

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 22 2003

STATE OF ILLINOIS
Pollution Control Board

BYRON SANDBERG,

Petitioner,

vs.

CITY OF KANKAKEE, ILLINOIS, THE CITY
OF KANKAKEE, ILLINOIS CITY COUNCIL,
TOWN AND COUNTRY UTILITIES, INC.,
and KANKAKEE REGIONAL LANDFILL,
L.L.C.,

Respondents.

Case No. PCB 04-33

WASTE MANAGEMENT OF ILLINOIS,
INC.,

Petitioner,

vs.

THE CITY OF KANKAKEE, ILLINOIS CITY
COUNCIL, TOWN AND COUNTRY
UTILITIES, INC., and KANKAKEE
REGIONAL LANDFILL, L.L.C.,

Respondents.

Case No. PCB 04-34

COUNTY OF KANKAKEE, ILLINOIS and
EDWARD D. SMITH, KANKAKEE COUNTY
STATE'S ATTORNEY,

Petitioners,

vs.

CITY OF KANKAKEE, ILLINOIS, THE CITY
OF KANKAKEE, ILLINOIS CITY COUNCIL,
TOWN AND COUNTRY UTILITIES, INC.,
and KANKAKEE REGIONAL LANDFILL,
L.L.C.,

Respondents.

Case No. PCB 04-35

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BRIEF IN SUPPORT OF PETITIONER BYRON SANDBERG'S THIRD PARTY APPEAL

STATE OF ILLINOIS

Pollution Control Board

Petitioner BYRON SANDBERG submits this brief in support of his third party appeal based on the 100 YEAR FLOOD PLAIN and PUBLIC HEALTH, WELFARE AND SAFETY CRITERIA of the August 18th, 2003 decision ("Decision") of the City of Kankakee, Illinois City Council ("City") granting the application of Mr Tom Volini who operates as Town & Country Utilities, Inc and Kankakee Regional Landfill LLC ("T&C" or Mr Volini) for siting approval of a new pollution control facility. As the name Kankakee Regional Landfill implies, it appears this limited liability corporation was formed solely for the purpose of obtaining a site approval for a landfill at this location. It has no history as a landfill operating company as far as I have found..

OVERVIEW OF THE POLLUTION PROBLEM and EMBARRASSING POLITICAL AND ECONOMIC RESULTS.

In graduate school, we were required to prepare an abstract or summary of our research papers. Since this landfill has so many problems that interact to make a worse pollution problem, that is important here. I will follow this with a presentation in standard appeal form, citing specific references in regard to criteria, manifest weight of the evidence and fundamental fairness.

A.. FLOODING WILL PRODUCE POLLUTANTS AND CREATE AN EMBARRASSING POLITICAL STENCH

I will begin with the 100 year flood plain criteria (iv) because the Pollution Control Board (PCB) made no finding on that criteria in it's previous reversal despite my petition on that criteria. If the PCB had made a finding on that criteria, we would not be here again on another petition based on a hearing in which only additional testing was done with no changes in the specifications of the landfill. Also, Mr Volini may not have appealed the PCB decision to a higher court if he had been turned down on that criteria. This landfill is going to be the most embarrassingly stinking, polluting landfill in the state because it is immediately adjacent to Interstate 57 which is the main line of travel between Chicago and Springfield. Fermented, water soaked garbage is just about the most offensive odor known to man.

I was surprised at the previous reversal of the City decision on the this application since the City would gain so much money if it had not reversed. the city decision. Money and politics often figure high in decisions of Illinois boards and agencies. Now the Pollution Control Board is under the EPA which has a reputation of making a political decision now and then. Also Mr J. Philip Novak has been appointed as head of the board. A seasoned political observer tells me Mr Novak's sponsorship of double liner legislation while representing this district indicates his support of this landfill that will bring money to the city and the other landfill that will bring money to Kankakee county. With a double liner, he was thinking the City and County could have their money and the public the safety of a double liner. If the Pollution Control Board allows the landfill to be built, the politico's traveling the road from Chicago and upstate to Springfield may dub this stinking landfill the J. Philip Novak landfill.

The proposed landfill is in the deepest part of the 100 year flood plain next to and centered on the railroad trestle over Minnie Creek that causes the flooding. There is no way to improve the flow under the trestle except to replace it.. Several engineering studies were done years ago that found nothing the Minnie Creek Drainage Board could do to decrease flooding except to improve the water flow downstream from the trestle. The downstream portion was improved at that time. The studies reported that Minnie Creek was so flat in grade upstream of the trestle that nothing could be done there to lessen the flooding. to do any work that would lessen the flooding. In fact, the ground level beside South Minnie Creek rises a foot or so forming a pool behind it that is part of the necessary flood flow

needed to store water until it can pass the trestle. The two branches of Minnie Creek are on each side of the proposed landfill and come together on the third side to go under the trestle.

