that the only "action" taken by the County Board relative to the Application (as defined in the Motion for Summary Judgment) is the failure of the oral motion for conditional approval, as amended, to pass. (Resp. Memo. pg. 1). Second, the County Board admits that the only "writing" created by the County Board memorializing the failure of the oral motion for conditional approval, as amended, to pass is the transcript of the May 3, 2006 meeting of the

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<sup>1</sup> The Response is not properly titled; the Motion for Summary Judgment pursuant to 415 ILCS §5/39.2(e) seeks complete summary judgment disposing of all issues in this case, not partial summary judgment. If awarded, summary judgment on the relevant Motion would result in a complete reversal of the County Board's purported decision and, pursuant to 415 ILCS §5/39.2(e), "granting" of the Application without conditions by operation of statute and without the need for further proceedings.

County Board. That transcript was not rendered “official” until June 8, 2006, considerably more than 180 days after filing of the Application. The only conclusion to be drawn from either of these two admissions is that there was no “final action” by the County Board within 180 days after the date on which it received the Application, and therefore, PDC may deem the Application approved pursuant to 415 ILCS §5/39.2(e).

**I. The County Board Took No Action on The Application, and Therefore, The Application Is Deemed Approved.**

The County Board does not contest the fact that the only “action” taken at the May 3, 2006 meeting relative to approval or denial of the Application was failure of the motion for conditional approval, as amended, to pass.<sup>2</sup> Pursuant to the Rules of Order of the Peoria County Board and the law, the failure of a motion to pass does not constitute “action”. Therefore, no action was taken by the County Board at the May 3, 2006 meeting, and the Application is deemed approved pursuant to 415 ILCS §5/39.2(e).

Section 39.2(e) of the Act provides, in pertinent part, as follows regarding the deadline for “final action” by a municipal siting authority:

\* \* \*. If there is no final action by the county board or governing body of the municipality within 180 days after the date on which it received the request for site approval, the applicant may deem the request approved.

415 ILCS §5/39.2(e). The Illinois Administrative Code defines “action” as follows for purposes of triggering the appeal deadlines in siting cases:

\* \* \*. Pursuant to Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval.

35 Ill. Adm. Code §107.204.

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<sup>2</sup> Respectfully, the County Board’s characterization of the failure of the Motion for Approval as “[t]he vote to deny approval of the application” on the first page of its Memorandum is grossly misleading and should be disregarded by the Pollution Control Board.

A. Pursuant to the Rules of Order of the Peoria County Board and Robert's Rules of Order, as incorporated by the Rules of Order of the Peoria County Board, no action was taken.

The 2005-2006 Rules of Order of the Peoria County Board, Art. III, Sec. 4, attached as Exhibit 2 to the County Board's Memorandum, state that "[t]he rules of parliamentary practice, as set forth in the latest published edition of Robert's 'Rules of Order, Revised', govern the proceedings of the Board to the extent the same are not inconsistent with the Rules of Order of the Board." It is clear under Robert's Rules of Order, Newly Revised (10th ed. 2000) (the "RONR") that any action to be taken by the County Board must be brought by a motion:

Business is brought before an assembly by the *motion* of a member. \* \* \*.

A motion is a formal proposal by a member, in a meeting, that the assembly take certain action.

RONR, pg. 26, lines 14-15, 19-20 (emphasis in original). It is also clear under the RONR that a majority vote in favor of a motion is required for action to be taken on the part of the County Board:

The basic principle of decision in a deliberative assembly is that, to become the act of choice of the body, a proposition must be adopted by a *majority vote*; that is, direct approval—implying assumption of responsibility for the act—must be registered by more than half the members present and voting on a particular matter....

RONR, pg. 4, lines 5-10 (emphasis in original). "A majority vote in the affirmative adopts any motion...." RONR, pg. 45, lines 31-32. The Rules of Order of the Peoria County Board are synchronous with the RONR: "[a] majority of the members of the Board shall constitute a quorum for transaction of business; and all questions which shall arise at meetings shall be determined by the votes of the majority of the members present at such meetings...." Rules of

Order, §7 (copy attached as Appx. B to PDC's Memorandum in Support of Motion for Summary Judgment) (the "Memo.").

In the instant case, the affirmative vote of ten (10) of the eighteen (18) County Board members present at the May 3, 2006 meeting was required to pass any motion brought before the County Board. (*See* Memo. Ex. 12). A motion was made for conditional approval of the Application (Ex. 12, 32/1, 32/4; C13719), which motion was amended (Memo. Ex. 12, 37/9-39/3; C13720-21). The motion for conditional approval, as amended, was voted on. (Memo. Ex. 12, 39/11-6-36/17; C13720). Six of the Board members voted in favor of the motion. (*Id.*) Therefore, the motion for conditional approval, as amended, was lost.

The failure of a motion to pass does not constitute "action". As above, "[a] motion is a formal proposal by a member, in a meeting, that the assembly take certain action." RONR, pg. 26, lines 19-20. If that "proposal" is declined, the assembly takes no action. The RONR makes it clear that in order for the County Board to take "action," there must be an affirmative vote in favor of the motion (*i.e.*, in favor of the "formal proposal by a member, in a meeting, that the assembly take certain action", *supra*):

It is preferable to avoid a motion containing a negative statement even in cases where it would have a meaning, since members may become confused as to the effect of voting for or against such a motion. \* \* \*. In this connection, it should be noted that voting down a motion or resolution that would express a particular opinion is not the same as adopting a motion expressing the opposite opinion, since—if the motion is voted down—no opinion has been expressed.

RONR, pg. 100, lines 18-21, 25-29 (emphasis added).

In support of its contention that no motion to deny the Application was required, the County Board relies almost entirely on the opinion of Chief Civil Assistant State's Attorney William Atkins, because of his designation as "Parliamentarian" of the County Board. (Resp.

Memo. pgs. 7-8, 10-12). Regarding the duties of the Parliamentarian, the RONR provides as follows:

The parliamentarian is a consultant, commonly a professional, who advises the president and other officers, committees, and members on matters of parliamentary procedure. The parliamentarian's role during a meeting is purely an advisory and consultative one....

RONR, pg. 449, lines 1-8. In fact, even as to strictly parliamentary matters, it is the opinion of the President or Chairman that prevails, not the Parliamentarian. Clearly, Mr. Atkins' "opinions" regarding the rules of the County Board, the RONR, the law and common sense are by no means dispositive on any of these issues. The County Board's argument that it properly denied the Application simply because it followed the incorrect advice of counsel is not sufficient to cure the County Board's failures.

No motion was passed by the County Board denying the Application. Therefore, the Application remained "pending" before the County Board. Had the County Board been so inclined, the County Board could have voted again to approve the Application unconditionally or with different special conditions, as the failure of the amended, conditional motion for approval did not "kill" the Application. (Given the controversy before the County Board concerning various proposed conditions, there was a real possibility that a second conditional motion for approval might be made by another County Board member). Very simply, the failure of the amended, conditional motion for approval to pass is not the same as the passage of a motion for denial of the Application.

B. Pursuant to the law, no action was taken.

Pursuant to 35 Ill. Adm. Code §107.204, "Action means the local government's official written decision granting or denying local siting approval." (Emphasis added). Thus, the local

siting authority must either grant local siting approval or deny local siting approval in order to take “action”. In this case, the County Board neither approved the Application nor denied same.

The County Board attempts to distinguish the case of Hoesman, et al. v. City Council of the City of Urbana, Illinois, et al., PCB 84-162, 1985 WL 21156 (Illinois Pollution Control Board, March 7, 1985), cited in PDC’s Memorandum of Law, from the case at hand on the grounds that “Hoesman dealt only with the Pollution Control Board’s internal rules which require an affirmative vote of four (4) members. Without four (4) members voting for a motion, the Board was unable to take any action.” (Resp. Memo. pg. 7).<sup>3</sup> In fact, the Rules of the County Board, as quoted and discussed above, also require an affirmative vote of a majority of the members present to take any action. See RONR, pg. 45, lines 31-32; Rules of Order, §7. The logic applied in Hoesman applies here as well:

Due to the failure of separate motions to gain the necessary four votes to affirm or reverse the Council’s action, and the termination of the statutory decision period, it is the Board’s opinion that the Respondent may deem the site location in question approved by operation of law. (See Section 40.1(a) and (b). Also see Cement Mfg. Co. v. Pollution Control Board (1980), 84 Ill. App. 3d 434, 405 N.E. 2d 512; Illinois Power Company v. Illinois Pollution Control Board (1983), 112 Ill. App. 3d 457, 445 N.E. 2d 820.)

1985 WL 21156, \*1 (emphasis added).

The County Board attempts to distinguish the case of Smith, et al. v. City of Champaign, et al., PCB 92-55, 1992 WL 207560 (Illinois Pollution Control Board, August 13, 1992), on the grounds that the procedural failure in that case was a quorum failure, which is not at issue in this case. (Resp. Memo. pgs. 8-9). The County Board does not, however, challenge the principles for which Smith stands.

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<sup>3</sup> The County Board’s additional basis for distinguishing Hoesman, i.e., that the case “dealt with ... a different statutory provision than ... implicated in this case” is inapposite. (Resp. Memo. pg. 7). As a general rule, the statute at issue in a vote is irrelevant to the voting procedures taken thereon, except regarding any majority/supermajority requirement.

In terms of case law, the County Board relies exclusively on a concurring opinion filed in the case of Guerrettaz, et al. v. Jasper County, et al., PCB 87-76, 1988 WL 160128 (Illinois Pollution Control Board, January 21, 1988), stating that “[t]he concurring opinion is well reasoned, and is not in conflict with the opinions cited by PDC or any other decisions of the Board, and should be followed in this case.” (Resp. Memo. pg. 10). In fact, in the Smith case, the Pollution Control Board expressly rejected the petitioners’ citation to the concurrence in Guerrettaz:

The Guerrettaz concurring opinion cited by petitioners is dicta, since that case was actually decided on the grounds that the required notice of the filing of the application was deficient. The majority opinion never discussed the question of “final action” or the effect of the tie vote in that case. (Guerrettaz v. Jasper County (January 21, 1988), PCB 87-76.)

Smith, 1992 WL 207560, \*5. Therefore, the Board in Smith placed the burden to take “final action” within the statutory timeframe squarely on the shoulders of the local siting authority, specifically disagreeing with Guerrettaz:

Section 39.2(e) clearly states that if a local decisionmaker does not take final action within 180 days, “the applicant may deem the request approved.” (Ill.Rev.Stat.1991, ch. 111 1/2, par. 1039.2(e).) Therefore, the Board rejects petitioners’ claim that the application was denied because the application failed to command a majority vote. The statutory language also repudiates petitioners’ argument that an approval without an affirmative vote by a majority of council members would be unconscionable. Section 39.2 gives local governments the power and the responsibility to rule upon an application for siting approval.

Smith, 1992 WL 207560, \*6. Pursuant to Smith, merely “because the application failed to command a majority vote” does not mean that the Application was denied. It is the responsibility of the local siting authority to take actual final action on an application; it is not the responsibility of an applicant to “win” a motion for approval before the local siting authority.

This is the legislative scheme expressly created by the statute, by which all parties to a pollution control facility siting proceeding are governed.

C. The County Board's "intentions" do not relieve the County Board of its duty to abide by its own Rules of Order and by the law.

The County Board concludes its discussion regarding the statutory "final action" requirement with the following argument:

Although PDC apparently does not agree with the advice of the Peoria County States Attorney's office, that does not change what the Peoria County Board thought it was doing or what it intended to do. Even if, with hindsight, the advice is found to be incorrect, the intent of the County Board is clear....

(Resp. Memo. pg. 11; emphasis added). There is absolutely no precedent under the law for the County Board's bizarre assertion that "what the Peoria County Board thought it was doing," even if it turns out to be incorrect, should be controlling. Similarly, the County Board's allegation that "everybody understood that vote to be a denial," which PDC by no means agrees with or concedes, is a nonsensical attempt to shirk the responsibilities placed on the County Board by the regulations and the statute. There is specific regulatory, administrative, common law and statutory guidance as to the correct and only way to take final action on an Application. The fact that the County Board was misinformed by its own lawyer does not abdicate the County Board of its responsibility to perform its function correctly.

Based on all the foregoing, no final action was taken on the Application, as neither an affirmative vote approving nor an affirmative vote denying the Application was ever taken. Section 39.2(e) of the Act requires that "[i]f there is no final action by the county board or governing body of the municipality within 180 days after the date on which it received the request for site approval, the applicant may deem the request approved." 415 ILCS §5/39.2(e). Therefore, the Application in this case is deemed approved.



**II. The Only “Official” Writing Submitted by the County Board Memorializing the Purported “Decision” of the County Board was not Rendered Official until June 8, 2006, well after the 180-day Statutory Deadline. Therefore, the Application Is Deemed Approved.**

Even if the failure of the motion to approve, as amended, to pass had been sufficient to deny the Application, the County Board failed to create an “official written decision” memorializing such decision until June 8, 2006. While PDC continues to believe that the proper filing date in this case is November 9, 2005 (as is set forth at length at Memo. pgs. 39-41), even if the November 14, 2005, “deemed filed” date asserted by the County Board is used, June 8, 2006, was well outside the 180-day statutory deadline for “final action”. In fact, PDC filed its Petition for Review in this matter on June 7, 2006, the day before the “official written decision” (if any) was rendered. If final action occurred on May 3, 2006, as has been consistently argued by the County Board, the last day for perfecting review by the Pollution Control Board was June 7, 2006.

The County Board’s brief argument at pages 17-18 of its Response that the 180-day statutory deadline was extended for 90 days to August 6, 2006, is not defensible. There is no basis whatsoever in the law to support the County Board’s contention that a proposal (in argument) by an applicant that the County Board condition its approval of an application with certain conditions is the same as an “amendment” of an application under 415 ILCS §5/39.2(e). In fact, even Section 39.2(e) requires that the amended application be filed with the local siting authority, not merely discussed or suggested. Id. PDC respectfully requests that the Pollution Control Board simply disregard this, seemingly unresearched, argument.

