

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

**TO:** See attached service list

**PLEASE TAKE NOTICE THAT** on the 6th day of December, 2006, George Mueller, one of the attorneys for Petitioner, Peoria Disposal Company, filed the original Motion to Reconsider December 21, 2006, Order Granting Motion for Leave to Supplement Record on Appeal and File Second Amended Index, with the Clerk of the Illinois Pollution Control Board, via electronic filing as authorized by the Clerk of the Illinois Pollution Control Board.

Respectfully submitted,  
PEORIA DISPOSAL COMPANY

BY:           / s / George Mueller            
One of its attorneys

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	)	(Pollution Control Facility Siting Appeal)
PEORIA COUNTY BOARD,	)	
	)	
Respondent.	)	

**MOTION TO RECONSIDER DECEMBER 21, 2006 ORDER GRANTING  
MOTION FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL  
AND FILE SECOND AMENDED INDEX**

**NOW COMES** Peoria Disposal Company (“PDC”), by its attorneys, Brian J. Meghinnes and George Mueller, and as and for its Motion asking the Board to reconsider its Order, entered December 21, 2006, granting the Motion for Leave to Supplement Record on Appeal and File Second Amended Index, filed by the Peoria County Board (the “County Board”), states as follows:

In this Motion to Reconsider, PDC requests that the County Board reconsiders its Order only as to the single Findings Page, based on certain inconsistencies in the Board’s Order and the various filings of the parties.<sup>1</sup> (All capitalized terms used herein are ascribed the same meanings attributed in the Response filed by PDC, as defined below, except as otherwise set forth herein).

On or about November 6, 2006, the County Board filed its Motion for Leave to Supplement Record on Appeal and File Second Amended Index (the “Motion”), seeking to supplement the Record with the Supplemental Staff Report. On November 16, 2006, PDC filed its Response to the Motion (the “Response”). On or about November 30, 2006, the County

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<sup>1</sup> PDC does not waive its objections to the filing of the April 6 Proposed Findings, in whatever format the April 6 Proposed Findings are tendered by the County Board, and hereby preserves its objections to same for appeal, if necessary.

Board filed its Motion for Leave to File Reply, and attached thereto the Reply it proposed to file (the "Reply"). PDC objected to the filing of the Reply on December 6, 2006. Pursuant to the Board's Order entered December 21, 2006, the County Board's Reply was accepted by the Board, and the County Board was given leave to file the Supplemental Staff Report and the Findings Page in the Record. The County Board was further given leave to file a "clean copy" of the April 6 Proposed Findings, or to explain the basis for filing of the marked version.

In the Order, the Board describes the Findings Page as "a one-page sheet of findings of fact generated by County staff at the May 3, 2006 County Board meeting incorporating one change decided and made by the County at that meeting (Findings Page)." (Order, pg. 2). The Board further summarizes the County Board's position regarding the Findings Page as follows:

The County contends that the first two documents were reviewed by the local siting authority during the proceedings and should be incorporated into the record. The Findings Page, argues the County, documents the one change made to the proposed findings of fact at the May 3, 2006 meeting, and should also be made part of the record. Mot. at 3.

(Order, pg. 2). Therefore, the Board recognized in the Order that the Findings Page was not reviewed by the local siting authority during the proceedings; rather, the Findings Page was created by County staff after the conclusion of the local siting proceedings.

In spite of the foregoing, the Board concluded as follows:

The Board finds that all three documents were presented to the local siting authority during the hearing process and grants the County's motion for leave to supplement the record.

(Order, pg. 3; emphasis added). Clearly, based on the Board's own recitation of the facts, the Findings Page was not "presented to the local siting authority during the hearing process...." (Id.) This conclusion is supported by the fact that "the one change made to the proposed findings

of fact at the May 3, 2006 meeting” (Order, pg. 2) was actually read aloud at that meeting—there was no Findings Page to enter into the record at that time. (C13722; 42/15-23).

Since the parties presented their arguments on the County’s motion to supplement the Record, PDC has had an opportunity to take the deposition of JoAnn Thomas, Peoria County Clerk during all times relevant hereto. Ms. Thomas confirmed that the Findings Page was merely the County staff’s recollection of “the one change made to the proposed findings of fact at the May 3, 2006 meeting” (Order, pg. 2):

Q [by Mr. Mueller] Now, you indicate in your affidavit that Karen Raithel on paragraph 11 or paragraph 12 that she typed up a change in the proposed findings of fact?

A Okay.

Q And that in paragraph 13 you indicate that you reviewed it?

A Right.

Q What was the purpose of your review?

A Well, I -- I think I remember making notes, but I was -- I was leaving the official wording up to her. So I reviewed it to make sure that that’s what -- was the same way that I remembered it or that I perceived it.

