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OCT 16 2006

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

STATE OF ILLINOIS  
Pollution Control Board

**SECOND SET OF REQUESTS TO ADMIT OF PETITIONER, PEORIA DISPOSAL COMPANY, DIRECTED TO RESPONDENT, PEORIA COUNTY BOARD**

**NOW COMES** Petitioner, Peoria Disposal Company, by and through its attorneys Brian J. Meginnes and George Mueller, P.C., and hereby requests that Respondent, Peoria County Board (the "County Board"), admit the truth of the following facts under oath, within 28 days of receipt of this request:

(Any and all capitalized terms not defined herein should be ascribed the meanings given them in the Petition for Review).

1977. The document attached hereto as Exhibit D, titled "Final Findings of Fact," is a true and accurate copy of Deposition Exhibit #35, identified by Karen Raithel under oath, on September 28, 2006.

1978. The document titled "Final Findings of Fact" (Exhibit D hereto) was not filed in the Peoria County Clerk's office prior to May 8, 2006.

1979. The document titled "Final Findings of Fact" (Exhibit D hereto) was not filed in the Peoria County Clerk's office prior to May 13, 2006.

1980. The document titled "Final Findings of Fact" (Exhibit D hereto) was not filed in the Peoria County Clerk's office prior to June 7, 2006.

1981. The document titled "Final Findings of Fact" (Exhibit D hereto) was not filed in the Peoria County Clerk's office prior to Peoria Disposal Company's appeal to the Pollution Control Board.

1982. The document titled "Final Findings of Fact" (Exhibit D hereto) was not filed by the County Board as part of the Record before the Pollution Control Board in this case.

1983. The document titled "Final Findings of Fact" (Exhibit D hereto) was not tendered or sent to Peoria Disposal Company prior to document production in this appeal, on August 30, 2006.

1984. The document titled "Final Findings of Fact" (Exhibit D hereto) was not received by Peoria Disposal Company prior to document production in this appeal, on August 30, 2006.

1985. The document titled "Final Findings of Fact" (Exhibit D hereto) was not posted on the Peoria County website.

1986. The document titled "Final Findings of Fact" (Exhibit D hereto) was never made public by the County Board.

1987. The "purple color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 2-6) were not filed in the Peoria County Clerk's office prior to May 8, 2006.

1988. The "purple color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 2-6) were not filed in the Peoria County Clerk's office prior to May 13, 2006.

1989. The "purple color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 2-6) were not filed in the Peoria County Clerk's office prior to June 7, 2006.

1990. The "purple color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 2-6) were not filed in the Peoria County Clerk's office prior to Peoria Disposal Company's appeal to the Pollution Control Board.

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Peoria Disposal Company prior to document production in this appeal, on August 30, 2006.

1994. The "purple color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 2-6) were not posted on the Peoria County website.

1995. The "purple color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 2-6) were never made public by the County Board.

1996. The "pink color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 7-11) were not filed in the Peoria County Clerk's office prior to May 8, 2006.

1997. The "pink color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 7-11) were not filed in the Peoria County Clerk's office prior to May 13, 2006.

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2000. The "pink color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 7-11) were not filed by the County Board as part of the Record before the Pollution Control Board in this case.

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2002. The "pink color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 7-11) were not received by Peoria Disposal Company prior to document production in this appeal, on August 30, 2006.

2003. The “pink color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 7-11) were not posted on the Peoria County website.

2004. The “pink color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 7-11) were never made public by the County Board.

2005. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not filed in the Peoria County Clerk’s office prior to May 8, 2006.

2006. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not filed in the Peoria County Clerk’s office prior to May 13, 2006.

2007. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not filed in the Peoria County Clerk’s office prior to June 7, 2006.

2008. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not filed in the Peoria County Clerk’s office prior to Peoria Disposal Company’s appeal to the Pollution Control Board.

2009. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not filed by the County Board as part of the Record before the Pollution Control Board in this case.

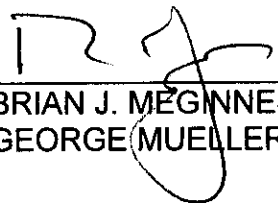
2010. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not tendered or sent to Peoria Disposal Company prior to document production in this appeal, on August 30, 2006.

2011. The “yellow color coded findings” referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not received by Peoria Disposal Company prior to document production in this appeal, on August 30, 2006.

2012. The "yellow color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were not posted on the Peoria County website.

2013. The "yellow color coded findings" referenced at the April 6, 2006, meeting of the Peoria County Board (see Transcript, pg. 5, lines 12-16) were never made public by the County Board.