Section 39.2(e) of the Act provides that a “decision” constituting “final action” must be written:

(e) Decisions of the county board or governing body of the municipality are to be in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section. \* \* \*. Such decision shall be available for public inspection at the office of the county board or governing body of the municipality and may be copied upon payment of the actual cost of reproduction. If there is no final action by the county board or governing body of the municipality within 180 days after the date on which it received the request for site approval, the applicant may deem the request approved.

415 ILCS §5/39.2(e) (emphasis added). The Illinois Administrative Code defines “action” as follows:

A petition for review must be filed within 35 days after the local siting authority’s action to approve or disapprove siting. Action means the local government’s official written decision granting or denying local siting approval. Pursuant to Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval.

35 Ill. Adm. Code §107.204 (emphasis added). While there could be a dispute as to what sort of writing is required (*i.e.*, a writing specifying reasons for the decision, versus a writing specifying only the decision itself), clearly, the “final action” of a local siting authority must be in writing pursuant to 35 Ill. Adm. Code §107.204: “Action means the local government’s official written decision granting or denying local siting approval.” (Emphasis added).

The County Board cites and discusses the following cases for the proposition that the local siting authority need only render an unwritten decision within 180 days of filing in order to satisfy the requirements of 415 ILCS §5/39.2(e), and can prepare its written decision at a later date: Guerrettaz, et al. v. Jasper County, et al., PCB 87-76, 1988 WL 160128 (Illinois Pollution Control Board, January 21, 1988), Clean Quality Resources, Inc. v. Marion County Board, PCB 91-72, 1991 WL 171684 (Illinois Pollution Control Board, August 26, 1991), and Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd., 145 Ill.2d 345, 585 N.E.2d 606,

165 Ill.Dec. 875 (1991). All of these cases were decided before the enactment of 35 Ill. Adm. Code §107.204, which became effective January 1, 2001, wherein it was made clear for the first time that the term “action” actually “means the local government’s official written decision granting or denying local siting approval.” 35 Ill. Adm. Code §107.204 (emphasis added). If (a) “action” requires the local siting authority to render an “official written decision”, and (b) “final action” must occur within 180 days of filing of an application, then (c) the “official written decision” must be rendered within 180 days of filing of an application. Any other conclusion would stretch the bounds of logic.

Moreover, the Illinois Supreme Court case cited by the County Board is not inconsistent with the rule that a timely written decision is required for final action. In Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd., the Pollution Control Board did render a written order within the statutory deadlines, and then later filed a written opinion. 145 Ill.2d 345, 585 N.E.2d 606, 165 Ill.Dec. 875 (1991). The Illinois Supreme Court distinguished between the requirement that the Board take final action (entering the written Order) and that the Board issue its opinion. Id. Similarly, in interpreting the requirements of Section 39.2(e) of the Act, read in conjunction with Section 107.204 of the Administrative Code, one could possibly distinguish between the requirement for a written decision (namely, an expression of the final action of the County Board) and the specification of reasons for that decision, which is a separate and additional statutory requirement. While there is some authority for the proposition that the specification of reasons may not be required within 180 days of filing of an application, this rationale does not apply to the statutory requirement of a timely written decision which memorializes the final action.

Therefore, the most basic question at issue is the following: if, as the County Board contends, the “final action” taken at the May 3, 2006 meeting was the failure of the motion for conditional approval, as amended, to pass, what “official” writing was created by the County Board memorializing that failure? If there is such an “official” writing, when was the writing rendered “official”?

It is uncontested that no Resolution denying the Application was ever rendered (though the Peoria County Code itself assumes that a resolution is created embodying the final decision of the County Board, defining the “Record” as including, “[a] copy of the resolution containing the final decision of the county board” (Peoria County Code, §7.5-45(a)(9)), and it is uncontested that no ordinary minutes summarizing the proceedings on May 3, 2006 were prepared. However, in support of its Response, the County Board submitted the Affidavit of JoAnn Thomas, the Peoria County Clerk at all times relevant to this matter, attesting to the fact that she “elected” to use the transcript of the May 3, 2006 meeting of the County Board in lieu of creating minutes for such meeting:

4. In lieu of creating minutes of the May 3, 2006, County Board meeting, I elected to use the court reporter transcripts of the meeting as the minutes and official record of the meeting since the transcripts represent the exact record of what took place, while any minutes would simply be a summary of what took place.

(Resp. Memo. Ex. 1, ¶4). PDC had the opportunity to depose Ms. Thomas, by agreement, on December 19, 2006. Ms. Thomas was sure that the transcript of the May 3, 2006 meeting was actually “approved and adopted” by the County Board as the minutes of the May 3, 2006 meeting, as required by the Rules of Order of the Peoria County Board:

Q [by Mr. Mueller] Now, minutes have to be approved, don't they?

A Yes.

Q In fact, when you take minutes, those are circulated among county board members prior to the next meeting and one of the first orders of business of the next meeting is the approval of the minutes?

A That's the practice now, yes.

Q Occasionally, minutes get changed or amended in the approval process, right?

A Correct

\* \* \*

Q [by Mr. Mueller] But I guess my question is, did the county board ever take formal action to approve the transcript of the May 3rd meeting as the minutes of that meeting?

A I believe so.

Q When did that action take place?

A I'm not sure. I would have to go check on that, but they were approved.

(Deposition of JoAnn Thomas ("Thomas Dep."), attached hereto as Exhibit 1, 15/20-16/7, 17/3-10).

In the Memorandum, PDC stated that no vote to approve and adopt any documents or record pertaining to the May 3, 2006 County Board meeting occurred at the subsequent meeting of the County Board, on May 11, 2006, which statement was confirmed by Ms. Thomas:

Q [by Mr. Mueller] I'm going to show you what's been marked as Exhibit A, and we have an extra copy for you, Mr. Brown, and one for the court reporter, which purports to be the minutes of the county board meeting of May 11<sup>th</sup>, 2006.

Does that look to you like an accurate copy of the minutes of the May 11<sup>th</sup>, 2006, board meeting?

A Yes.

Q Now, there is nothing in those minutes relating to approval of the transcript of the May 3<sup>rd</sup> meeting?

A Yes, correct.

(Thomas Dep., 53/5-17).<sup>4</sup> The minutes of the May 11, 2006 County Board meeting, identified as Exhibit A in Ms. Thomas's deposition, are attached with that transcript in Exhibit 1 hereto.

In actuality, the transcript of the May 3, 2006 meeting was approved and adopted at the following meeting of the County Board, on June 8, 2006, the day after PDC filed its Petition for Review in this matter and the 36th day after the May 3, 2006 meeting:

Q [by Mr. Mueller] Let me show you then what's been marked as Exhibit B. Again, I will hand Mr. Brown a copy and ha[n]d the court reporter a copy.

Does this appear to you to be a true and accurate copy of the board – county board meeting minutes of June 8<sup>th</sup>, 2006?

A Yes.

Q If you go down about half way down the first page, you'll see that there's approval of May 11<sup>th</sup> county board meeting minutes; May 3<sup>rd</sup>, 2006, special county board meeting transcripts; and April 6<sup>th</sup>, 2006, regional pollution control site hearing committee transcripts?

A Yes.

Q Does this refresh your recollection as to when the transcripts of the May 3<sup>rd</sup> meeting were approved?

A Yes. They were approved June 8<sup>th</sup>, 2006.

Q That, in fact, confirms your recollection that they would have been approved at some point?

A Right.

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<sup>4</sup> Of course, the Rules of Order of the Peoria County Board require that the minutes County Board meetings be approved at the subsequent meeting, not the second subsequent meeting after the meeting recorded in the minutes.

Q Were any other records from the May 3<sup>rd</sup> meeting approved at either the May 11<sup>th</sup> meeting or the June 8<sup>th</sup> meeting?

A If it's not in the record, it wasn't done. Because everything that was done is in the record.

(Thomas Dep., 54/9-55/10). The minutes of the June 8, 2006 County Board meeting, identified as Exhibit B in Ms. Thomas's deposition, are attached with that transcript in Exhibit 1 hereto.

The minutes of the June 8, 2006 County Board meeting provide, in pertinent part, as follows:

Approval of May 11, 2006 County Board Meeting minutes, May 3, 2006 Special County Board Meeting transcripts, and April 6, 2006 Regional Pollution Control Site Hearing Committee Meeting transcripts.

\* \* \*

Williams and Pearson moved to approve the May 3, 2006 Special County Board Meeting transcripts, and April 6, 2006 Regional Pollution Control Site Hearing Committee Meeting transcripts. The motion was approved by a unanimous vote of 16 ayes.

(Ex. 1, Exhibit B therein, pg. 1).

While PDC does not concede that the transcript of the May 3, 2006 meeting constituted proper minutes (*see* Memo. pgs. 33-35), even if the transcript did constitute the County Board's "official written decision granting or denying local siting approval" under 35 Ill. Adm. Code §107.204, the transcript was not approved and adopted by the County Board until June 8, 2006, and therefore was not "official" until June 8, 2006. As admitted by Peoria County Clerk JoAnn Thomas, the transcript (like any other set of minutes subject to the approval and adoption of the County Board) was subject to change or amendment by the County Board members until its approval and adoption on June 8, 2006. (Thomas Dep., 15/20-16/7). Therefore, the transcript was not finalized and rendered "official" until June 8, 2006. (Notably, the County Board failed to file the June 8, 2006 minutes with the Record in the Pollution Control Board).

Moreover, as set forth at length in the Affidavit of Brian Meginnes filed with the Pollution Control Board, and in the Supplemental Affidavit of Brian Meginnes filed with the Board contemporaneously with this Reply (a copy of which Supplemental Affidavit is attached hereto as Exhibit 2), the transcript was not made available to the public or to PDC. On June 7, 2006, the last day on which to perfect a review of the “action”, if any, taken on May 3, 2006, attorney Brian Meginnes actually went to the County Clerk’s office and requested that the Chief Deputy County Clerk in charge of maintaining the record assist him in locating the May 3, 2006 transcript and various documents from the May 3, 2006 County Board meeting. (See Memo. Ex. 17; Ex. 2 hereto). The Chief Deputy County Clerk and Mr. Meginnes could not locate the May 3, 2006 transcript anywhere in the County Clerk’s office. Mr. Meginnes’s Affidavits are supported by the recollection of Karen Raithel, who testified in her deposition that she recalled being phoned by the Chief Deputy County Clerk regarding Mr. Meginnes’s inquiries, and that she helped the Chief Deputy County Clerk find a copy of the transcript after Mr. Meginnes left the County Clerk’s office. (Memo. Ex. 13, 51-53, especially 53/10-14). The Chief Deputy County Clerk was unable to contest Mr. Meginnes’s recollection at her deposition. (Memo. Ex. 16, 56/11-18, 58/9-24).

In its Response, the County repeatedly claims that the transcript of the May 3, 2006 meeting was available to the public at the County Clerk’s office. (See Resp. Memo. pgs. 2, 4, 5, 6, 19). In particular, the County Board claims that “[t]he transcript of the May 3, 2006, meeting was included in the County Board records in the County Clerk’s office, and those documents were available for inspection by the public.” (Resp. Memo. pg. 5). This allegation is, respectfully, blatantly untrue. The only authority offered in support of the County Board’s assertions is the Affidavit of JoAnn Thomas. In fact, in her Affidavit, Ms. Thomas does not



claim that she placed the May 3, 2006 transcript in the files maintained by the County Clerk's office, or that the transcript was in those files at any point. Ms. Thomas's generic statement that the "files relating to the May 3, 2006, County Board meeting have been kept and maintained in the County Board files in the Peoria County Clerk's Office" since May 3, 2006 (Resp. Memo. Ex. 1, ¶14), is unavailing, as the transcript in fact was not made available to PDC at its express request. Moreover, Ms. Thomas testified at her deposition that (1) she did not personally place her documents pertaining to the May 3, 2006 meeting in the County Clerk's files, and (2) she did not actually recall giving such documents to anyone else to file in the County Clerk's office. (Ex. 1, 43/6-44/18).

Compelling further evidence that the County Board is being untruthful on this most crucial issue comes from the fact that the May 3, 2006 transcript submitted by the County Board as part of the Record filed herein is not file-stamped. (C13711-28). JoAnn Thomas testified at her deposition that it was the uniform policy and practice of the County Clerk's office to file-stamp all documents placed in the file, with the sole exception being those documents received during County Board meetings:

Q [by Mr. Mueller] \* \* \*. You said that it's the practice of the county clerk's office to file stamp every document that is filed?

A Yes.

Q Is that every page of every document?

A Sometimes. Sometimes it's the first and last page of a, you know, of a many page document. It's sort of – that's kind of a judgment call depending on the document.

Q Is that also the practice for documents that are kept in the county board files?

A Yes.

Q They are also file stamped?

A Yes. Unless they are – yeah. They are file stamped unless they are presented at the meeting. Documents that are presented at the meeting are put in with the record, and it's a possibility that they may not get file stamped, but they are a part of that meeting and that's when they came in. It's reflected in the record that they were submitted at that time. So there is a time, you know, a statement about when they were submitted.

Q So the only exception to file stamping county board documents would be for documents that are submitted at the open meeting while it's in process?

A Yes.

(Ex. 1 hereto, 23/10-24/13; emphasis added). This practice is consistent with the County Clerk's duty pursuant to Section 7.5-45 of the Peoria County Code to maintain a complete record of pollution control facility siting proceedings. The absence of a file-stamp on the May 3, 2006 transcript (and on the one page of additional findings of fact recently sought to be filed in the Record by the County Board) speaks for itself.