. This water will have to be treated as it is pumped out. Around 30 feet of trash will be below flood level when this landfill floods. At least 25 feet of the trash will be below ground surface. This is the water equivalent of 2,028,000,000 gallons. It will take weeks to pump the water out because the pump installation is only large enough for a maximum of a few inches of leachate a day, not 25 feet of water. The above ground portion of this water will flow untreated back into the stream and to the Kankakee River. The greater water pressure and chemical concentration of the leachate can be expected to cause a major penetration of the liner. The travel of pollutants in other locations nearby in this aquifer indicate they will be in the river in 3 or 4 years" As described in a later paragraph, they will enter at the junction of the Kankakee and Iroquois River and from there enter the water supply intakes of Kankakee and it's three adjoining cities.. It will take weeks to pump the water out because the pump installation is only large enough for a maximum of a few inches of leachate a day, not twenty feet of water. The water must be treated to remove pollutants and the city sewerage plant that is to do that does not have the capacity for this much waste water. Transportation of wastes to the sewerage plant is also inadequate.

It only takes only one flood in a 100 years to establish the 100 year flood plain. A movie showing the extent of the 1957 flood and a picture showing the extent of the 1993 flood were introduced as evidence. There is a picture available of another flood. The detailed testimony of Mr Mossier establishes the extent of the 1938 flood. This landfill is designed to Schedule D Municipal landfill specs. In this kind of landfill, the pollutants self destruct as they trickle down in a relatively dry environment. If this kind of landfill is water soaked, the water speeds up the decomposition and chemical reactions so the pollutants do not self destruct as in a dry environment. There are procedure for deliberately wetting landfills to speed up decomposition and production of gas, but they require controlled wetting, the grinding of garbage, a much better site and higher specifications than are in this site and specifications.

The Illinois Dept. of Natural Resources (DNR) informed Mr Volini on June 18th, 2002 that they had copies of his plan and his work falls under their jurisdiction because it is in the flood way which is the " portion of the flood plain that must remain open and unobstructed in order to store and convey flood flows". The flow way is unusually wide on the North Branch because it must overtop a 625 elevation beside the Creek to allow flow from a large area below the 625 elevation upstream. They said that Mr Volini must receive a permit from this office prior to the initiation of construction" The sent him a copy of their Part 3700 Rules and an application for permit form. They also said this applies even if the flood is not shown on the NEMA flood management map. They asked Mr. Volini to "Please submit information providing specific details of the proposed work and an analysis demonstrating that your proposed project will meet the applicable standards of the Part 3700 rules. Section 3700.60 does not allow construction that would increase the stage of the flood plain more than 0.1 foot. Mr Lee Milk has estimated the increase in flood stage due to the proposed landfill at least 0.5 from levels that would otherwise occur. He used the elevations on a survey map that was part of the wetlands section of the application. He is experienced in similar estimates from his work as an excavating contractor submitting bids to the state and by experience on a crew surveying along the Mississippi River. Mr. Volini has not returned the application with specific details of his work as he was requested to do. A copy of this letter was sent to the Kankakee City Planner Dave Schaffer on Jun 18th, 2002. The city at that time should have required the application be submitted and the FLOOD PLAIN determined before the hearing rather than stonewalling this criteria by stating it was not on the NEMA map. Section 3700.100 states that when the DNR becomes aware of activity without a permit, it shall conduct an investigation to determine the facts. It further states that enforcement will be sought as determined by the DNR. Investigations may be initiated either by the DNR or in response to complaints identifying the location and the name, address and telephone number of the person responsible according to Section 3700.10. It has been a waste of time and funds to hold two hearings on a landfill that could not be built if it does not meet the criteria of Part 3700.

B. POLLUTANTS FROM THIS LANDFILL MOVE TO THE KANKAKEE RIVER AND

FROM THERE TO THE RIVER INTAKES THAT SUPPLY THE WATER TO KANKAKEE,
BRADLEY, BOURBONNAIS AND AROMA PARK.