Q It says in paragraph 13 that you reviewed the single printed page and confirmed that it was consistent with the motion made by Board Member Mayer?

A Yes.

Q How did you confirm that? What steps did you take?

A Well, I was there. I heard it. I read it. I confirmed that that’s what I heard, too. I mean, maybe I’m not understanding your question.

Q I mean, did you have any handwritten notes of your own or did you just confirm it based upon your recollection of what you had heard?

A I believe I did. I mean, I can't swear to it, but I do believe I did have some handwritten notes. I was keeping track of what was going on.

(39/17-40/22).<sup>2</sup> Ms. Thomas also confirmed that the Findings Page was never reviewed and adopted by the County Board:

Q But do you remember whether any county board member ever approved the page as being an accurate representation of what had been said and voted on?

A No, I don't remember.

Q Do you know whether Karen Raithel had Allen Mayer review that single page?

A No, I do not.

(46/23-47/7).

Moreover, the Reply filed by the County never challenged the assertion of PDC that the Findings Page was never made available to PDC or the public at any time, and is, therefore, not a public record. It is undisputed that this document saw the light of day literally for the first time during discovery in these proceedings. Because the Findings Page was never seen or considered by any County Board member, was never filed in the public record in the County Clerk's office and was never available to PDC or the public at any time prior to the filing of this appeal, the fact that it may have been prepared by a County staff member at or shortly after the May 3<sup>rd</sup> County Board meeting and the further fact that it may be a written representation of some finding made by the County Board at that meeting are completely irrelevant on the issue of whether it should be made a part of this record. Ms. Thomas's testimony supports the undisputed assertion

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<sup>2</sup> A copy of the transcript of Ms. Thomas's deposition was filed with the Court as Exhibit 1 to the Reply in Support of Motion for Summary Judgment filed by PDC on December 28, 2006. PDC has refrained from attaching the entire transcript to this Motion.

of PDC that the Findings Page was never part of the record available to the public or PDC herein:

Q Now, then you say that you included that single page with the county board file for the May 3rd meeting?

A Yes.

Q Walk me through that, if you would, JoAnn, in terms of what physically happened to that single page after it was given to you.

A It would be -- it was given to me. It was part of all the other documents I had for that meeting, and it was all kept together. It wasn't in a separate place. It was with all of the board meeting records.

(40/23-41/10).

Q [by Mr. Mueller] You physically put it with some other papers --

A With everything -- with the May 3rd record, with all of the -- she handed it to me. I'm up there with the county board. I've got all the -- because I take everything with me to the meeting and I had it altogether, and I took it all back to the office as a county board record.

Q When did you take it back to the office?

A I believe I went back that very evening. It was at the ITOO Hall, and I believe I went back to the office and put it in the -- in my office, locked it in that night.

Q When you say you locked it in your office, do you mean your personal office within the clerk's office?

A Yes. Because that's what I always do with the county board record until I can give it to someone to put together after the minutes are finished.

Q Okay. Now, in this case, there weren't any minutes to finish?

A No. We were waiting for the court reporter's transcript, right.

Q When did the single page document referred to in your affidavit physically get out of your office, meaning your personal office?

A I'm not sure. Within a couple of days.

Q Who did you give it to?

A Megan Fulara.

(41/24-43/5).

Q [by Mr. Mueller] You don't remember specifically handing these off, is that true?

A Well, they are no longer in my office. So I must have handed them off.

Q But you don't remember actually handing them off?

A No. I don't remember that.

(44/12-18).

Further support for the conclusion that the Findings Page was never part of the public record comes from the fact that the Findings Page submitted by the County was not file stamped, in derogation of the uniform practice of the County Clerk to file stamp all documents received in her office:

Q (Mr. Mueller) So every document that is delivered to the county clerk's office is file stamped as received?

A (Ms. Thomas) That's correct.

Q Are there any exceptions to that practice?

A No.

(11/6-11/10)

Based on the foregoing analysis, PDC respectfully requests that the Board reconsider its Order entered December 21, 2006, as to the Findings Page, and either (1) deny the Motion for Leave to Supplement as to the Findings Page, or (2) state the legal basis for inclusion of the Findings Page in the Record before the Board, given that the Findings Page is not “information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process” pursuant to 35 Ill. Adm. Code §107.304(a).

**WHEREFORE**, Peoria Disposal Company prays that the Board reconsider its Order entered on December 21, 2006, pertaining to the Motion for Leave to Supplement Record on Appeal and File Second Amended Index, filed by the Peoria County Board, as set forth herein.

Respectfully submitted,

PEORIA DISPOSAL COMPANY

By: /s/ George Mueller  
One of its attorneys

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