The County's fallback argument regarding the transcript is that it was posted on the County website. As more fully discussed in PDC's Memorandum filed in support of the instant motion, the posting of an unsigned, unapproved, unauthenticated transcript on a website more than 180 days after the Application was filed does not even come close to satisfying the legislative mandate for a timely official written decision.

Alternatively, the County Board has claimed that the Recommended Findings of Fact filed on April 27, 2006, plus the amendment of those Recommended Findings of Fact as recited into the record and memorialized in writing in the transcript, together constitute a "written decision" by the County Board. (Resp. Memo. pg. 15). Plainly, however, findings of fact are of no import or effect in and of themselves—findings of fact merely support an action taken by the

County Board. The findings of fact do not themselves memorialize the motion for conditional approval, or the failure of that motion. Because the County Board took no action, as above, the findings of fact are moot. Moreover, as discussed above, the transcript containing the oral amendment of the findings of fact was approved outside the statutory decision period. Therefore, the complete findings of fact were not "official" until June 8, 2006, the day after PDC filed its Petition for Review in this case.

### **Conclusion**

It is an indisputable fact in this case that the County Board failed to take any final action whatsoever on the Application, much less creating a written decision (either specifying reasons for same or not) within the statutory decision deadline. The County, in its Response, has not contested the allegations of PDC that on June 7, 2006, the last day to perfect the appeal in this case, it was made impossible for a member of the public to learn the outcome of the May 3, 2006 meeting by examining the official record maintained by the County Clerk's office.

For all the foregoing reasons, the Motion for Summary Judgment pursuant to 415 ILCS §5/39.2(e) filed by PDC should be granted.

**WHEREFORE**, Petitioner, Peoria Disposal Company, prays that this Board issue summary judgment in favor of Petitioner, Peoria Disposal Company, and award Petitioner, Peoria Disposal Company, such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

PEORIA DISPOSAL COMPANY

By: 

One of its attorneys

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906-1608.2

# Exhibit 1

BEFORE THE ILLINOIS POLLUTION

CONTROL BOARD

PEORIA DISPOSAL COMPANY,	)
	)
Petitioner,	)
	)
-vs-	) NO. PCB 06-184
	)
PEORIA COUNTY BOARD,	)
	)
Respondent.	)

The deposition of JoANN THOMAS, a material witness herein, called for examination pursuant to notice and the Supreme Court Rules as they pertain to the taking of discovery depositions before Aana M. Giftos, CSR, RPR, and Notary Public in and for the County of Peoria, and State of Illinois, on Tuesday, December 19th, 2006, at 416 Main Street, Suite 1400, Peoria, Illinois, commencing at the hour of 9:01 a.m.

APPEARANCES:

GEORGE MUELLER, ESQUIRE  
528 Columbus Street, Suite 204  
Ottawa, Illinois 61350  
and  
JANAKI NAIR, ESQUIRE  
BRIAN J. MEGINNES, ESQUIRE  
Elias, Meginnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602  
on behalf of the Petitioner;

DAVID A. BROWN, ESQUIRE  
Black, Black & Brown  
101 South Main Street  
Morton, Illinois 61550  
on behalf of the Respondent;

ALSO PRESENT:

Royal Coulter, PDC;

Chris Coulter, PDC.

I N D E X

WITNESS

JoANN THOMAS

Examination by Mr. Mueller . . . . . pg. 3

EXHIBITS

IDENTIFIED

Thomas Exhibit No. A . . . . . pg. 53

Thomas Exhibit No. B . . . . . pg. 54

<p style="text-align: right;">Page 3</p> <p>1 JoANN THOMAS, 2 a material witness herein, being duly sworn, was 3 examined and testified as follows: 4 EXAMINATION 5 BY MR. MUELLER: 6 Q Would you state your full name, please? 7 A JoAnn Thomas. 8 Q Let the record show this is the discovery 9 deposition of JoAnn Thomas taken pursuant to 10 notice, in accordance with the rules of the 11 Pollution Control Board and by agreement of the 12 parties. 13 Is it okay if I call you JoAnn? 14 A Yes. 15 Q JoAnn, have you ever had your deposition 16 taken before in any case for any reason? 17 A Yes. 18 Q So you're generally familiar with the 19 ground rules about only one of us talking at a time 20 and the like? 21 A Yes. 22 Q You understand that you are under oath? 23 A Yes. 24 Q In preparation for today's deposition, who</p>	<p style="text-align: right;">Page 5</p> <p>1 the substance of questions or answers about her 2 deposition? 3 A No. 4 Q Have you ever reviewed the transcript of 5 either Megan or Karen's depositions? 6 A No. 7 Q Recently, JoAnn, there was filed among 8 other documents an affidavit of JoAnn Thomas -- 9 A Correct. 10 Q -- which is about three pages. 11 Who prepared that document? 12 A I believe the State's Attorney or Dave 13 Brown. 14 Q Can you describe for me the process of how 15 that document was prepared? 16 A The document was presented to me for -- to 17 review and to make sure that that was what I had 18 remembered occurring as well as I could and to make 19 sure it was accurate, and I agreed that it was and 20 I signed it. 21 Q You didn't recommend any changes or 22 modifications? 23 A I don't believe so. 24 Q Who presented the document --</p>
<p style="text-align: right;">Page 4</p> <p>1 did you meet with? 2 A I met with Dave Brown and Lyn Schmidt, but 3 it was for, like, 10 minutes before I came over 4 here. 5 Q Did you review any documents in preparation 6 for today's deposition? 7 A No. 8 Q Did you review any deposition transcripts 9 of other witnesses who we have deposed? 10 A No. 11 Q Did you meet with Megan Fulara in 12 preparation for today's deposition? 13 A No. 14 Q Did you meet with Karen Raithel in 15 preparation for today's deposition? 16 A No. 17 Q Has Megan Fulara ever talked to you about 18 her deposition other than the fact that it was 19 going to happen? 20 A No. 21 Q Never talked to you about the substance of 22 questions or answers? 23 A No. 24 Q Has Karen Raithel ever talked to you about</p>	<p style="text-align: right;">Page 6</p> <p>1 A Nothing of any substance or anything. 2 Q Who presented the document to you for 3 review? 4 A I don't remember. I really don't remember. 5 Q Let's go back to some basic stuff. 6 What's your current address? 7 A 1303 North Glenwood Avenue. 8 Q That's in Peoria? 9 A Yes, 61606. 10 Q How long have you lived there? 11 A For one year, almost a year. 12 Q What's your highest -- well, give us your 13 educational background. 14 A I have a bachelor's degree and hours 15 towards a master's in social work. 16 Q Where's your bachelor's degree from? 17 A The University of Illinois. 18 Q What is your employment history since 19 college? 20 A Well, I started out as a social worker in 21 Madison, Wisconsin. Then I started a family and 22 did not work outside the home. I had two -- I 23 worked for two years in '73 and '74 for the State 24 of Illinois as an employment counselor and then</p>

Pages 3 to 6



<p style="text-align: right;">Page 7</p> <p>1 later for two and a half years as an intermittent 2 adjudicator for the Unemployment Insurance Office. 3 Then starting in '84, I believe, I started 4 working part-time as an adult basic education 5 instructor at Illinois Central College, and then I 6 later managed a job search lab and taught 7 motivational courses with the dislocated worker 8 program. 9 This was all pretty much part-time until 10 about '89. Then I spent a year as the weekend 11 college coordinator full-time at Illinois Central 12 College. Then I -- in '90, in July of '90, Mary 13 Harkrader asked me to come and manage her office, 14 and so I became the chief deputy county clerk at 15 that time. 16 In '98 when she retired, I ran for office 17 and became the Peoria County clerk. 18 <b>Q Were you just recently reelected?</b> 19 A No. I just retired two weeks ago. 20 <b>Q Okay. You are no longer the county clerk?</b> 21 A No. I am not the county clerk. 22 <b>Q You did not even stand for reelection is</b> 23 <b>what you're saying?</b> 24 A No, no. Time to retire.</p>	<p style="text-align: right;">Page 9</p> <p>1 election commission, but the commission -- the 2 county clerk is responsible for all petitions and 3 for putting all the results together and certifying 4 to the State Board of Elections. 5 We work closely with a number of state 6 agencies. We work with the State Board of 7 Elections, the Department of Revenue, the Secretary 8 of State's Office, the Department of Health, and I 9 guess that's it. 10 <b>Q The county clerk maintains vital records,</b> 11 <b>right?</b> 12 A Right. The elections is a big part of the 13 job. The other part is tax responsibility. We do 14 all the preparation of the tax bills and work with 15 all of the local entities with their levies and all 16 their financial papers. 17 Then once the tax bills are sent out and 18 the money is collected and there's -- the treasurer 19 holds a tax sale at the end of the year, any 20 delinquent tax accounts come back into the county 21 clerk's office, and the county clerk manages that 22 whole delinquent tax program until the property is 23 either redeemed or is transferred by deed. 24 We do vital records as well, birth, death,</p>
<p style="text-align: right;">Page 8</p> <p>1 <b>Q So you served as chief county -- or as the</b> 2 <b>elected county clerk for eight years?</b> 3 A Yes. 4 <b>Q Your husband is Jim Thomas?</b> 5 A Yes. 6 <b>Q That's Jim Thomas the county board member?</b> 7 A Yes. 8 <b>Q Did he get into politics before you did or</b> 9 <b>did you get into it before he did?</b> 10 A We've been politically active since we were 11 students. 12 <b>Q What are the general duties of a county</b> 13 <b>clerk?</b> 14 A They are many and diverse, and they're all 15 covered in the statute. Everything the office does 16 is mandated by state or federal statute except for 17 passport acceptance. That's the one thing our 18 office did that was not required by statute. 19 Do you want me to list them all? 20 <b>Q Yes, please.</b> 21 A We're responsible for overseeing elections, 22 the election authority for the county and actually 23 running elections in all precincts outside the City 24 of Peoria because there is a City of Peoria</p>	<p style="text-align: right;">Page 10</p> <p>1 marriage from 1825 to present. 2 We issue marriage licenses. We -- why do I 3 say that? The county clerk issues marriage 4 licenses, liquor licenses, raffle licenses, 5 business licenses. The county clerk's office is 6 sort of -- I think of it as the filing cabinet for 7 the county except for court records which, of 8 course, are in the Circuit Clerk's Office and land 9 records which are in the Recorder of Deed's Office. 10 All other miscellaneous public records are 11 in the county clerk's office. So there's a pretty 12 significant record management task involved. 13 <b>Q Let's talk about that for a while. You</b> 14 <b>describe the county clerk's office as the filing</b> 15 <b>cabinet for the county.</b> 16 A Right. 17 <b>Q What kinds of documents are physically</b> 18 <b>delivered to your office for filing?</b> 19 A All kinds of documents, public documents, 20 reports. We have a huge file of just public 21 documents that -- anything that wants to -- any 22 public document that people bring in, we file. 23 We also file all contracts and agreements 24 that the county makes and the county board records,</p>

1 of course.  
 2 **Q How is filing physically evidenced when**  
 3 **someone brings documents to your office?**  
 4 A It's file stamped and put in an appropriate  
 5 file.  
 6 **Q So every document that is delivered to the**  
 7 **county clerk's office is file stamped as received?**  
 8 A That's correct.  
 9 **Q Are there any exceptions to that practice?**  
 10 A No.  
 11 **Q When you were the county clerk during this**  
 12 **past year, how many total employees did the office**  
 13 **have?**  
 14 A Full-time employees --  
 15 **Q Just approximately.**  
 16 A 12.  
 17 **Q Did you have a chief deputy?**  
 18 A Yes.  
 19 **Q Who was that?**  
 20 A Megan Fulara.  
 21 **Q How long had she been your chief deputy?**  
 22 A Since February of 2005.  
 23 **Q Who's the new county clerk by the way?**  
 24 A Steve Sonnemaker.

1 **Q Has Megan been kept on as chief deputy?**  
 2 A Yes.  
 3 **Q When you were county clerk during the past**  
 4 **two years, did you delegate most of your**  
 5 **responsibilities to your staff or were you a**  
 6 **hands-on person who went to the office every day**  
 7 **and did actual work other than policy making?**  
 8 A Yes. No, I was hands on.  
 9 **Q You understand what I'm talking about?**  
 10 A Yes.  
 11 **Q There's some elected officials that you**  
 12 **don't see them very often and their first deputy**  
 13 **actually does all the work.**  
 14 A Yes. That's not the case with me.  
 15 **Q You were a hands-on county clerk?**  
 16 A Yes.  
 17 **Q Who didn't let the first deputy run the**  
 18 **office, right?**  
 19 A I don't know if that's true. I have two  
 20 management staff. There's two management people,  
 21 an election administrator and a chief deputy, and I  
 22 *did delegate to them.* They were -- you know, they  
 23 had the authority to make decisions or to run the  
 24 office with my oversight.