These cities draw their common water supply from the pond formed by a dam ("Six Mile Pool") on the Kankakee River. The entire lowland area near the Kankakee River drains into the river because the dolomite limestone is so close to the surface that any pollutant spill on it quickly penetrates the drinking water aquifer and moves toward the river. This site and the lowland beside the Kankakee River is shown in red as one of the worst sites in the state to bury underground wastes on a map of the Illinois Geologic Survey. Underground gas tank leaks have been a more serious problem in this red marked area because of this. Even road salt from side of the road polluted several deep wells. There is a 1500 page lawsuit against an oil spill east of Kankakee despite considerable efforts of the pipeline company to contain this spill by a semicircle of wells. . It is very difficult to find and remove the pollutants in this fractured rock aquifer because they travel in connected fractures like fingers between the monitoring wells. In sand and gravel aquifers, they move in a line and the monitoring wells will catch them. There are methods that try to block off the fractures and treat the water, but they are less effective and much more expensive than those used in sand and gravel aquifers. Dr G Gordon Lee recommends that an electronic system be placed under the landfill on a second liner in this situation. Monitoring wells only work in sand and gravel aquifers where the pollutants move in a line rather than like fingers. The county and city would make this area a protected recharge area if they could understand this problem. Landfills should only be placed in hills in this area because where there is a 30 foot layer of glacial till that will protect the aquifer. Mr Volini made a serious mistake when he did not submit a landfill application for the hills east of Kankakee on the highway. They could have been annexed into the city using the highway. The burden of detecting and treating contaminated water falls on the Water System since the pollutants cannot be detected and treated in the aquifer or the six mile pool. This will considerable increase the cost of water in the area since the Kankakee Water now only requires chlorination and removal of sediments. Since contaminants below the drinking water standard cannot all be removed, residents who are worried about the water will have the additional cost of buying bottled water. Industries that require pure water for their production like Armor, Avetis Behring, Ceteon and West Laboratories may move out to places where that water is available.

. As I and the other petitioners will detail out later, our hydrological tests shows this landfill to be set in an aquifer rather than an aquitard as Mr Volini's experts claim. It is very clear that they faked and misrepresented their hydrological tests that claim to show the dolomite rock is not fractured. This is discussed in detail in a later section. The tests that were done right show it has many large crevices directly under the base of the landfill that will carry water and pollutants away from the landfill site. An EPA site reports that the same pollutants that are present in gas spills are found in pollution from historic landfill sites. Oil based plastics are a large and growing part of household trash. There are 60 pounds of pollutants in one ton of cardboard and paper that occupies 3 cubic yards of landfill space.

The movement of water which would carry pollutants to the "Six Mile Pool" is shown on a water level map (Figure 26) on page 29 of IL Water Survey Investigation Report No 111 (an exhibit to the first hearing). A circle of low water level around the junction of the Iroquois and Kankakee river shows the water for several miles in every direction flowing toward that point. Page 24 of the same report explains why the water moves to that point. An Illinois Geologic Survey study found that unlike most of the river, there was no silt in the river bottom at the junction of the Iroquois and Kankakee River. This area extended upstream on the Iroquois for about a mile. They did not explain why, but I think it is because the river flows faster here and that keeps the silt moving rather than depositing at this point. . With no silt to separate the fractures of the aquifer from the river, the water that will carry pollutants from the proposed landfill site moves directly into the river. There is a venturi effect created by the fast flowing water passing over the open fractures that will pull the pollutants into the water. These pollutants will have an opportunity to mix and accumulate in the Six Mile Pool that they don't have in the usual river situation. They will not be treated and escape from water as they would to some extent in flowing water.. I advised the City how the Kankakee River and City water supply would be polluted in my brief of the hearing and in a statement during the hearings.

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THE CITY COUNCILS DECISION APPROVING LOCAL SITING SHOULD BE REVERSED BECAUSE THE FAVORABLE FINDINGS BY THE CITY ON CRITERION TWO AND FOUR ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

A. THIS LANDFILL IS NOT LOCATED AND DESIGNED TO PROTECT THE PUBLIC HEALTH AND SAFETY (CRITERIA 2). IT WILL POLLUTE THE RIVER WATER SUPPLY OF KANKAKEE, BRADLEY, BOURBONNAIS, AROMA PARK AND THE AQUIFER

The city council could not make their decision on the manifest weight of the evidence because the hydrological well tests that were faked in six tests. Mr. Volini's experts dishonestly and unfairly selected the depths in six wells where their well driller could tell them where they would not find these water and pollutant carrying fractures. In the other 18 test wells, there were so many fractures distributed along the entire depth of the well that they could find no place to do this. To hide the results of the other 18 tests, they placed them in a table that they falsely claimed was the "Slug Test Summary Table for The Weathered Nigerian Dolomite". (Appendix H3) Dolomite is just limestone with more magnesium than other limestone. The weathered dolomite is just the broken up limestone on top of the more solid limestone below. It is so broken that well drillers set their well pipe down through it and seal the pipe into the more solid fractured limestone below.