Respectfully submitted,  
Peoria Disposal Company, Petitioner

  
\_\_\_\_\_  
BRIAN J. MEGINNES and  
GEORGE MUELLER, Its Attorneys

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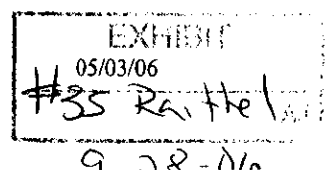
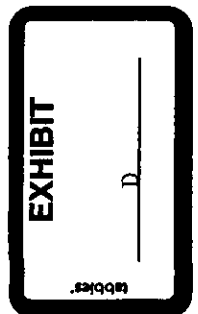
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## FINAL FINDINGS OF FACT

### Criterion 1

**The facility is not necessary to accommodate the waste needs of the area it is intended to serve.**

- Applicant failed to use the most recent U.S. EPA data on hazardous waste generation;
- U.S. EPA data from 2003, reported in 2005, shows a significant decline in hazardous waste generation rates in the hazardous waste service area;
- During cross-examination by County staff, applicant's expert Smith testified that there was a reduction in hazardous waste generated in the service area from 2001 to 2003;
- Applicant's expert Smith testified that there are a decreasing number of hazardous waste landfills in both the service area and the nation;
- Applicant's employee and expert Ron Edwards is quoted in a newspaper article, included in the public record, as saying that applicant's tipping fees have decreased from an average of \$100 per ton to an average of \$80 to \$85 per ton;
- While not subject to cross-examination, applicant's statement about price is deemed reliable as a statement against interest;
- A decreasing price during a time period when the number of hazardous waste landfills is decreasing suggests decreasing demand for disposal capacity;
- On cross-examination applicant's expert Dr. David Daniel testified that over the last two decades there has been a gradual reduction in the amount of hazardous waste generated;
- Daniel was qualified by applicant as a national expert on hazardous waste and landfill design and technology;
- In her report applicant's expert Smith assumed a constant rate of hazardous waste generation in the service area from 2001 until 2029;
- However, the evidence provided by U.S. EPA data, applicant's public statement about prices and the testimony of the applicant's own experts indicates a reduction in the amount of hazardous waste generated in the service area;
- An annual reduction in hazardous waste generation in the service area of between one and two percent, and therefore consistent with the U.S. EPA data,



would reduce the capacity shortfall applicant's expert Smith estimated in her report for hazardous waste by hundreds of thousands or even millions of tons;

- In estimating disposal capacity applicant's expert Smith assumed that hazardous waste landfills outside the service area would not utilize a greater percentage of their capacity for hazardous waste generated within the service area than they did in 2001, but supplied no evidence or data to support this assumption;
- Applicant's expert Smith failed to fully consider potential substitutes for a new hazardous waste landfill in the service area, including increased recycling of the type of waste codes accepted by applicant, continued waste reduction in the service area and increased disposal of hazardous waste generated in the service area in landfills outside the service area.

## Criterion 2

**The facility is not so designed, located and proposed to be operated that the public health, safety and welfare will be protected.**

- There is evidence that the existing landfill may already be leaking into the aquifer;
- If the existing landfill is already leaking, the facility and the proposed facility which relies upon the existing liners and leachate collection systems is not designed to be protective of the public health, safety and welfare;
- The liner systems presently in use at the facility and proposed to be used in the vertical expansion, by the applicant's own experts' testimony, will fail at some time in the future;
- When those liners fail, leachate will begin migrating through the site, and will eventually reach the groundwater under the site;
- The groundwater aquifer located under the site is, by the applicant's own experts' testimony, hydraulically connected to the Sankoty aquifer which is the primary drinking water aquifer for the area;
- If the drinking water wells for the area are contaminated, the costs of replacing the water supply will be enormous;
- The risk of contaminating of the area's drinking water is not worth the short term economic benefits of allowing the expansion of the landfill;
- The old areas of the site are not constructed to modern regulatory standards and present unreasonable risks to the public;
- The location of a hazardous waste disposal site over the aquifer is against the stated policy of the Peoria County Board;
- The design of trench C-1 is inferior to present "state-of-the-art" technology in the waste field, and allowing the Applicant to remove the existing cover from that trench presents an unreasonable risk to the public and the aquifer under the site;
- The testimony of opponents' expert, Charles Norris, was that fissures in the clayey till, weathering of the till, and continuous sand seams all contribute to the rapid transport of liquids through the glacial till underlying the site, and will, and have, resulted in leachate releases and other contaminants migrating into the groundwater from the glacial till;