1 **Q Now, when did you become aware -- or let me**  
 2 **back up.**  
 3 **What is the county clerk's responsibility**  
 4 **vis-a-vis the activities of the county board?**  
 5 A The county clerk clerks the county board  
 6 meetings and is responsible for creating the record  
 7 and maintaining that record permanently.  
 8 **Q Did you act as the secretary of the county**  
 9 **board?**  
 10 A Yes.  
 11 **Q That means you were present at all county**  
 12 **board meetings?**  
 13 A Yes.  
 14 **Q Was it your job to keep minutes of county**  
 15 **board meetings?**  
 16 A Yes.  
 17 **Q Do you believe that's a statutory duty or**  
 18 **is that one that just evolved in Peoria County?**  
 19 A No. That's a statutory duty.  
 20 **Q So the county clerk is the defacto**  
 21 **secretary of the county board?**  
 22 A Correct.  
 23 **Q Is it your understanding that the taking of**  
 24 **minutes of county board meetings is optional or**

1 **mandatory?**  
 2 A It's mandatory.  
 3 **Q What do you base that understanding on?**  
 4 A On the statute.  
 5 **Q If I can skip ahead for a second, in your**  
 6 **affidavit you stated that you on May 3rd elected**  
 7 **not to take minutes at the county board meeting?**  
 8 A Correct.  
 9 **Q So that would have been in violation of**  
 10 **your statutory duty to take minutes?**  
 11 A Well, let me back up. It is -- the minutes  
 12 must be taken by the county clerk. It's the county  
 13 clerk's responsibility; however, there was a court  
 14 reporter at the meeting who was taking a complete  
 15 transcript of the meeting. So I was basically  
 16 using that transcript as the minutes.  
 17 I believe I also did take -- no. I didn't  
 18 take any minutes because the transcript I felt was  
 19 getting every single word.  
 20 **Q Are you aware of any statutory authority**  
 21 **for substituting a transcript for actual minutes of**  
 22 **a meeting?**  
 23 A I don't think there's any problem with  
 24 that. The statutory authority mainly it's up to --

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1 it says up to the county clerk to take the minutes  
2 or to have someone take the minutes to decide on  
3 how the meeting will be recorded. So it's more of  
4 a decision of deciding how the meeting will be  
5 recorded.  
6 I made the decision that a word-by-word  
7 transcript by a court reporter was a perfect way to  
8 take minutes. If I could afford it, I might do it  
9 always.  
10 **Q At how many county board meetings over the**  
11 **past eight years have you failed to take minutes**  
12 **other than the May 3rd meeting?**  
13 A I don't remember. There have been some. I  
14 had my chief deputy sit in for me. I believe there  
15 have been other instances where there was a court  
16 reporter, and I can't remember the exact times or  
17 reasons, but that's kind of always been my  
18 practice. If there's a court reporter taking  
19 minutes, I do not have to take the minutes.  
20 **Q Now, minutes have to be approved, don't**  
21 **they?**  
22 A Yes.  
23 **Q In fact, when you take minutes, those are**  
24 **circulated among county board members prior to the**

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1 **next meeting and one of the first orders of**  
2 **business of the next meeting is the approval of the**  
3 **minutes?**  
4 A That's the practice now, yes.  
5 **Q Occasionally, minutes get changed or**  
6 **amended in the approval process, right?**  
7 A Correct.  
8 **Q Was the transcript that was taken of the**  
9 **May 3rd, 2006, meeting ever approved by the**  
10 **county board as the minutes of that meeting?**  
11 A The minutes were approved, yes. The  
12 minutes are my decision, and that was my decision.  
13 So the county board approved my decision.  
14 **Q When did the county board approve your**  
15 **decision?**  
16 A I believe at that time -- at some time in  
17 the past year, they changed their procedures so  
18 they now approve minutes after the fact. They used  
19 to approve minutes at the time of the meeting.  
20 They would just approve the county clerk's decision  
21 about the minutes. That's what has been done  
22 historically for a very long time.  
23 The county board decided to change that  
24 during this year. So it's just -- it's the county

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1 clerk's responsibility to decide what's in the  
2 minutes and to record the action that is taken.  
3 **Q But I guess my question is, did the county**  
4 **board ever take formal action to approve the**  
5 **transcript of the May 3rd meeting as the minutes**  
6 **of that meeting?**  
7 A I believe so.  
8 **Q When did that action take place?**  
9 A I'm just not sure. I would have to go  
10 check on that, but they were approved.  
11 **Q "They" meaning the transcript?**  
12 A The motion says the minutes are approved.  
13 I'm the one that decides the minutes. The  
14 transcript were minutes, and they approved my  
15 decision.  
16 **Q The next county board meeting after**  
17 **May 3rd was on May 11th.**  
18 **Do you remember whether on May 11th there**  
19 **were minutes of a May 3rd meeting presented and**  
20 **approved by the county board?**  
21 A I don't remember.  
22 **Q Do you remember whether on May 11th there**  
23 **was a transcript of the May 3rd meeting that was**  
24 **approved by the county board as the minutes of the**

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1 **May 3rd meeting?**  
2 A I don't remember.  
3 **Q Do you remember whether by May 11th the**  
4 **transcript of the May 3rd meeting was even in**  
5 **your possession?**  
6 A I really don't remember. I would have to  
7 go look.  
8 **Q Where would you look to refresh your**  
9 **recollection?**  
10 A In the records in the county clerk's  
11 office.  
12 **Q Now, where are the records of the county**  
13 **board maintained in the clerk's office?**  
14 A They're maintained in files in the office.  
15 We have a very large -- that kind of a file  
16 (indicating), with all documents pertaining to each  
17 county board meeting chronologically.  
18 When our files get full, they are put into  
19 the archives, but they're kept forever.  
20 **Q Is there a county board file cabinet that's**  
21 **located somewhere in the county clerk's office?**  
22 A Yes.  
23 **Q Where is it physically located in the**  
24 **county clerk's office?**

<p style="text-align: right;">Page 19</p> <p>1 A It's located in -- it's in the, in a back 2 room basically. It's connected to the regular 3 room, but there's a bank of file cabinets there. 4 <b>Q Is it in someone's office?</b> 5 A It's in the main office. 6 <b>Q It's not in Megan Fulara's office?</b> 7 A No. 8 <b>Q It's not in your office?</b> 9 A No. 10 <b>Q I'm asking these questions as if you still</b> 11 <b>were the county clerk.</b> 12 A Yes. 13 <b>Q So to be clear, we're talking about things</b> 14 <b>as they existed while you were in office?</b> 15 A Correct. 16 <b>Q Are you aware of the rules of order for the</b> 17 <b>Peoria County Board that were published for the</b> 18 <b>2005-2006 year?</b> 19 A Yes. 20 <b>Q Are those rules maintained in the county</b> 21 <b>board files of the clerk's office?</b> 22 A I don't understand what you mean. 23 <b>Q Well, is a copy of these rules on file in</b> 24 <b>your office?</b></p>	<p style="text-align: right;">Page 21</p> <p>1 May 3rd meeting? 2 <b>Q I don't know, ma'am.</b> 3 A Yes, but they were approved. 4 <b>Q But you cannot as you sit here direct me to</b> 5 <b>any -- any specific document as evidence of</b> 6 <b>approval?</b> 7 MR. BROWN: That's been asked and 8 answered. I think we need to move on. I don't see 9 how any of this has anything to do with fundamental 10 fairness which is the purpose of -- my 11 understanding the purpose of this deposition is to 12 provide a transcript for the hearing that's coming 13 up in January which is dealing exclusively with 14 fundamental fairness issues. 15 MR. MUELLER: I think that hearing can 16 deal with more than that, Mr. Brown. It can 17 probably deal with everything but manifest weight 18 of the evidence. 19 BY MR. MUELLER: 20 <b>Q JoAnn, when did you first become aware that</b> 21 <b>the county clerk was going to have some</b> 22 <b>responsibilities with regard to the PDC landfill</b> 23 <b>application?</b> 24 A I'm not sure, but I know that's -- we have</p>
<p style="text-align: right;">Page 20</p> <p>1 A Oh, yes. 2 <b>Q You've actually reviewed these rules in the</b> 3 <b>past?</b> 4 A Yes. 5 <b>Q If I were to tell you that section -- or</b> 6 <b>Article IV, Section 1 specifies the order of</b> 7 <b>business at county board meetings and that the</b> 8 <b>fifth item on that order of business is the</b> 9 <b>approval of the preceding meeting and minutes,</b> 10 <b>would that refresh your recollection as to whether</b> 11 <b>or not meeting minutes need to be approved by the</b> 12 <b>county board?</b> 13 A Yes. They're approved -- they did need to 14 be approved by the county board. 15 <b>Q Can you direct me to any document or record</b> 16 <b>indicating that minutes of the May 3rd, 2006,</b> 17 <b>county board meeting were ever approved?</b> 18 A I would -- I would look at the -- what did 19 you say? It was May 11? 20 <b>Q May 11th was the next county board</b> 21 <b>meeting.</b> 22 A Right. I would look there. Because of the 23 short timeframe, perhaps, it was the next -- that 24 was a special meeting, I believe, right, the</p>	<p style="text-align: right;">Page 22</p> <p>1 a record management responsibility for all such 2 applications, and we've had one in the past while I 3 have been there. So I was familiar with the 4 process. 5 <b>Q This was not your first landfill or</b> 6 <b>pollution control facility application?</b> 7 A No. 8 <b>Q What was your general understanding at the</b> 9 <b>beginning of the process for what your</b> 10 <b>recordkeeping or record management responsibilities</b> 11 <b>were going to be?</b> 12 A I know it was a very serious responsibility 13 to keep all records pertaining to this issue, and 14 so there was one place where all documents were 15 placed, whether they came in over the counter, 16 through the mail, and we even did it electronically 17 because now we have the capability of doing that. 18 <b>Q Where was the one place where everything</b> 19 <b>was kept relating to this application?</b> 20 A It was in a specific basket in Megan 21 Fulara's office. 22 <b>Q Well, obviously, the total record would</b> 23 <b>have been bigger than what fits in a basket?</b> 24 A Yes. Then it was put in a box in -- that's</p>

<p>Page 23</p> <p>1 where all documents came to, and then Megan Fulara 2 had the responsibility to keep those files and she 3 kept them in her office. 4 <b>Q So the landfill record, to your</b> 5 <b>understanding, was to be kept in Megan's office?</b> 6 A Yes. Just wanted to make certain it was 7 altogether. 8 <b>Q Now, when documents related -- or let me</b> 9 <b>back up a second.</b> 10 <b>You said that it's the practice of the</b> 11 <b>county clerk's office to file stamp every document</b> 12 <b>that is filed?</b> 13 A Yes. 14 <b>Q Is that every page of every document?</b> 15 A Sometimes. Sometimes it's the first and 16 last page of a, you know, of a many page document. 17 It's sort of -- that's kind of a judgment call 18 depending upon the document. 19 <b>Q Is that also the practice for documents</b> 20 <b>that are kept in the county board files?</b> 21 A Yes. 22 <b>Q They are also file stamped?</b> 23 A Yes. Unless they are -- yeah. They are 24 file stamped unless they are presented at the</p>	<p>Page 25</p> <p>1 A Yes. 2 <b>Q She was familiar with those procedures?</b> 3 A Yes. And our reference is always the 4 State's Attorney's Office. So it was -- everything 5 we did was with the advice of the State's 6 Attorney's Office. 7 <b>Q Did anyone else besides Megan have direct</b> 8 <b>responsibility for receiving and maintaining</b> 9 <b>documents that were part of the landfill</b> 10 <b>application record?</b> 11 A Well, anyone could receive a document over 12 the counter. Then as I said, it was placed in the 13 landfill, the landfill record. 14 <b>Q My question was, were people out front by</b> 15 <b>the counter instructed that anything that came in</b> 16 <b>went to Megan?</b> 17 A Yes. 18 <b>Q Did the State's Attorney, you said your</b> 19 <b>ultimate resource on this, ever instruct you to</b> 20 <b>deviate from your normal procedures regarding how</b> 21 <b>you evidenced the receipt of documents?</b> 22 A I don't remember that, no. 23 <b>Q No meaning they didn't instruct you or no</b> 24 <b>meaning you don't remember what they told you?</b></p>
<p>Page 24</p> <p>1 meeting. Documents that are presented at the 2 meeting are put in with the record, and it's a 3 possibility that they may not get file stamped, but 4 they are part of that meeting and that's when they 5 came in. It's reflected in the record that they 6 were submitted at that time. So there is a time, 7 you know, a statement about when they were 8 submitted. 9 <b>Q So the only exception to file stamping</b> 10 <b>county board documents would be for documents that</b> 11 <b>are submitted at the open meeting while it's in</b> 12 <b>process?</b> 13 A Yes. 14 <b>Q Going back then to the record related to</b> 15 <b>the landfill application, was the maintenance of</b> 16 <b>that record a responsibility that you delegated to</b> 17 <b>Megan Fulara?</b> 18 A Yes, it was. 19 <b>Q Did you continue to maintain any personal</b> 20 <b>supervision over how she maintained that record?</b> 21 A No. 22 <b>Q Had she been instructed by you previously</b> 23 <b>in the procedures of the clerk's office with regard</b> 24 <b>to file stamping documents that were received?</b></p>	<p>Page 26</p> <p>1 A No. I would say no. 2 <b>Q What is your understanding of what the</b> 3 <b>landfill application record was to consist of?</b> 4 A We had a list of -- that was presented, 5 given to us by the State's Attorney. I was not 6 very involved in that. As I said, I delegated that 7 to Megan Fulara. 8 <b>Q Was it your understanding that transcripts</b> 9 <b>of hearings would be part of that record?</b> 10 A I have no idea what was part of that 11 record. 12 <b>Q Do you have any idea what was supposed to</b> 13 <b>be part of that record?</b> 14 A I just thought anything that was presented 15 in our office that related to the landfill was part 16 of the record. 17 <b>Q Would it be fair to say that beyond that</b> 18 <b>you don't have knowledge of specific kinds of</b> 19 <b>documents as to whether they would be part of the</b> 20 <b>record or not?</b> 21 A That's correct. Anything relating to the 22 landfill, anything I received through the mail or 23 in the office that related to the landfill I 24 automatically put in that file. Everyone had</p>