The weathered dolomite only averages 3.5 foot in depth according to the test wells and the application (page 2-7.3). . However, Mr. Volini's hydrologist deceptively included all tests less than 10 feet in this table. Mr Moran uncovered this by questioning Mr Volini's hydrologist on every one of the tests. When he was asked why he had selected this arbitrary 10 foot depth when the fractured dolomite only averaged 3.5 feet deep, all he could say was that he wanted to make sure they were deep enough in case there were any questions. It is fundamentally dishonest research to first decide what you want to prove and then collect and arrange the information (tests) so it supports only what you want to prove. This kind of faked and misrepresented research would not be published in a peer reviewed research journal and should not be accepted by the Pollution Control Board. These false tests showed the landfill to be set down in an aquitard when it is actually is set down in an aquifer. Mr. Moose based his landfill plan on these tests that show it is an aquitard when it actually is an aquifer. No landfill of any specification should be down into a fractured dolomite rock aquifer. .

It was easy to fake these tests because rectangular sections of soft dolomite with many water carrying fractures lay side by side with sections of hard dolomite. The fractured soft dolomite has fractures large enough to provide water for wells so it is called an aquifer. The hard dolomite has only a few small fractures that do not carry enough water for a well so it is called an aquitard. The hard dolomite with few fractures, the soft dolomite with larger fractures and the layer of broken limestone on top of them can be seen in the rock walls of Bird Park south of Court Street or in any quarry in the area if you can get close enough to the walls. Water can be seen coming out of some of the fractures in the walls of Rock Creek. The early well drillers with the old slow equipment almost always found enough water with wells less than 70 feet total depth and twenty or thirty feet into the dolomite limestone. These old wells within two miles of the landfill site shown in the well log also prove that the strata below the base of the landfill is an aquifer that provides enough water for a well so will carry pollutants away from the landfill. The old well drillers when they found hard rock with few water carrying fractures moved their equipment over to another place in the same lot and found soft rock with fractures enough to make a well within twenty feet or so of the top of the dolomite strata. The later wells are usually deeper because it is easier to drill through the hard dolomite with the powered drills now being used than it is to set over to find a higher layer of soft fractured dolomite rock.

These fractures or cracks in the dolomite limestone become enlarged by the acidic water working

on the limestone are the primary source of well water in this area. Water from the higher fractures that will carry pollutants from the landfill join together in a network that works about like a pipeline to carry water and pollutants directly into the upper end of "Six Mile Pool" where the Kankakee and Iroquois river join together. They enter there because the turbulence from the two rivers joining does not allow silt to deposit on the riverbed there as in most of the river. Because there is no silt there, the water that will carry pollutants from the landfill is drawn directly into the river. Kankakee and its adjoining cities draw their water from the pond formed by a dam that is called "Six Mile Pool" a few miles downstream. This direction of water flow from the landfill site to the Kankakee River has been carefully researched by the Illinois Water Survey and published in Water Survey Investigation Report No 111. This publication (Report No 111) was entered as an exhibit and its lead editor Mr Stuart Cravens was an expert witness at both hearings. I also spoke to it in my statement at the hearing and it is part of my brief of the hearing so it should have been considered in the manifest weight of the evidence, but it was not. The map on page 19 shows the water flow from an area that includes the landfill converging on the junction of the Kankakee and Iroquois River. On page 24 of this same publication, a report from the Illinois Geologic Survey states that there is no silt at this point as there is over most of the rest of the river. This material I have just reviewed was in my statement and is part of my brief of the hearing so it should have been considered in the manifest weight of the evidence.

The city council also did not consider the manifest weight of the evidence of Mr Craven's pumping tests, well log tests and pictures of the well logs in their decision. Mr Cravens had pictures showing the large crevices in his well core sections compared to just notations of few or no fractures in the test well logs in the application. Pumping tests measuring the drawdown in one well when 400 gallons a minute is pumped are much more accurate than the slug tests conducted by Mr Volini's experts. Mr Craven's stated "The applicants used a slug test that displaces the water in the well to the total volume of maybe a gallon of water or less". (Mr Cravens testimony on page 38 transcript of 6/27/03). Mr. Volini's experts did the exact opposite of what the research rules of the Pollution Board Rules require. They dishonestly and unfairly selected the depths in six wells where their well driller could tell them where they would not find these water and pollutant carrying fractures. In the other 18 test wells, there were so many fractures distributed along the entire depth of the well that they could find no place to do this. To hide the results of those tests, they placed them in a table that they falsely claimed was the "Slug Test Summary Table for The Weathered Nigerian Dolomite". Mr Volini's experts admit the weathered dolomite is an aquifer. It is the strata below it that they say is not an aquifer. The test wells and the application (page 2-7.3) show this weathered dolomite averages only 3.5 feet. However, Mr. Volini's hydrologist had deceptively included all tests less than 10 feet in this table. Mr Moran uncovered this by questioning Mr Volini's hydrologist on every one of the tests. When he was asked why he had selected this arbitrary 10 foot depth when the fractured dolomite only averaged 3.5 feet deep, all he could say was that he wanted to make sure they were deep enough in case there were any questions. Please refer to Mr Moran's brief for more details and reference to this questioning. It is fundamentally dishonest research to first decide what you want to prove and then collect and arrange the information (tests) so it supports only what you want to prove. They deliberately ignored all other information and based the landfill plans on it being an aquitard so they are invalid for this location. These false tests showed the landfill to be set down in an aquitard when it is actually set down in an aquifer. Mr. Moose based his plan on these faked and misrepresented tests, so it is invalid for this location.