- The testimony concerning the organic contaminant found in a shallow monitoring well located in the upper till in the northeast corner of the facility, and the subsequent discovery of the same contaminant in a monitoring well located in the lower sand aquifer in the same area suggests the rapid migration of contaminants at the site, in directly conflict with the testimony of applicant's experts, and in support of Mr. Norris' testimony;
- The increased levels of chlorides in the monitoring well downgradient of trench C-1 also suggest the same conclusions;
- The close proximity of residential neighborhoods to the east of the proposed facilities raises numerous questions concerning whether the location of the proposed facility is protective of the public health, safety and welfare;
- The facility, at its closest location, is a mere 300 feet from the nearest residential property;
- The close proximity of the residences raises serious concerns regarding the potential adverse health effects the proposed landfill may cause to these residents;
- The medical community has spoken out against the proposed expansion due to the potential health risks posed by place large volumes of hazardous waste so close to the residents of the County;
- The Applicant did not present any data, studies, or reports concerning the potential health affects on the citizens, or any risk assessments or epidemiological studies or data concerning the proposed facility;
- Due to the close proximity and the hazardous nature of the materials being disposed of and proposed to be disposed of at the facility, the proposed facility presents an unwarranted risk to the public;
- Opponents primary comments were that the liner systems would fail at some point in the future, and this commentary was largely supported by the testimony of Applicant's witnesses, the major difference being when the liner systems would begin to degrade;
- Applicant and opponents agree that protection of the groundwater is the primary concern at the proposed facility;
- However, there is considerable difference of opinion between the parties as to the magnitude and likelihood of a risk to the groundwater presented by the proposed facility;
- One area of concern for the County Staff was the groundwater impact

assessment conducted by PDC's experts Dr. Barrows and Ken Liss;

- The type of groundwater modeling done by Dr. Barrows is appropriate for this type of application and for determining future potential impacts to groundwater as required by IEPA for permit applications;
- IEPA requires this type of modeling to determine impacts up to 100 years after closure, but the Applicant did the modeling for 500 years after closure;
- At the public hearing, Dr. Barrows was asked about his modeling and his sensitivity analysis, and he stated in his testimony that the report on his sensitivity analysis was incorrect, and that the most sensitive parameter was flux through the liners as opposed to the hydraulic conductivity of the clayey till underlying the liners;
- After the public hearing, and before the close of the public comment period, Dr. Barrows submitted a supplemental report detailing his corrected findings regarding the sensitivity analysis, but County Staff was not able to independently verify his corrected conclusions;
- Because County Staff was not able to independently verify his corrected conclusions, the County is unwilling to accept the results of the modeling as a method for ruling out the possibility that the C trenches are or have released contaminants at the site;
- Mr. Liss testified for the Applicant that the groundwater monitoring data demonstrates the existing facility is not contributing contamination to the groundwater at the site;
- Mr. Norris disputed that conclusion by pointing to TOX sampling data;
- The County finds the surface impoundment presently located at the facility and used for the collection and storage of leachate is less protective of the public health than other areas of the facility because it is only double lined, and has no effective means of leak detection;
- A number of the opponents and their witnesses call into question the safety of the inactive portions of the site;
- County Staff indicated, upon questioning at the April 3, 2006 hearing, that it was their opinion that the application as submitted did not satisfy Criterion 2. County staff indicated it was their opinion that only with the imposition of numerous special conditions could Criterion 2 be satisfied.

### **Criterion 3**

**The proposed facility is not located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.**

#### **A. Compatibility**

- Surrounding land uses are a mix of open space, agriculture, industrial and residential;
- The testimony and report in the record state the site is separated from surrounding land uses by natural buffers, vegetative screening, and natural topography, but with an expansion the natural buffers are not as effective;
- A significant portion of the residential property is in relative close proximity to the proposed facility;
- A 45 foot increase in vertical height of this landfill will have a noticeable and demonstrable effect on surrounding residential properties;
- The County did note that during the Applicant's presentation certain before and after images of what the proposed facility will look like from various positions in the neighboring residential areas showed that in a few locations the top of the proposed facility will be visible to neighboring residential properties.

#### **B. Property Values**

- Numerous individuals commented during the public comment period that they were totally unaware of the facility until the siting process started, but are aware now;
- A 45 foot increase in vertical height of this landfill will have a noticeable visual impact on surrounding residential properties.

## **Criterion 4**

**The proposed facility is located outside the 100-year floodplain.**

- Applicant presented expert testimony to this effect;
- County Staff confirmed the location of the facility outside of the 100-year flood plain;
- There was no evidence presented that the facility was located in the 100-year flood plain.