<p>Page 27</p> <p>1 specific instructions to do that.</p> <p>2 <b>Q When individuals from the public would ask</b></p> <p>3 <b>to see the record of the landfill application and</b></p> <p>4 <b>proceedings, what would they be shown?</b></p> <p>5 A Megan Fulara handled that. I was never</p> <p>6 involved with that.</p> <p>7 <b>Q No one ever asked you to see any portion of</b></p> <p>8 <b>the landfill record?</b></p> <p>9 A If they did, I referred them to Megan. I</p> <p>10 was very busy at that time with other duties, with</p> <p>11 elections and tax extension. I was not involved in</p> <p>12 this. I know it was a very important issue to keep</p> <p>13 this record and -- but I felt Megan was able to</p> <p>14 handle it.</p> <p>15 <b>Q Who determined what documents went into the</b></p> <p>16 <b>landfill application proceedings record and what</b></p> <p>17 <b>documents didn't?</b></p> <p>18 A The State's Attorney's Office. When in</p> <p>19 doubt, everything went into the landfill record.</p> <p>20 <b>Q It's your understanding that the same file</b></p> <p>21 <b>stamping procedure was used for the landfill record</b></p> <p>22 <b>as for general documents received in the county</b></p> <p>23 <b>clerk's office?</b></p> <p>24 A Yes.</p>	<p>Page 29</p> <p>1 electronic file went into the website. He didn't</p> <p>2 make any decisions about that.</p> <p>3 <b>Q Did you ever participate in the preparation</b></p> <p>4 <b>of any proposed findings of fact by the staff?</b></p> <p>5 A No.</p> <p>6 <b>Q Did you ever interact with any county board</b></p> <p>7 <b>members regarding the development of proposed</b></p> <p>8 <b>findings of fact?</b></p> <p>9 A No.</p> <p>10 <b>Q Would that be true, also, of your husband</b></p> <p>11 <b>Mr. Thomas?</b></p> <p>12 A Yes.</p> <p>13 <b>Q Would that be true for Allen Mayer as well?</b></p> <p>14 A Yes.</p> <p>15 <b>Q Were you present at the April 6th meeting</b></p> <p>16 <b>of the county -- of the committee of the whole --</b></p> <p>17 <b>A Yes.</b></p> <p>18 <b>Q -- of the county board?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Did you take minutes at that meeting?</b></p> <p>21 A No. There was a court reporter at that</p> <p>22 meeting.</p> <p>23 <b>Q Do you know whether the minutes or the</b></p> <p>24 <b>transcript of that meeting was ever approved by the</b></p>
<p>Page 28</p> <p>1 <b>Q Did you have any responsibilities or duties</b></p> <p>2 <b>relating to the county's website?</b></p> <p>3 A No.</p> <p>4 <b>Q Who maintained the county's website?</b></p> <p>5 A Russell Hauppert, the director of the IT</p> <p>6 department, information technology.</p> <p>7 <b>Q Did you have any ability to upload</b></p> <p>8 <b>documents directly to that website?</b></p> <p>9 A No. Anything that I received through</p> <p>10 E-mail or electronically I put into a specific PDC</p> <p>11 application file which was sent to Russell, and he</p> <p>12 uploaded everything to the website.</p> <p>13 <b>Q Did you exercise any editorial control over</b></p> <p>14 <b>what went onto the website and what didn't?</b></p> <p>15 A No.</p> <p>16 <b>Q Your understanding is that 100 percent of</b></p> <p>17 <b>what you got electronically was forwarded to</b></p> <p>18 <b>Russell?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Did you ever meet with Russell to discuss</b></p> <p>21 <b>policy about what went on the website and what</b></p> <p>22 <b>didn't?</b></p> <p>23 A We did meet just to set up the procedure,</p> <p>24 and he understood that anything put in that</p>	<p>Page 30</p> <p>1 county board?</p> <p>2 A I'm guessing it was. I'm assuming it was</p> <p>3 because that was their procedure.</p> <p>4 <b>Q You can't direct me to a specific document,</b></p> <p>5 <b>though, where that would happen, can you?</b></p> <p>6 A I would look at the next county board</p> <p>7 meeting after that meeting.</p> <p>8 <b>Q Did you have any role in developing written</b></p> <p>9 <b>proposed findings after the April 6th meeting?</b></p> <p>10 A No.</p> <p>11 <b>Q Karen Raithel has previously testified that</b></p> <p>12 <b>she put together some written proposed findings</b></p> <p>13 <b>sometime after the April 6th meeting and before</b></p> <p>14 <b>May 3rd.</b></p> <p>15 <b>Did you assist her in any of that?</b></p> <p>16 A No.</p> <p>17 <b>Q Did she ever deliver any of those proposed</b></p> <p>18 <b>findings to you personally?</b></p> <p>19 A No.</p> <p>20 <b>Q Did Allen Mayer ever give you any proposed</b></p> <p>21 <b>findings with regard to the criterion on or about</b></p> <p>22 <b>April 6th?</b></p> <p>23 A No.</p> <p>24 <b>Q Did you ever see any proposed findings</b></p>

<p style="text-align: right;">Page 31</p> <p>1 prepared by Mr. Mayer?</p> <p>2 A Yes. They were presented at the meeting.</p> <p>3 Q Who were they presented to?</p> <p>4 A They were presented by the county</p> <p>5 administration, and I know that Allen Mayer was the</p> <p>6 author of some of them. That was discussed in the</p> <p>7 meeting.</p> <p>8 Q Do you remember the pink, purple and yellow</p> <p>9 sheets?</p> <p>10 A Yes.</p> <p>11 Q Did you prepare any of them?</p> <p>12 A No.</p> <p>13 Q Do you know whether they were ever filed</p> <p>14 with the landfill application?</p> <p>15 A I don't know. I assume so.</p> <p>16 Q But you don't know as a fact that they were</p> <p>17 made part of the record or not?</p> <p>18 A No, I do not. I know that they were part</p> <p>19 of that particular board meeting which I consider</p> <p>20 part of the record. So they were certainly kept in</p> <p>21 the record of the board meeting or the hearing,</p> <p>22 whatever you call it.</p> <p>23 Q That raises a question then. You indicated</p> <p>24 that the county board records are kept in a file</p>	<p style="text-align: right;">Page 33</p> <p>1 Q Now, you indicated that if documents were</p> <p>2 received at a county board meeting they would be</p> <p>3 included with the records of that county board</p> <p>4 meeting in the county board file?</p> <p>5 A Absolutely.</p> <p>6 Q You also indicated that everything that</p> <p>7 came in relating to the landfill was kept in the</p> <p>8 landfill file?</p> <p>9 A Yes.</p> <p>10 Q So where would the pink and yellow and</p> <p>11 purple sheets that were received by the county</p> <p>12 board at the April 6th meeting relating to the</p> <p>13 landfill be kept? The county board file or the</p> <p>14 landfill file?</p> <p>15 A Well, I know they would be in the county</p> <p>16 board file. If they were in the landfill file, I'm</p> <p>17 not aware whether they were or not, but the copy</p> <p>18 was in the county board file.</p> <p>19 Q I believe you said you thought everything</p> <p>20 that related to the landfill should be kept in the</p> <p>21 landfill file?</p> <p>22 A Except for -- the county board records is</p> <p>23 kind of -- we have to keep everything that's</p> <p>24 relating to a county board record. It is all kept</p>
<p style="text-align: right;">Page 32</p> <p>1 cabinet somewhere in the back, in the back room of</p> <p>2 the clerk's office?</p> <p>3 A Yes.</p> <p>4 Q You indicated that the landfill application</p> <p>5 record was kept in Megan Fulara's office?</p> <p>6 A While it was being compiled and then</p> <p>7 later -- and when it got so very large was moved</p> <p>8 back to the same location as the county board</p> <p>9 records.</p> <p>10 Q When did that happen?</p> <p>11 A I can't remember exactly, but we had set up</p> <p>12 a table right by the county board records. It's a</p> <p>13 table we use because people -- all the records in</p> <p>14 our office except for vital records are public</p> <p>15 records. So we often have people coming in to view</p> <p>16 records.</p> <p>17 So we had a special place where all the</p> <p>18 landfill information was so that the public or</p> <p>19 attorneys could come in and look at the record. It</p> <p>20 was in the same room as the county board. It was</p> <p>21 right by the county board records.</p> <p>22 Q But the county board records were in a</p> <p>23 separate file cabinet?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 34</p> <p>1 together, but they are also in our office and they</p> <p>2 are also public files.</p> <p>3 So we really can't go digging around and</p> <p>4 take certain things out of the county board record.</p> <p>5 You could make copies I suppose if you wanted to,</p> <p>6 but I did not direct Megan to do that. I did not</p> <p>7 feel that was necessary because the record was in</p> <p>8 our office.</p> <p>9 Q If I'm a member of the public and I would</p> <p>10 have come into the office on, say, April 10th and</p> <p>11 asked to see those colored sheets that I heard a</p> <p>12 county board member talking about on April 6th at</p> <p>13 their meeting, I presume I would have been shown</p> <p>14 the landfill file?</p> <p>15 A No. Probably also the county board record.</p> <p>16 Our county board records are very -- are often</p> <p>17 viewed by the public. We keep them in our office</p> <p>18 for, like, 20 years before they go into archives</p> <p>19 because they're something people enjoy looking at</p> <p>20 for whatever reason.</p> <p>21 Q Was there ever a sign posted saying that</p> <p>22 not all landfill related materials would be in the</p> <p>23 landfill file and some of those might be found in</p> <p>24 the county board file?</p>

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1 A A sign posted, not that I'm aware of.  
2 **Q Then how would members of the public**  
3 **looking for landfill related materials know that**  
4 **they should also be asking to look at county board**  
5 **meeting files?**  
6 A Because they did not just -- we didn't turn  
7 them loose. There was always someone there kind of  
8 supervising what they were doing, what they were  
9 looking at and asking them questions and helping  
10 them find things they might be looking for.  
11 **Q Was that someone more often than not Megan**  
12 **Fulara?**  
13 A Yes, if she was available.  
14 **Q You're confident that she knew where**  
15 **everything was?**  
16 A Yes.  
17 **Q Probably more than anyone else?**  
18 A Probably.  
19 **Q Did you have any role in the preparation of**  
20 **the record filed with the Pollution Control Board**  
21 **by the county?**  
22 A No.  
23 **Q Did you participate physically in that**  
24 **process at all?**

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1 A No. They used the floor of my office to do  
2 it and a table in my office because it's large.  
3 **Q Who were the individuals that actually did**  
4 **the physical compilation of the record?**  
5 A It was Megan Fulara, Lyn Schmidt the  
6 Assistant State's Attorney.  
7 **Q Anyone else?**  
8 A I believe Karen Raithel was sort of  
9 involved with that. I just remember seeing her  
10 coming down to the office. I know that I was not  
11 and -- I was very busy involved in something else  
12 at that time. I can't remember when it was that  
13 they were doing it, but I was not involved in that  
14 at all.  
15 **Q You didn't make any decisions then as to**  
16 **what was included and what wasn't, correct?**  
17 A No, I did not.  
18 **Q I want to talk to you a little bit about**  
19 **your affidavit.**  
20 **Mr. Brown, do you have an extra copy of her**  
21 **affidavit?**  
22 **MR. BROWN:** I didn't bring any with  
23 me.  
24 **MR. MUELLER:** We can give her one. It

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1 will make it easier.  
2 BY MR. MUELLER:  
3 **Q You've got the affidavit in front of you,**  
4 **is that correct?**  
5 A Yes.  
6 **Q First of all, is that a true and correct**  
7 **copy of the affidavit which was attached to the**  
8 **county's response to a motion for summary judgment**  
9 **filed by PDC?**  
10 A Yes.  
11 **Q If I can direct you first to paragraph 6 of**  
12 **the affidavit, you indicate that no other findings**  
13 **of fact or other documents purporting to be**  
14 **findings of fact were before any members of the**  
15 **county board on May 3rd?**  
16 A Yes.  
17 **Q How do you know that?**  
18 A Because everything that happened at that  
19 meeting was in my file.  
20 **Q But when you say in your file --**  
21 A Or in the file, the meeting file.  
22 **Q But you don't physically know what county**  
23 **board members may have had in front of them?**  
24 A I get a copy of everything they get.

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1 **Q You're assuming that they give you**  
2 **everything that they have, right?**  
3 A Yes. I pretty much make sure I get a copy  
4 of what they get.  
5 **Q Did you look at the desktop of every county**  
6 **board member to verify that he or she had nothing**  
7 **else in front of them --**  
8 A No. But the chairman's sitting right next  
9 to me. So if the chairman had it, I had it. The  
10 administrator is here (indicating). If he had it,  
11 I had it.  
12 If it was given to every county board  
13 member, I know I had one. If one or two persons  
14 had something special, it's possible, of course.  
15 **Q You don't remember whether the transcript**  
16 **identified what was in front of the county board**  
17 **members, do you?**  
18 A No. I assume it did. I assume -- if it  
19 was mentioned aloud, it would be in the transcript  
20 because every spoken word was there. Every spoken  
21 word is in the transcript, every piece of paper was  
22 in the record. So --  
23 **Q If I can direct you to paragraph 8 of your**  
24 **affidavit, whose idea was it to set up the computer**



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1 at the meeting?  
2 A With Karen Raithel? I believe that would  
3 be the county administrator Patrick Ulrich.  
4 Q As to paragraph 9, did you take any  
5 handwritten notes of the one change in the  
6 recommended findings of fact?  
7 A I believe I did.  
8 Q Do you have a copy of those notes?  
9 A No. They would be in the record.  
10 Q What record would that be?  
11 A At the May 3rd record, wherever those --  
12 I mean, anything that I did would be in that  
13 record. I never deviated from that.  
14 Q I guess I'm confused when you say that  
15 record --  
16 A In the May 3rd board meeting record.  
17 Q Now, you indicate in your affidavit that  
18 Karen Raithel on paragraph 11 or paragraph 12 that  
19 she typed up a change in the proposed findings of  
20 fact?  
21 A Okay.  
22 Q And that in paragraph 13 you indicate that  
23 you reviewed it?  
24 A Right.