Since the testimony of Mr Daniels and the rest of Mr Volini's experts was based on these tests that reported that the strata below the base of the landfill was an aquitard when it actually is an aquifer, this testimony is invalid. In an aquifer, there is enough water flow to provide water for farm, home and commercial uses and therefore should be protected from underground wastes by "no less than 30 feet of relatively impermeable material capable of attenuation" according to several publications of the Illinois Geologic Survey. The specifications of this landfill only require three feet of such relatively impermeable material. An aquitard is an area that restricts water flow. It is not a desirable place for a landfill either. Mr Daniel was brought into the hearing at the last minute without adequate notice to promote the existing specifications. He did not write the specifications. The other petitioners will write in more detail on this issue with reference to the transcripts and PCB rules so I do not need to go further into this issue. (My statement before the hearing on page 96, Jun 27, 03 transcript, concerns this issue, but it

states I said 9 feet when I actually said 10 feet)

This river junction location where pollutant carrying water will enter is at the upper end of a ponded area formed by a dam that is called the "Six Mile Pool". The Six Mile Pool is promoted by maps as a fishing and boating paradise. The water intakes of the water company that provide water to Kankakee and four adjacent cities is drawn from the lower end of the "Six Mile Pool". The pollutants will not be treated naturally in this pool as they are to some extent in a flowing river. There is substantial stirring and waves created by motor boats that the pollutants don't settle and are well distributed. Motor boat races are held here. The pollutants cannot be detected, withdrawn and treated as they travel in the crevices of a dolomite rock aquifer. Dr G. Fred Lee states that this is because the pollutants travel like fingers in the rock crevices so it is not possible to find them with monitoring wells. Monitoring and treatment wells work in other aquifers because the water and pollutants travel in a line or front rather than like fingers that will go between and bypass the treatment and monitoring or treatment wells. Dr G. Fred Lee states that the only way to detect pollutants escaping from the landfill in this fractured dolomite rock situation is by installing an electronic monitoring system over a second liner that will detect leaks soon after they occur. This system was installed in 82 landfills in the Southwest and detected small leaks in all the large landfills within two years. There is no such electronic monitoring system or even a second liner specified in the application for this landfill. The application only shows monitoring wells installed in the sand above that lays over a silty clay layer that isolates it from the water and pollution carrying crevices in the dolomite rock. Mr Volini's experts faked and misrepresented their tests that they claimed showed that the dolomite rock under this aquifer was not creviced and thus would carry water and pollutants away from the landfill. (See a later section of this brief and Mr Moran's brief for details and references. The Kankakee River is perhaps the most pure source of water for water supply and fishing near the high population area south of Chicago. It requires no water treatment other than for bacteria and sediments. The detection of contaminants in this water supply will require extensive and costly treatments that will only reduce the contaminant level to meet standards, not return it to its current pristine state. This treatment will continue indefinitely, because there is no way of totally cleaning up this pollution. There will be fear and taste problems that encourage many more to use purchased bottled water.

B. THE CITY COUNCIL'S DECISION REGARDING THE LOCATION OF THIS LANDFILL SITE IS NOT IN A 100 YEAR FLOOD PLAIN WAS NOT BASED ON THE MANIFEST WEIGHT OF THE EVIDENCE.

1. The vote on the flood plain criteria followed the following statement by Attorney Bohlen. "Criteria 4 is a very straightforward one. It's a question where or not it's within the 100-year flood plain. The only evidence is that it's outside the 100-year flood plain. There was no further discussion and the vote was to accept that statement as the findings of fact.