## **Criterion 5**

**The plan of operations for the facility is designed to minimize the danger to the surrounding areas from fire, spills, and other operations accidents, if certain special conditions are met.**

- Applicant presented expert reports and testimony concerning its plan of operations and its fire, spill, and operational accident plans;
- The plans set forth details of hours of operation, waste screening and acceptance procedures, waste handling procedures, daily waste placement and cover operations, leachate management, air quality controls, dust managements, mud tracking, noise control, access control, hazard prevent and emergency response plans;
- The testimony and documents submitted by Applicant demonstrate it is fully in compliance with its regulatory requirements for financial assurance for closure and post-closure care, and in fact has more funding in its trust than is presently required by IEPA;
- The testimony and documents submitted both in support of and against the application suggest that long term care and maintenance of the facility is necessary to fully and adequately protect the public health, safety and welfare;
- The County ordinance requires the applicant to present calculations of perpetual care costs for the proposed facility;
- The Applicant presented perpetual care cost estimates during the public hearing, and offered to implement and fund a perpetual care fund for the proposed expansion as well as inactive waste management areas of the larger facility;
- Applicant's plans do not adequately provide for the perpetual care of the facility after the termination of the post-closure care period;
- Applicant's plans do not adequately provide for the proper removal of leachate from the leachate manholes;
- Applicant's plans do not adequately provide for the monitoring of stormwater discharges to make sure stormwater has not come into contact with either the waste and/or leachate;
- Questions and concerns were raised about coordination with fire departments and emergency service providers, and the proximity to schools;
- There was no evidence presented which demonstrated Applicant's plans for fires, spills or accidents were insufficient;

- There was no evidence presented which demonstrated there was a lack of coordination with local fire departments and emergency service providers;
- There was no evidence presented which demonstrated there was any risk to schools from potential fires, spills, or accidents at the facility;
- The facility is located close to residential houses, and a fire, spill or other operations accidents, could present a danger for residents.

**Special Conditions - Criterion 5:**

1. Leachate will be automatically removed from all leachate manholes to maintain a minimal risk of leachate on the manhole liner. This is intended to minimize risk of leachate leakage through liner components.
2. The south stormwater detention basin shall be tested on a schedule identical to the existing permit requirements for groundwater monitoring wells and for the following indicator constituents: TDS (total dissolved solids), chloride, calcium, bromide, sulfate, and sodium. Although stormwater typically has less stringent water quality parameters, the records shall be kept and analyzed to verify that trends do not increase to levels of concern that would indicate leachate has been accidentally released to stormwater as long as the active landfill operations occur. PDC shall notify the County of any statistically significant upward trend in stormwater concentrations.
3. Effective upon PDC's receipt of a permit from Illinois EPA to operate the proposed expanded landfill, PDC shall pay additional sums into a perpetual care fund, on at least a quarterly basis equal to \$5.00 per ton of the Expanded Volume of Waste deposited in the PDC Landfill, but if the volume of waste disposed of at the landfill facility in any calendar year is less than 150,000 tons, PDC shall pay into the fund a minimum of \$750,000 for 15 years. Said payments shall be calculated based upon the same information and figures used to calculate the Host Benefit Fee pursuant to Section 9 of the Host Community Agreement, and shall be subject to the same documentation and verification requirement of the Host Benefit Fee. Said Perpetual Care Fund shall be used exclusively for the care and maintenance of the entire PDC site after the period of post-closure care for the expanded landfill has been terminated by IEPA.

## **Criterion 6**

**Traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows provided certain special conditions are met.**

- Applicant presented expert testimony and a report establishing that the facility will have minimal or no impact on existing traffic flows;
- No expert testimony, report or other evidence was submitted into the record that contradicts the conclusions of Applicant's expert;
- The expanded facility is proposed to be operated in substantially the same fashion as the existing facility, and the existing facility is not causing traffic flow problems according to local and state transportation agencies;
- Some concerns regarding the possibility of transportation related accidents were raised; however, those concerns were better addressed under other criteria;
- Applicant's expert report recommends coordinating efforts with the Illinois Department of Transportation to install advance warning signs along State Route 8 to warn motorists of possible truck turning movements;
- Applicant's report indicates it has designated two (2) main haul routes for trucks coming to and leaving the facility, but does not specify whether or how those routes are communicated to haulers who are not affiliated with Applicant;

### **Special Conditions - Criterion 6:**

1. PDC shall work with IDOT to install an advance warning sign along State Route 8 at this location to alert motorists of possible truck turning movements.
2. PDC shall inform all haulers to and from the facility of the designated truck routes in writing and PDC shall cooperate with local law enforcement agencies to enforce the truck routing requirements on the surrounding roads.