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1 Q What was the purpose of your review?  
2 A Well, I -- I think I remember making notes,  
3 but I was -- I was leaving the official wording up  
4 to her. So I reviewed it to make sure that that's  
5 what -- was the same way that I remembered it or  
6 that I perceived it.  
7 Q It says in paragraph 13 that you reviewed  
8 the single printed page and confirmed that it was  
9 consistent with the motion made by Board Member  
10 Mayer?  
11 A Yes.  
12 Q How did you confirm that? What steps did  
13 you take?  
14 A Well, I was there. I heard it. I read it.  
15 I confirmed that that's what I heard, too. I mean,  
16 maybe I'm not understanding your question.  
17 Q I mean, did you have any handwritten notes  
18 of your own or did you just confirm it based upon  
19 your recollection of what you had heard?  
20 A I believe I did. I mean, I can't swear to  
21 it, but I do believe I did have some handwritten  
22 notes. I was keeping track of what was going on.  
23 Q Now, then you say that you included that  
24 single page with the county board file for the

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1 May 3rd meeting?  
2 A Yes.  
3 Q Walk me through that, if you would, JoAnn,  
4 in terms of what physically happened to that single  
5 page after it was given to you.  
6 A It would be -- it was given to me. It was  
7 part of all the other documents I had for that  
8 meeting, and it was all kept together. It wasn't  
9 in a separate place. It was with all of the board  
10 meeting records.  
11 Q Did you give that single page to anyone  
12 else?  
13 A I don't know why I would have done that.  
14 If there were two copies of it, maybe and someone  
15 wanted a copy of it, but I -- I guess I don't  
16 understand your question.  
17 Q Okay. You're telling me now that there  
18 were two copies --  
19 A No. I'm saying if there were two copies.  
20 I don't know that there were. I know that I had it  
21 and I put it with the record. I don't know that  
22 there were any other copies of it, but there may  
23 have been. I don't remember.  
24 Q You physically put it with some other

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1 papers --  
2 A With everything -- with the  
3 May 3rd record, with all of the -- she handed it  
4 to me. I'm up there with the county board. I've  
5 got all the -- because I take everything with me to  
6 the meeting and I had it altogether, and I took it  
7 all back to the office as a county board record.  
8 Q When did you take it back to the office?  
9 A I believe I went back that very evening.  
10 It was at the ITOO Hall, and I believe I went back  
11 to the office and put it in the -- in my office,  
12 locked it in that night.  
13 Q When you say you locked it in your office,  
14 do you mean your personal office within the clerk's  
15 office?  
16 A Yes. Because that's what I always do with  
17 the county board record until I can give it to  
18 someone to put together after the minutes are  
19 finished.  
20 Q Okay. Now, in this case, there weren't any  
21 minutes to finish?  
22 A No. We were waiting for the court  
23 reporter's transcript, right.  
24 Q When did the single page document referred

Pages 39 to 42

<p style="text-align: right;">Page 43</p> <p>1 to in your affidavit physically get out of your 2 office, meaning your personal office? 3 A I'm not sure. Within a couple of days. 4 Q Who did you give it to? 5 A Megan Fulara. 6 Q You remember as we sit here actually giving 7 it to Megan Fulara or are you just assuming that's 8 the practice? 9 A That's what I would do. That's the 10 policy -- the process with the county board record 11 is I would give it to her. She would complete the 12 minutes. I would review the minutes, and then it 13 goes to another employee who organizes a file and 14 puts it in the permanent, you know, just to prepare 15 it for the permanent file. 16 Q I understand that's the process. 17 A Okay. 18 Q But, apparently, and I don't mean to 19 misquote you, you don't have a specific 20 recollection that that process was followed with 21 respect to the May 3rd documents, do you? 22 A I don't have any recollection that it was 23 not followed. 24 Q Do you have any recollection either way?</p>	<p style="text-align: right;">Page 45</p> <p>1 with the handwritten notes -- and Megan Fulara has 2 been doing this now for about eight months, I used 3 to do it myself -- and creating the minutes. 4 In this case, we did not need to do that 5 because we had a transcript of the meeting. So we 6 waited -- we would wait for the transcript; and, 7 you know, we didn't have to do the job we usually 8 have to do with minutes because of the transcript. 9 Q Do you know whether anyone ever approved 10 the single page of findings typed up by Karen 11 Raithel on May 3rd? 12 A Yes. I believe the county board voted to 13 approve those. 14 Q The county board voted to approve Karen 15 Raithel's single page of findings? 16 A Yes. Because they were amending the -- the 17 findings of fact were approved at that meeting. 18 Q Maybe I'm not being clear. 19 A Okay. 20 Q My understanding is that there was a motion 21 made at the meeting by Mr. Mayer, and then Karen 22 Raithel typed up a single page of findings based 23 upon that motion which she believed corresponded to 24 the motion?</p>
<p style="text-align: right;">Page 44</p> <p>1 A I assume it was followed because we do 2 that -- we always follow that process. It never, 3 never varies. These are very important records 4 that you have to keep forever. So I take my 5 management responsibilities pretty seriously or 6 record management responsibilities. 7 Q But it's fair to say you do not have a 8 specific recollection of giving the May 3rd 9 documents to Megan Fulara? 10 A I'd say they're in my office until I hand 11 them off to a trusted person. 12 Q You don't remember specifically handing 13 these off, is that true? 14 A Well, they are no longer in my office. So 15 I must have handed them off. 16 Q But you don't remember actually handing 17 them off? 18 A No. I don't remember that. 19 Q Thank you. Now, based upon your procedure, 20 though, how would the handoff process be different 21 if there weren't minutes being prepared and there 22 was just a transcript? 23 A Because when the minutes are prepared, what 24 you do is listen to the tape of the meeting along</p>	<p style="text-align: right;">Page 46</p> <p>1 A That was an amendment. 2 Q Right. And that she gave it to you, and 3 you agreed with her that she accurately put it 4 together? 5 A Yes. 6 Q My question is, did anyone on -- did the 7 county board or any county board member ever 8 approve that page after it was prepared? 9 A Well, they voted to accept the amendment 10 presented by Allen, and Allen approved that page as 11 what he had said. 12 Q Okay. Now, you've just added another 13 twist. You're saying that Allen Mayer also 14 approved what he typed? 15 A He had just said this, and then she wrote 16 it. It was the same thing. What he said she 17 wrote. So, I mean -- 18 Q Do you remember whether -- 19 A Maybe it was my perception of what the 20 amendment was, but the county board voted to accept 21 his amendment and the page just put in writing what 22 he had said. 23 Q But do you remember whether any county 24 board member ever approved the page as being an</p>

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1 accurate representation of what had been said and  
2 voted on?  
3 A No, I don't remember.  
4 Q Do you know whether Karen Raithel had Allen  
5 Mayer review that single page?  
6 A No, I do not.  
7 Q Do you know whether that single page was  
8 ever given to Peoria Disposal Company?  
9 A I don't know. It is part of the record.  
10 So the company could have a copy if they wanted.  
11 MR. MUELLER: We're going to take a  
12 short break.  
13 (Recess from 10:10 to 10:20)  
14 MR. MUELLER: Back on the record.  
15 BY MR. MUELLER:  
16 Q JoAnn, do you have any recollection about  
17 Brian Meginnes coming to the county clerk's office  
18 on June 7th, 2006, to look for various documents  
19 relating to the landfill application?  
20 A I remember Brian Meginnes coming to our  
21 office. I do not remember the date.  
22 Q Did you ever show him any landfill related  
23 documents when he came to the office?  
24 A I don't remember.

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1 Q Did you ever have any conversation with  
2 Megan Fulara about Brian Meginnes coming in to look  
3 for documents and records?  
4 A I don't believe so.  
5 Q Did you ever have any conversation with  
6 Karen Raithel about Brian Meginnes coming to the  
7 office to look for records or documents?  
8 A No.  
9 Q Are you familiar with the Peoria County  
10 code?  
11 A Yes.  
12 Q Did you review the portions of the county  
13 code pollution control facility siting ordinance  
14 relating to the clerk's responsibilities regarding  
15 the record?  
16 A No.  
17 Q Well, you said you were aware that the  
18 county clerk shall be responsible for keeping the  
19 record of a pollution control facility siting  
20 proceeding?  
21 A The State's Attorney advises us on our  
22 responsibilities. So I didn't look at the code  
23 myself is what I'm saying.  
24 Q Are you aware that Section 7.5-45 of the

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1 Peoria County code specifies that the record of a  
2 pollution control facility siting proceeding would  
3 include a complete transcript of the public  
4 hearings?  
5 A No.  
6 Q Are you aware that that same section  
7 specifies that the record would include a copy of  
8 the resolution containing the final decision of the  
9 county board?  
10 A No. I'm not familiar with any of that.  
11 Q In this case, was there such a resolution  
12 containing the final decision of the Peoria County  
13 board?  
14 A Yes, there was.  
15 Q Can you direct us to that resolution?  
16 A I would look in the county board record  
17 when it was -- when that resolution was passed.  
18 Q Do you remember the resolution that was  
19 passed which contained the final decision of the  
20 county board?  
21 A I remember that there was one.  
22 Q A resolution passed?  
23 A Yes.  
24 Q What did that resolution say?

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1 A I don't remember.  
2 Q Did you ever see a copy of that resolution?  
3 A Yes.  
4 Q Where did you see it?  
5 A At the county board meeting when it was  
6 approved.  
7 Q Do you remember what the resolution said?  
8 A No.  
9 Q Did that resolution then go back to your  
10 office with you?  
11 A I'm certain it did.  
12 Q You would have looked it in your personal  
13 office?  
14 A You know, I'm not remembering this  
15 specifically, but this is the procedure. So I'm  
16 saying yes.  
17 Q If you don't remember it specifically,  
18 don't guess based on procedure.  
19 A I don't remember.  
20 Q We're talking about a resolution passed at  
21 the May 3rd meeting?  
22 A I don't remember.  
23 Q So you don't remember whether a resolution  
24 containing the final decision of the county board

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1 was passed at the May 3rd meeting or not, is that  
2 fair?

3 A Well, I believe it was. I mean, I do  
4 remember that it was -- something was passed, that  
5 the resolution was passed or the findings of fact  
6 were passed.

7 Q Well, all right. That's not a resolution.

8 A Different than the resolution. I guess I  
9 don't remember exactly when that resolution was  
10 passed.

11 Q Do you even remember if a resolution was  
12 passed?

13 A I guess I don't remember.

14 Q Okay. Fair enough.

15 A I would have to look at the record.

16 Q When the PDC application was delivered to  
17 the clerk's office, were you present? Now we're  
18 going back to November 9th of 2005.

19 A I can't remember if I was there when it  
20 was -- when it was filed or not.

21 Q Did you issue a receipt for the filing fee?

22 A I'm sure our office -- my office issued a  
23 receipt.

24 Q Did you personally issue it?

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1 A I don't remember.

2 Q Did you personally instruct anyone to issue  
3 the receipt?

4 A Yes. The receipt had to be issued by  
5 someone. So it would have been Megan Fulara or me.

6 Q You don't remember, though, whether it was  
7 you or her?

8 A No.

9 Q Were you involved in any way in reviewing  
10 the application after it was received to determine  
11 whether it was complete?

12 A No. The State's Attorney did that.

13 Q In fact, when the application was  
14 physically delivered and received by your office,  
15 it was file stamped, correct?

16 A Yes.

17 Q You're telling me that the State's Attorney  
18 did the completeness review on the application?

19 A Yes. They helped Megan Fulara.

20 Q Did anyone else participate in completing  
21 this review?

22 A I don't remember. I don't believe. Maybe  
23 Karen Raithel.

24 Q Are you just speculating or do you have a

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1 specific recollection that she did it?

2 A I don't have a specific recollection. I  
3 know that I delegated the job to Megan Fulara,  
4 period.

5 Q I'm going to show you what's been marked as  
6 Exhibit A, and we have an extra copy for you,  
7 Mr. Brown, and one for the court reporter, which  
8 purports to be the minutes of the county board  
9 meeting of May 11th, 2006.

10 Does that look to you like an accurate copy  
11 of the minutes of the May 11th, 2006, board  
12 meeting?

13 A Yes.

14 Q Now, there is nothing in those minutes  
15 relating to approval of the transcript of the  
16 May 3rd meeting?

17 A Yes, correct.

18 Q I think you had indicated that an eight-day  
19 difference between the dates of the meetings might  
20 be too short of a period of time to get the  
21 transcript done and to the board?

22 A Right, correct.

23 Q So it's your belief that the reason the  
24 May 3rd transcript isn't approved in the

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1 May 11th meeting because it wasn't available yet?

2 A Yes. It was not on the agenda. The  
3 administration sets the agenda.

4 Q Is it fair to say that approval of the last  
5 minutes or the last meeting's minutes or transcript  
6 is on the agenda if the transcript or minutes are  
7 available?

8 A I don't do that. So I don't know.

9 Q Let me show you then what's been marked as  
10 Exhibit B. Again, I will hand Mr. Brown a copy and  
11 hand the court reporter a copy.

12 Does this appear to you to be a true and  
13 accurate copy of the board -- county board meeting  
14 minutes of June 8th, 2006?

15 A Yes.

16 Q If you go down about halfway down the first  
17 page, you'll see that there's approval of  
18 May 11th county board meeting minutes; May 3rd,  
19 2006, special county board meeting transcripts; and  
20 May 6th, 2006, regional pollution control site  
21 hearing committee meeting transcripts?

22 A Yes.

23 Q Does this refresh your recollection as to  
24 when the transcripts of the May 3rd meeting were

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1 approved?

2 A Yes. They were approved June 8th, 2006.

3 Q That, in fact, confirms your recollection  
4 that they would have been approved at some point?

5 A Right.

6 Q Were any other records from the  
7 May 3rd meeting approved at either the  
8 May 11th meeting or the June 8th meeting?

9 A If it's not in the record, it wasn't done.  
10 Because everything that was done is in the record.

11 MR. MUELLER: JoAnn, thank you. We  
12 have no further questions.

13

14 (Further deponent saith not;  
15 signature waived by agreement of counsel.)