Kankakee City Planner Dave Schaffer received a letter from the Illinois DNR on Jun 18th, 2002 saying that they had the plans for this landfill that showed fill was to be deposited on a floodway that the DNR had jurisdiction over. The letter asked Mr Volini to submit an application with specifications so they could determine if he could get a permit to build here. He said this applied even if the site was not shown on the FEMA flood plain map. The state determines the flood way and flood plain if it is not on the FEMA map. It was wrongful for the City to proceed with this application twice without requiring Mr Volini to apply for a permit.

A movie of the large 1957 flood that showed it's covered the entire landfill site and adjoining route 2000 was shown at the first hearing and a picture of the 1993 flooding of the landfill site that included Minnie Creek and the highway that are boundaries of the landfill was an attachment and described in my brief for the city council of the 2003 hearing. Ms. O'Connor referred to a flood of February, 1972 (page 307, hearing of 6/28/02) Mr Mosier testified to a flood in 1938 that he remembers because it was the first year he moved here. he said the traffic on old state road 45 just west of the landfill site was first reduced to one lane and then stopped. In reply to question about flooding a year or two ago, he said that the water crossed 2000 west road which is old US 45 then. Then in reply to another

question, he said 2000 West which was Old US 45 is on the west edge of the proposed landfill. Mr Mosier described his occupation as township highway employee and stated there are eight places between 2000 West road next to the landfill and four miles west where the water crossed township roads despite large culverts. He had to patrol these places and barricade them when they were washed out due to flooding. Mr Mosier testified that putting a berm around the landfill would divert the flood water from going in a straight line in a half mile flood flow on each side of Minnie Creek and that would be costly. He stated that the landfill floods when there is 3 inches of rain of the sloping clay hills south of Minnie Creek. (page 286 to 293 transcript of 628/02 hearing) .

2. Mr Moose stated that the flooding had been corrected by the Minnie Creek Drainage District that is the only governmental body having jurisdiction over the flooding in the propose landfill site and the drainage basin that causes the flooding. .

I enclosed a statement that was attached to my brief to the City Council from two of the three Minnie Creek Drainage District board members. It states they have cleaned Minnie Creek to improve drainage on the farms of the Drainage District. They said "This cleaning will increase the flooding problem because the more water will come down the Creek during and immediately after the flooding" They said that Mr Volini had offered to clean the part of Minnie Creek beside the railroad embankment. But that "Cleaning any part of Minnie Creek will not reduce the flooding because the railroad trestle causes the flooding. There is more than 15,000 acres in the Minnie Creek Drainage District. Land that drains into Minnie Creek in addition to the 15,000 acres that should be annexed into the District is not included in the 15,000-acre figure. They stated "The flooding is caused by the railroad embankment and trestle (bridge) which forms a dam for the water and cause flooding in the area where the landfill is to be built. The landfill is to be built in the deepest part of the flooding near and about centered on the railroad trestle. Both the width and structure of the trestle cause the flooding. It is not possible to change this except by replacing the trestle with one that is wider and designed more efficiently"..... "The grade of Minnie Creek upstream is also part of the problem. It cannot be improved because the land is so flat". Mr Milk who has worked for the local licensed surveyor told me verbally that several engineering studies to improve this flooding were done many years ago. The conclusion was that nothing could be done upstream, but that deepening Minnie Creek downstream would help. This was done according to the specifications of the engineering study at that time.

3. Mr Mosier was wrongfully quoted as having said that changes had been made in drain that would prevent future flooding.

These drains are for the purpose of draining the road bed and preventing water from crossing the road. They have nothing to do with flood water movement or control. Water simply runs over the road when there is too much water from flooding that they cannot handle. Mr Mosier testified in reply to a question from Mr Mueller that they have not been enlarged or changed since the 1957 flood. .

4. Mr Mueller stated that their 27 acres of drainage basins would stop the flooding.

These basins only hold the few inches of water that falls on the top of the landfill. This would be only around 55 acre feet for a three inch rain. These basins and the 220 acres of the landfill take up the space that would otherwise be occupied by 650 acre feet of water when the landfill is flooded to the 626 foot level as in 1957. When Mr Mosier was asked a leading question by Mueller if he thought the 27 acres of drainage basins would protect the landfill, he said: "Sir, you make me laugh. Watch this video coming up". (page 290, transcript of 6/28/02). Mr Milk in a statement attached to my brief for the City Council (2d Hearing) estimated this water displaced by and landfill and its drainage basins at 650 acre feet in the 53 flood. He drove around and through the flood because he was worried about his future wife who lived on the road in the flooded area. He was able to estimate the total area of that flood at 1000 acres from the elevation map in the wetland section of the application and the water level at the elevation marked at corner the fringe of the flood touched and the elevation line next to his future wife's house where he drove through the flood to visit. If a 250 acre landfill/drainage basin is placed in the 1000 acre basin, this area no longer holds water. Therefore, 250 acres has to be subtracted from the 1000 acres leaving 750 acres in which the 650 acre feet

of water displaced by the landfill will raise the flood level and enlarge the area flooded. Mr Milk estimated it would raise the water level at least half a foot. Mr Milk is used to estimating from elevation lines because he did that in order to submit bids in the many years he was an excavating contractor.