## **Criterion 7**

**The Applicant has an emergency response plan that sufficiently includes notification, containment and evacuation procedures to be used in case of an accidental release at the facility, provided special conditions are met.**

- The application includes Spill Prevention Control and Countermeasure Plan, a Stormwater Pollution Prevent Plan, and a RCRA Contingency Plan;
- Applicant presented testimony of its operational expert concerning the foregoing plans;
- There was no evidence or testimony submitted into the record indicating there were no plans or that any plans were lacking;
- Some questions were raised regarding the degree of emergency preparedness and coordination with applicable emergency response agencies, but no facts or evidence was presented to support or validate such questions or concerns;
- While the plans generally meet this criterion, additional measures are necessary to fully coordinate emergency procedures and activities with applicable emergency responders in the County to adequately prepare for a potential emergency;

### **Special Conditions - Criterion 7:**

1. PDC shall annually host a table-top meeting with appropriate emergency responders from Peoria County as approved by the Peoria County Administrator. This may include, but not be limited to, the Peoria County Emergency Services and Disaster Agency, Peoria County Highway Department, Peoria County Sheriff's Office, Limestone Township Fire Protection District, with invitations to attend forwarded to the City of Peoria Fire Department and the Illinois Emergency Management Agency for their input.
2. PDC shall annually have a mock disaster drill, with appropriate emergency responders from Peoria County as approved by the Peoria County Administrator. This may include, but not be limited to, the Peoria County Emergency Services and Disaster Agency, Peoria County Highway Department, Peoria County Sheriff's Office, Limestone Township Fire Protection District, with invitations to attend forwarded to the City of Peoria Fire Department and the Illinois Emergency Management Agency for their input.
3. PDC shall coordinate with E-911 in order to utilize the reverse 911 system and is responsible for contacting 911 if and when an emergency happens.



## **Criterion 8**

**The proposed expansion of the landfill is consistent with the County's integrated solid waste management plan and the 1996 and 2001 five-year plan updates.**

- Applicant presented a report and testimony by its expert, Sheryl Smith, who concluded the proposed facility is consistent with the County's solid waste management plan and the updates thereto;
- There was no evidence or testimony that was contrary to the Applicant's expert testimony or report;
- County Staff concluded the proposed facility is consistent with the County's solid waste management plan;
- County Staff is responsible for implementing the County's solid waste management plan, and is in the best position to make a determination as to whether the facility is consistent with the plan or not.

## **Criterion 9**

### **The proposed facility is located outside any regulated recharge area.**

- Applicant presented the testimony of its expert, George Armstrong, that the proposed facility is not located within a regulated recharge area;
- Comments or concerns were raised concerning the proposed facility being located above an aquifer and that the aquifer is hydraulically connected to a regulated recharge area;
- However, no testimony or evidence was provided that contradicted the Applicant's witness regarding the location of the recharge area and the location of the proposed facility;
- County Staff independently confirmed the proposed facility is not located within the regulated recharge area for the Pleasant Valley Public Water District or any other regulated recharge area.

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF PEORIA    )

SS

**AFFIDAVIT OF SERVICE & FILING**

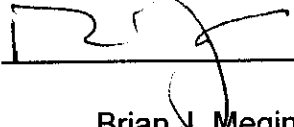
The undersigned being first duly sworn on oath, states that a copy of the foregoing SECOND SET OF REQUESTS TO ADMIT OF PETITIONER, PEORIA DISPOSAL COMPANY DIRECTED TO RESPONDENT, PEORIA COUNTY BOARD was served upon the following persons as set forth below on the 12th day of October, 2006:

Illinois Pollution Control Board  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
*via U.S. Mail from Peoria, IL*  
[FIVE (5) Copies]

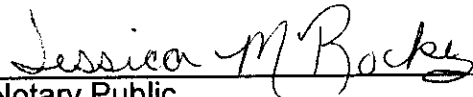
Mr. Kevin Lyons  
Peoria County State's Attorney  
324 Main Street, Room #111  
Peoria, Illinois 61602  
*via hand delivery*

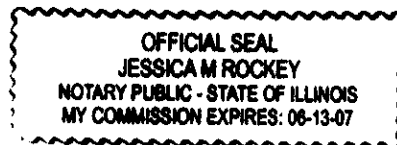
Mr. David A. Brown  
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101 South Main Street  
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Ms. Carol Webb, Hearing Officer  
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Springfield, Illinois 62794-9274  
*via U.S. Mail from Peoria, IL*

  
\_\_\_\_\_  
Brian J. Meginnes  
\_\_\_\_\_  
(print name)

Subscribed and sworn to before me this 12th day of October, 2006.

  
\_\_\_\_\_  
Notary Public



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