16

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STATE OF ILLINOIS :  
 : SS  
COUNTY OF PEORIA :

I, Aana M. Giftos, CSR, RPR, and Notary Public in and for the County of Peoria, State of Illinois, do hereby certify that heretofore, to-wit, on Tuesday, December 19th, 2006 personally appeared before me at 416 Main Street, Suite 1400, Peoria, Illinois:


JoANN THOMAS, a material witness herein.

I further certify that the said witness was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by said witness was reported stenographically by me in the presence of said witness and afterwards reduced to typewriting and the foregoing is a true and correct transcript of the testimony so given by said witness as aforesaid.

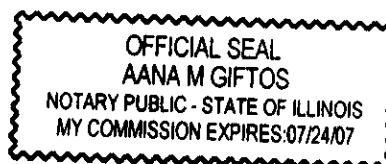
I further certify that the signature of the witness was waived.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof, I hereunto set my hand and affixed my notarial seal on this day, December 19th, 2006.

  
Notary public

Aana M. Giftos, Certified Shorthand Reporter  
(State of Illinois License #084-003571)  
My commission expires 07/24/07





A Regular Meeting of the County Board, County of Peoria, Illinois was held on Thursday,  
May 11, 2006, at six o'clock p.m. the Courthouse, Room 403.

The meeting was called to order by David T. Williams, Sr., Chairman.

**CALL TO ORDER**

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL BY THE COUNTY CLERK**

Megan Fulara, Chief Deputy County Clerk, called attendance and the following members of the Board were present: Baietto, Elsasser, Hidden, Joyce, Kennedy, Mayer, O'Neill, Pearson, Phelan, Polhemus, Prather, Riggerbach, Salzer, Thomas, Trumpe, Watkins, Widmer, and Williams, 18 present.

**APPROVAL OF April 13, 2006, COUNTY BOARD MINUTES**

Prather and Kennedy moved for the approval of the April 13, 2006 County Board Minutes. The motion was approved by a unanimous roll call vote of 18 ayes.

**PRESENTATIONS & PROCLAMATIONS:**

- A proclamation from your Chairman recognizing Illinois Central College Women's Basketball Team for winning the 2006 National Junior College Athletic Association (NJCAA) Tournament.

Thomas presented the proclamation noting that head coach Steve Garber was also named Coach of the Year.

- A proclamation from your Chairman recognizing Chillicothe Illinois Valley Central High School Boy's Basketball Team for winning Second Place in the 2006 Illinois High School Association (IHSA) Class A Boy's Basketball Championship.

Prather presented the proclamation. Baietto thanked Coach Thornton.

- A proclamation from your Chairman recognizing Richwoods High School Boy's Basketball Team for winning Second Place in the 2006 Illinois High School Association (IHSA) Class AA Boy's Basketball Championship.

Baietto presented the proclamation. Coach Ellis introduced his players and thanked the Board.

A  
12-19-06

- A proclamation from your Chairman recognizing the Bradley University Men's Basketball Team for a successful 2006 season.

O'Neill presented the proclamation. The assistant Coach accepted it and thanked the Board.

- A proclamation from your Chairman recognizing June 1, 2006, as the *kick off date* for the NACo Prescription Drug Card.

Phelan presented the proclamation and thanked Shauna Musselman, Risk Manager. Musselman accepted the award and thanked the Board for the opportunity to work in this capacity.

- A proclamation from your Chairman congratulating the participants of the Peoria County Civic Leadership program for completing the course.

Phelan presented the proclamation and thanked Communications Director, Jennifer Zinkel for her leadership with the group. Zinkel thanked the Board as well as the participants in the program.

- A proclamation from your Chairman proclaiming the month of May, 2006 as "Older Americans Month".

Hidden presented the award to Kate Van Beek, Human Resource Director who accepted on behalf of the residents and staff at Bel-Wood Nursing home.

- A presentation of the Illinois Sheriff's Association Scholarship Award.

Sheriff McCoy presented the award to Thomas Couri of Peoria Notre Dame High School. Couri thanked the Board, the Sheriff, and his parents for the scholarship.

## CONSENT AGENDA

- C1. A communication from the Illinois Department of Transportation dated April 5, 2006, regarding Motor Fuel Tax allotment and transactions for the County for the month of March 2006.
- C2. A revenue and expenditure report was received from the County Auditor and County Treasurer for the month ending April 30, 2006, and filed.
- C3. Appointments

Kennedy and Prather moved for the approval of the Consent Agenda. Hidden asked that item C3, Limestone Fire Protection District be pulled from the agenda. Joyce asked that the Dunlap Community Fire Protection District be voted on separately. The Consent Agenda was approved by a unanimous roll call vote of 18 ayes.



The Dunlap Community Fire Protection District Appointment was approved by a roll call vote of 17 ayes and 1 abstention, with Joyce abstaining. Joyce noted the woman being appointed was his sister-in-law.

### **CITIZENS' REMARKS**

*(To address the County Board, fill out a card and submit it to the Chairman before the Board Meeting.)*

Joyce Blumenshine, 2419 E. Reservoir, Peoria, thanked the Board on behalf of the Heart of Illinois Sierra Club and distributed flowers to the Board.

Tom Edwards, 902 W. Moss Ave., Peoria thanked the Board on behalf of the health and well being of the community. Edwards gave a brief history of Peoria Disposal Company's applications for expansion.

Widmer requested a copy of Edward's testimony.

### **ZONING ORDINANCES & RESOLUTION**

1. Case #025-06-U (Kimberly Kang)

The petitioner is requesting a Special Use to allow a campground in the "A-2" Agricultural District. The property is located in Chillicothe Township.

The Zoning Board of Appeals recommends approval with restrictions. The Land Use Committee concurs.

Trumpe and Elsasser moved for the approval of the resolution with restrictions. The resolution passed by a roll call vote of 17 ayes and 1 abstention with Prather abstaining.

2. Case #029-06-U (Ronald Weber)

The petitioner is requesting a Special Use to divide a 38-acre parcel into two parcels of approximately 16 and 22 acres. The property is located in Kickapoo Township.

The Zoning Board of Appeals recommends approval with restrictions. The Land Use Committee concurs.

Trumpe and Pearson moved for the approval of the Special Use with restrictions. There was discussion about the restrictions concerning the use of City water. Assistant State's Attorney Lyn Schmidt noted that no additional restrictions could be put on this special use. The Special Use passed by a roll call vote of 15 ayes and 3 nays with Kennedy, Joyce and Thomas voting nay.

3. Case #W01-06 (Thomas Ballard)

A resolution from your Land Use Committee recommending denial of a waiver of compliance from Section 20-61 of the Subdivision Ordinance, which requires all new subdivisions to have a public water supply. The

petitioner proposes to divide two parcels of approximately 1.9 acres each from a 41.2-acre tract. The property is located in Hallock Township.

Trumpe and Pearson moved for the adoption of recommendation of denial by resolution. The resolution passed by a roll call vote of 18 ayes.

Joyce noted that he learned from the siting hearings of a number of contaminated wells in the County. He asked that the Health Department report to the Land Use Committee on the number of tainted wells noting if they are tainted by septic or farm chemicals.

4. Case #W03-06 (Timothy Durdell)

A resolution from your Land Use Committee recommending approval of a waiver of compliance from Section 20-4-2.C.2.b(1) of the Subdivision Ordinance, which requires a minimum frontage of 30 feet on a public road for parcels being created of less than 10 acres. The petitioner proposes to divide a 10-acre parcel into two parcels of approximately 5 acres each. The property is located in Limestone Township.

Trumpe and Hidden moved for the approval of the resolution. The resolution passed by a roll call vote of 18 ayes.

5. A resolution from your Management Services Committee recommending approval of salaries of Elected Officials to be elected in 2006.

Phelan and Elsasser moved for the approval of the resolution. Phelan noted it is a 4% increase with a \$5000 one time stipend for the Treasurer and a \$5000 annual stipend for the Sheriff. Baietto noted that the County salaries should reflect comparable counties. Phelan noted that Peoria County would like to be considered an employer of choice. He also noted that if this raise is not approved in some departments subordinates will earn more than the Elected Official. The resolution passed by a roll call vote of 17 ayes and 1 nay, with Mayer voting nay.

6. A resolution from your Judicial Committee recommending approval of an appropriation of \$10,677.31 to the appropriate expense and revenue line items in the Sheriff's Office budget for overtime expenses related to ILEAS (Illinois Law Enforcement Alarm System) training.

Kennedy and Joyce moved for the approval of the resolution. The resolution passed by a roll call vote of 18 ayes.

7. A resolution from your Health & Environmental Issues Committee recommending approval of an additional appropriation of \$100,000.00 to the Recycling & Resource Conservation budget to pay the engineering expenses, outside legal counsel, and other costs associated with review of the hazardous waste landfill facility application submitted by Peoria Disposal Company.

Hidden and Widmer moved for the approval of the resolution. The resolution passed by a roll call vote of 18 ayes.

8. A resolution from your Transportation Committee recommending approval of RPCCA's Application for a Rolling Stock Assistance Grant.

O'Neill and Baietto moved for the approval of the resolution. The resolution passed by a roll call vote of 18 ayes.

9. A resolution from your Transportation Committee recommending approval to lower the speed limit to 35 mph on Jones Hollow Road (TR 230) from Norwood Boulevard northerly to Conley Road in Limestone Township.

O'Neill and Watkins moved for the approval of the resolution. The resolution passed by a roll call vote of 18 ayes.

10. A resolution from your Transportation Committee recommending approval to place a stop sign at the intersection of Alder and Starr Streets in Limestone Township.

O'Neill and Elsasser moved for the approval of the resolution. The resolution was approved by a roll call vote of 18 ayes.

11. A resolution from your Transportation Committee recommending approval of an Engineering Services Agreement for engineering design to replace the Lancaster Road (D55) Bridge and \$4,600,000.00 be appropriated from the County's share of MFT funds to cover costs.

O'Neill and Baietto moved for the approval of the resolution. The resolution was approved by a roll call vote of 18 ayes.

12. A resolution from your Tax/EDC Committee recommending approval of the appointment of Election Judges for 2006 and ensuring years.  
{List of judges on file in County Administration Office}

Prather and Pearson moved for the approval of the resolution. The resolution was approved by a roll call vote of 18 ayes.

## **ANNOUNCEMENTS**

O'Neill noted the Transportation Meeting on Wednesday will be canceled.

Salzer encouraged everyone to attend the Spring Celebrations at lunch and thanked Gerry Brookhart.

Phelan noted that Monday is the first minority business meeting at 4:00 p.m.

Joyce wished his wife a happy 26th wedding anniversary.

Riggenbach noted that the Community Builders Fundraiser will be at the Civic Center at 6:00 p.m. on June 2nd. The fundraiser benefits District 150. He also noted that his wife is featured in a new Peoria magazine, Numero publishing.

Elsasser noted a new bank opened at the Shoppes at Grand Prairie.

Prather invited everyone to attend a fundraiser in Chillicothe, June 1st-3rd.

Hidden wished all mothers a Happy Mother's Day.

#### **ADJOURNMENT**

Kennedy and Pearson moved to adjourn. The meeting was adjourned at 7:14 p.m. by a unanimous voice vote of 18 ayes.



**\*\* REVISED 07/13/2006 \*\***

A Regular Meeting of the County Board, County of Peoria, Illinois was held on Thursday, June 8, 2006, at six o'clock p.m. the Courthouse, Room 403.

**CALL TO ORDER**

The meeting was called to order by David T. Williams, Sr., Chairman.

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL BY THE COUNTY CLERK**

JoAnn Thomas, County Clerk, called attendance and the following members of the Board were present: Baietto, Elsasser, Hidden, Kennedy, Mayer, O'Neill, Pearson, Phelan, Polhemus, Prather, Riggensbach, Salzer, Thomas, Watkins, Widmer, and Williams, 16 present. Joyce and Trumpe were absent.

- Approval of May 11, 2006 County Board Meeting minutes, May 3, 2006 Special County Board Meeting transcripts, and April 6, 2006 Regional Pollution Control Site Hearing Committee Meeting transcripts.

Prather and Pearson moved for the approval of the May 11, 2006 County Board minutes. The motion was approved by a unanimous voice vote of 16 ayes.

**PRESENTATIONS & PROCLAMATIONS:**

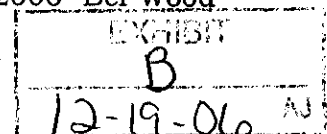
- A proclamation from your Chairman recognizing the Limestone Walters School 8th Grade Girls' Volleyball Team for winning the 2006 "8A" State Girls Volleyball Tournament.

O'Neill presented the proclamation to the team. Coach Huber thanked the Board.

Williams and Pearson moved to approve the May 3, 2006 Special County Board Meeting transcripts, and April 6, 2006 Regional Pollution Control Site Hearing Committee Meeting transcripts. The motion was approved by a unanimous voice vote of 16 ayes.

- A proclamation from your Chairman recognizing the 2006 "Bel-Wood Legends in our Own Time."

Hidden presented the proclamation.



- A proclamation from your Chairman recognizing State Farm Insurance Company, the International Brotherhood of Electrical Workers Local 34, the National Electrical Contractors Association and the Tri-County Construction Labor-Management Council for their donations toward the

start-up cost of administering and enforcing the County's Building and Property Maintenance Code.

Phelan presented the proclamation. Marty Clinch, IBEW local 34, thanked the Board and Matt Wahl, director of Planning and Zoning.

- A presentation of the Annual *Correctional Officer of the Year* Award.

Sheriff Mike McCoy presented the award to Officer David Landi Vittori and Officer Randy Weber. Superintendent Smith read the award.

- A presentation of the Annual *Deputy of the Year* Award.