5... Mr Moose answered my question about flooding by stating the banks of Minnie Creek protected the landfill from flooding and that he did not plan any other levee or protection to protect the landfill.

The ditch embankments are referred to as dredge spoils on page 6, Appendix F.6 of the application. A statement from two members of the Minnie Creek Drainage District attached to my brief of the hearing for the City Council stated that the spoil banks beside Minnie Creek have not prevented flooding in the past and that they were not intended for that purpose. They are only the dirt from work on Minnie Creek. Mr Milk in a statement also attached to my brief for the City Council stated he has been an earthmoving contractor most of his life which included building embankments. He said the ditch banks were only the dirt removed in constructing the ditch, that they are not built to any particular specification, have not protected from flooding in the past and will not in the future. He also stated he had built a levee above the ditch banks on his farm that protected his farm only from flooding during the lesser floods. The ditch embankments are referred to as dredge spoils on page 6, Appendix F.6 of the application.

Mr Moose first testified in reply to my questions that the banks of Minnie Creek would prevent flooding. Later Mr Moose entered into the record " that the landfill unit itself and all its principal support componets to the landfill.....gas collection system, leachate storage and so forth are all going to be in post -construction which is going to be something we are going to have to make sure we are clear about. After the facility is developed they are going to be above the 628 elevation and be protected from the overflowing Minnie Creek" (page 80 Volume 5-A 6/28/03 #1499 of the transcript) This statement does not establish how the landfill is to be protected in pre -construction. This landfill will be in pre-construction for 20 years or so if one cell is opened every year. These cells will be open for a considerable time while the base of the landfill is constructed and until enough trash is dumped to bring them above ground. Fill does not describe a material necessarily suitable for protection of flooding. Water moves freely though sand of which there is an abundance at the site. This unusual procedure of setting a landfill down in dolomite rock means the dirt has to be stockpiled and moved rather than starting from a suitable clay base. I question if there is enough clay at the site for the places that require clay including a flood protection barrier. I also question if the construction contractor can sort out and place clay in all the locations that require clay. The filling to the 628 level from the 625-626 level in a flood way is expressly forbidden in Part 3700 of the Illinois Administrative Code. The code forbids filling in a floodway of more than 0.1 foot. Mr Volini was told to submit specifications of his work in a letter dated June 18th 2002 from the Illinois Department of Natural Resources (DNR). A copy of this letter is enclosed. The letter reads in part that the "Office of Water Resources exercises jurisdiction over construction in the floodway of streams with a drainage area of more than 10 miles or 1 square mile in an urban area" It states "based upon the plans available to us, the project does include work within the floodway and must receive a permit from this office prior to the initiation of construction. Enclosed for your use in a copy of our Part 3700 rules entitled "Construction in Floodways of Rivers, Lakes and Stream" and an application form. Please submit information providing specific details of the proposed work and an analysis demonstrating that your proposed project will meet the applicable standards of the Part 3700 Rules. The letter states that DNR has jurisdiction over this filling irregardless if it is on the FEMA mapor not. .Since Mr Volini does not have a permit to fill and build here, he would not be permitted to begin work on the landfill.

"Flood way" is defined in Part 3700 as: "The channel of a river, lake or stream and that portion of the adjacent land area that is needed to safely store and convey flood waters. Where flood ways have been delineated regulatory purposes, the mapped lines show the flood way encroachment limits and will be used. For other areas, flood way limits will be estimated, using hydrological and hydraulic calculations, to preserve adequate conveyance and storage so that stage increases for the 100-year frequency flood would not exceed 0.1 foot" Mr Milk estimated that the flood stage was increased more than 0.5 feet in

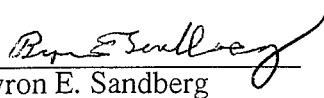
the 1957 flood. A larger part of this flood in the flood way here because of the two 90 degree turns of Minnie Creek into the trestle and around the east corners of Minnie Creek. Also because a pool that stores flood water is formed by the higher ground elevation near the trestle than upstream.

FUNDAMENTAL FAIRNESS and REIMBURSEMENT OF COSTS.