Chief Deputy Sheriff, Joe Needham presented the award to Deputy Mark Confort.

- A presentation by Mike Hughes, Community Outreach Liaison for Attorney General Lisa Madigan, informing of the types of information available in the Attorney General's Office.

Hughes introduced himself and the services that the Attorney General's Office offers. Widmer asked that Hughes look into the current landfill expansion in Peoria County.

- An update on the Workforce Network.

Bruce Marsten updated the Board on the Workforce Network and distributed literature, a copy of which is included in these minutes. Widmer asked if the Network will be working with Manual High School. Marsten outlined a plan for the students. Riegenbach stressed the importance of this program.

#### **CONSENT AGENDA**

- C1. A communication from the Illinois Department of Transportation dated May 9, 2006, regarding Motor Fuel Tax allotment and transactions for the County for the month of April 2006.
- C2. A revenue and expenditure report was received from the County Auditor and County Treasurer for the month ending May 31, 2006, and filed.
- C3. Appointments

Kennedy and Prather moved for the approval of the Consent Agenda. The Consent Agenda was approved by a unanimous roll call vote of 16 ayes.

#### **CITIZENS' REMARKS**

*(To address the County Board, fill out a card and submit it to the Chairman before the Board Meeting.)*

Tom Edwards, 902 W. Moss Ave., Peoria addressed the Board concerning some correspondence to be sent to U.S. Senators Barrack Obama and Dick Durbin. Baietto questioned Edwards on some of his literature. Edwards promised to respond to him.

## **ZONING ORDINANCES & RESOLUTION**

1. Case #032-06-U (Randall Rush)

The petitioner is requesting a Special Use to divide a 32.03-acre parcel into two parcels of approximately 25 acres and 7 acres. The parcel is located in Chillicothe Township.

The Zoning Board of Appeals recommends approval with restrictions. The Land Use Committee concurs.

Elsasser and Hidden moved for the approval of the resolution. The resolution was approved by a roll call vote of 16 ayes.

2. A resolution from your Land Use Committee recommending approval of the appointment of Kathi Lowder and Anuja Lala as Deputy Plat Officers.

Elsasser and Hidden moved for the approval of the resolution. The resolution was approved by a roll call vote of 16 ayes.

3. A resolution from your Executive Committee recommending approval of an appropriation of \$250,000.00 from Fund Balance to be used to train and certify lead abatement contractors in the community.

Polhemus and O'Neill moved for the approval of the resolution. The resolution was approved by a roll call vote of 16 ayes.

4. A resolution from your Management Services Committee recommending approval of the appropriation of funds in the amount of \$50,461.54 to the appropriate line items in the Sheriff's budget for a new SLATE Auto Theft Task Force position.

Phelan and Kennedy moved for the approval. Phelan noted this resolution is in response to the new positions previously approved by the Board. The resolution was approved by a roll call vote of 16 ayes.

5. A resolution from your Management Services Committee recommending approval of a new Planner II position for the Planning & Zoning Department.

Phelan and Thomas moved for the aproval. The resolution was approved by a roll call vote of 16 ayes.

6. A resolution from your Management Services Committee recommending approval of the acquisition of Northern Telecom Release 4.5 and Voicemail

Upgrades, including installation services, from AT&T (SBC) for Peoria County Courthouse PBX System.

Phelan and Hidden moved for the approval of the resolution. The motion was approved by a roll call vote of 16 ayes.

7. A resolution from your Health and Environmental Issues Committee recommending approval of various bids for Food Products and Supplies for Bel-Wood Nursing Home.

Daniel Whitson of 433 E. High Point Rd. and Peter Pasquel of 459 E. High Point Rd. addressed the Board on behalf of George Pasquel Company. Pasquel noted that the current bid for food service is costing the County money. Whitson spoke about concerns in the bidding process. Thomas asked for a copy of the figures presented.

Hidden and Widmer moved to defer the resolution. Phelan questioned the EEO compliance for the bids. Assistant State's Attorney Bill Atkins cautioned the Board on deferring the resolution. Watkins also questioned the EEO compliance. Elsasser asked how much time they would have to review the bid. County Auditor Steven Sonnemaker stated it was a six month bid. O'Neil asked that the Board review this in six months while accepting these current bids. Hidden disagreed with O'Neill and stated that this problem was supposed to be addressed six months ago. Baietto agreed that he thought this had been resolved six months ago. Sonnemaker explained the history of the market basket bid. Whitson stated that none of Pasquel's customers have a market basket bid. The motion was approved by a roll call vote of 16 ayes. Ulrich stated that the department manager makes the final decision to order supplies for Bel-Wood.

8. A joint resolution from your Facilities and Health and Environmental Issues Committees recommending approval of an agreement with STS Consultants, Ltd., Peoria, IL, for design of Water Booster Pump at Bel-Wood Nursing Home subject to General Conditions satisfactory to the State's Attorney's Office.

Polhemus and Hidden moved for the approval of the resolution. Ulrich stated that the EEO certification will be updated. The motion was approved by a roll call vote of 16 ayes.

Mayer left the meeting

9. A resolution from your Facilities Committee recommending approval of an agreement with PSA Dewberry, Peoria, IL, for design work for Phase II of the Courts Remodel Project subject to PSA and the County Administrator agreeing on a work schedule for the project.

Polhemus and O'Neill moved for the approval of the resolution. The motion was approved by a roll call vote of 15 ayes.



Mayer returned to the meeting.

10. A resolution from your Facilities Committee recommending that the Committee be authorized to award or reject bids for the World War I & II Memorial and the Plaza Ramp construction projects.

Polhemus and Watkins moved for the approval of the resolution. The motion was approved by a roll call vote of 16 ayes.

11. A resolution from your Judicial Committee recommending approval of the lowest responsible bid of Bradford Systems, E. Peoria, IL, in the amount of \$19,118.80 for file folders and traffic jackets for the offices of the Circuit Clerk and State's Attorney.

Kennedy and Hidden moved for the approval of the resolution. The motion was approved by a roll call vote of 16 ayes.

12. A resolution from your Judicial Committee recommending approval of the 2006 Public Safety Crime Prevention Grant Awards.

Kennedy and Phelan moved for the approval of the resolution. Pearson stated this was a good move to help District 150. Kennedy asked that the remaining money be budgeted for next year. The motion was approved by a roll call vote of 16 ayes.

13. A resolution from your Finance/Legislative Study Committee recommending approval of a contract with Clifton Gunderson LLP, Peoria, IL, in the amount of \$13,864.00 for professional financial management training.

Riggenbach and Thomas moved for the approval of the resolution. Riggenbach noted that this training is a result of the management letter from the County's external auditors. Mayer noted some concern in awarding this contract to the same company that performs the County's audit. Mayer also suggested mandatory auditor rotation as policy. Riggenbach noted this training was approved by the State's Attorney's Office. Atkins noted that the State's Attorney's office is not endorsing this training, but rather has approved it. Williams noted that the County Board crafts these policies and the State's Attorney's Office advises. The motion was defeated by a roll call vote of 8 ayes and 8 nays with Prather, Pearson, Kennedy, Watkins, Elsasser, Phelan, Mayer, and Williams voting nay.

Phelan requested items 14 and 15 be discussed after Executive Session.

- 16 A review of the County Board Executive Session minutes.

Kennedy and Pearson moved that the Executive Session minutes not be released per the State's Attorney's recommendation. The motion was approved by a roll call vote of 16 ayes.

#### 17 Executive Session - Labor Relations

Phelan and Elsasser moved to go into Executive Session. The motion was approved by a unanimous voice vote of 16 ayes.

14. A resolution from your Management Services Committee recommending approval of the contract with the Highway Maintenance Unit (Laborers, Operating Engineers, and Teamsters).

Phelan and O'Neill moved for the approval of the resolution. The resolution was approved by a roll call vote of 16 ayes.

15. A resolution from your Management Services Committee authorizing the County Administrator to withdraw the pending Worker's Compensation (Case #010015-003752-WC-01) lien in return for a \$26,550.00 payment in an attempt to settle the case.

Phelan and Hidden moved for the approval of the resolution. The resolution was approved by a roll call vote of 16 ayes.

#### **MISCELLANEOUS**

O'Neill noted the Highway transportation trip will be in the fall.

#### **ANNOUNCEMENTS**

Watkins would like to get a proclamation for the Chillicothe baseball team.

#### **ADJOURNMENT**

Watkins and O'Neil moved to adjourn. The meeting was adjourned by a unanimous voice vote of 16 ayes.

## Exhibit 2

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**SUPPLEMENTAL AFFIDAVIT OF BRIAN J. MEGINNES**

STATE OF ILLINOIS	)	
	)	ss.
COUNTY OF PEORIA	)	

Brian J. Meginnes, having been first been duly sworn upon his oath, deposes and states as follows:

1.     My name is Brian J. Meginnes. I am one of the attorneys representing the Peoria Disposal Company ("PDC") in their Application for Site Location Approval filed with the Peoria County Clerk on November 9, 2006 (the "Application").
  
2.     On June 9, 2006, I executed an affidavit describing my search for the May 3, 2006 transcript and various documents from the May 3, 2006 Peoria County Board meeting, on June 7, 2006, at the Peoria County Clerk's office.
  
3.     I was assisted in that search by Megan Fulara, the Chief Deputy County Clerk.
  
4.     On June 7, 2006, Ms. Fulara and I searched not only the documents filed pertaining to the five (5) boxes of written material in Ms. Fulara's office, which she identified as "the Record," but also the County Clerk's meeting files, where the Clerk habitually filed her minutes and notes from County Board meetings.

5. Ms. Fulara and I could not locate the transcript from the meeting of the Peoria County Board on May 3, 2006 in either the Record (in Ms. Fulara's office) or the County Clerk's meeting files.

6. I do not recall seeing the single page of findings recently submitted by the County Board for inclusion in the Record before the Pollution Control Board (defined as the "Findings Page" in PDC's Response to the County Board's Motion for Leave to Supplement Record on Appeal and File Second Amended Index) during our search of the Record (in Ms. Fulara's office) and the County Clerk's meeting files.

7. I am an adult and if called upon to testify in this matter, I could competently testify to the facts stated herein.

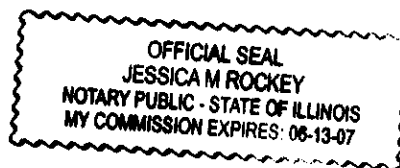
FURTHER AFFIANT SAYETH NOT.

Subscribed and sworn to before me  
this 27th day of December, 2006.

Jessica M Rock  
Notary Public

906-1627

Brian J. Meginn  
Brian J. Meginn, Esq.



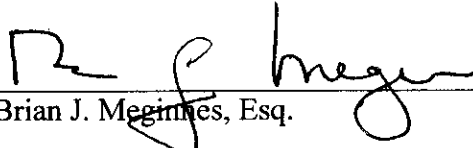
### AFFIDAVIT OF SERVICE

The undersigned, being first duly sworn upon oath, states that copies of the Reply in Support of Motion for Summary Judgment pursuant to 415 ILCS §5/39.2(e) of Petitioner, Peoria Disposal Company, will be served upon the following persons by enclosing same in separate envelopes, addressed as follows, and depositing said envelopes in a U.S. Postal Service mail box at Peoria, Illinois, on the 27th day of December, 2006, before 5:00 p.m., with all fees thereon fully prepaid and addressed as follows:

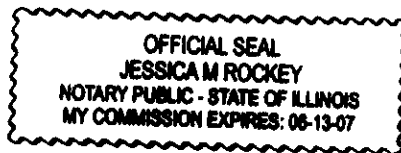
Mr. William Atkins  
Assistant State's Attorney  
Peoria County  
324 Main Street, Room #111  
Peoria, IL 61602

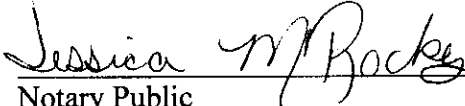
Ms. Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P. O. Box 19274  
Springfield, IL 62794-9274  
(217) 524-8509 - Telephone  
[webbc@ipcb.state.il.us](mailto:webbc@ipcb.state.il.us)

Mr. David A. Brown  
Black, Black & Brown  
Attorneys at Law  
101 South Main Street  
P. O. Box 381  
Morton, IL 61550  
(309) 266-9680 - Telephone  
(309) 266-8301 - Facsimile  
[dbrown@blackblackbrown.com](mailto:dbrown@blackblackbrown.com)

  
Brian J. Meginnes, Esq.

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this 27th day of December, 2006.



  
Notary Public

*George Mueller*  
**GEORGE MUELLER, P.C.**  
Attorney at Law  
628 Columbus Street, Suite #204  
Ottawa, Illinois 61350  
(815) 431-1500 - Telephone  
(815) 431-1501 - Facsimile

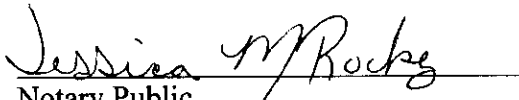
*Brian J. Meginnes*  
**ELIAS, MEGINNES, RIFFLE & SEGHELLI, P.C.**  
Attorneys at Law  
416 Main Street, Suite #1400  
Peoria, IL 61602-1153  
(309) 637-6000 - Telephone  
(309) 637-8514 - Facsimile

**AFFIDAVIT OF FILING**

The undersigned, being first duly sworn upon oath, states that ten (10) copies of the Reply in Support of Motion for Summary Judgment pursuant to 415 ILCS §5/39.2(e) of Petitioner, Peoria Disposal Company, will be filed with the Illinois Pollution Control Board via Federal Express, overnight delivery, sent on the 27th day of December, 2006, before 5:00 p.m.

  
Brian J. Meghinnes, Esq.

Subscribed and sworn to before me, a Notary Public, in the Peoria County, Illinois, this 27th day of December, 2006.

  
Notary Public