Mr Volini's attorney made a motion to adjourn the last PCB hearing that indicates he was only pursuing this landfill application to sell it to another party. The reason he gave for the adjournment was to negotiate a sale with Waste Management. He said they were interested in negotiating because of the costs of appeal. There are rumors abroad that Mr Volini is only in the business of obtaining approvals of landfill applications to sell to others, not to operate them.. I have not had the time to confirm these rumors, but I will take time if it allows myself, the other petitioners and CRIME to make a claim for the reimbursement of our expenses and time against Mr Volini and the City. If Mr. Volini actually intended to build a landfill to operate, he would have selected a much better site on the hills of this area rather than in this lowland site that lacks natural protection for the aquifer and is in the 100 year flood plain. When I asked Mr Moose during the hearing how he was going to keep water from flowing out of the fractures in the rock while they were working. He said they would push clay over it. Why would anyone want to build a landfill in such a situation. If he planned to actually build a landfill, he would have sent in the application to build in a ~~landfill~~ and not proceeded until he had a permit. The granting of such a claim against Mr Volini and the City would have the effect of discouraging Mr Volini and others who engage in this practice from repeating it. *Flood Plain*

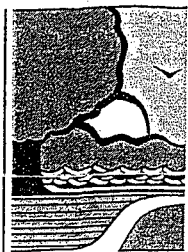
The City went forward with two hearings on this application despite knowledge that Mr Volini had been notified to submit an application to build in the Flood plain by the Illinois ~~CNR~~ They also were informed that he could not build in this flood plain without a permit. Yet, he submitted two applications and they approved both knowing he could not build without such a permit. They approved the first with good evidence that it was in a flood plain and that he did not present enough test boring evidence required by PCB rules to prove that the strata below the landfill base was not an aquifer. They approved the second after a clear disclosure that the evidence Mr Volini's experts provided was faked and misrepresented.. These circumstances indicate that the petitioners and CRIME should have a claim against the City for being forced to defend against a hearing and an appeal for a landfill that could not have been built without CNR approval. It also appears that Mr Volini never intended to build the landfill, only sell the permit to Waste Management so they could have a monopoly in this lucrative landfill location. A monopoly here is of considerable value because it would be the closest landfill by far to the Southern Suburbs. Higher charges can be charged here and profit gained because of lower transportation costs and truck turn around time.

The four million dollars per year that the city would gain from this landfill can be interpreted as a bribe to the individual city council members. The well known tax protester Keith Runyon has researched the employee numbers of cities this size. Kankakee has 132 more employees than Park Forest, a city of the same size and demographics. These extra employees are not needed to perform the work of a city this size. Among them are the political campaign workers and supporters who are needed to insure the reelection of the members of the present city council to office.


Byron E. Sandberg

Incllosures.

1. Letter from the DNR to Mr Volini with copy to the City
2. Picture of flooding covering the landfill site June 8th, 1993 that was an inclosure to my brief submitted to the City Council before their vote.
3. Page 19 of Water Survey Investigation Report No 111
4. Page 24 Ibid
5. 1st page of my hearing brief advising City Council how the Kankakee River and City Water supply would be polluted if a landfill was built on this site. .
6. Letter from 2 members of Minnie Creek Ditch District Board.



Illinois
Department of
Natural Resources
Office of Water Resources

<http://dnr.state.il.us>

One Natural Resources Way • Springfield, Illinois 62702-1271

George H. Ryan, Governor • Brent Manning, Director

June 18, 2002

SUBJECT: Kankakee Regional Landfill
Minnie Creek Floodway
Sections 24 & 25, T30N, R14W, 2nd P.M.
Kankakee County

Town & Country Utilities, Inc.
3990 Garfield Street
Gary, Indiana 46408

ATTENTION: Mr. Thomas Volini

Dear Mr. Volini:

It was recently brought to our attention that fill material is proposed to be placed within the vicinity of Minnie Creek and its tributary for the construction of the Kankakee Regional Landfill. It is our understanding that the Town & Country Utilities, Inc. are the developers for this project.

The Illinois Department of Natural Resources, Office of Water Resources exercises jurisdiction over construction in the floodway of streams with a drainage area of greater than 10 square miles in a rural area or 1 square mile in an urban area, whether or not the stream has been included in the typical mapping from the Federal Emergency Management Agency (FEMA). The floodway is the portion of the floodplain that must remain open and unobstructed in order to store and convey flood flows. Based upon the plans available to us, the project does include work within the floodway and must receive a permit from this office prior to the initiation of construction. Enclosed for your use is a copy of our Part 3700 Rules entitled "Construction in Floodways of Rivers, Lakes and Streams" and an application for permit form. Please submit information providing specific details of the proposed work and an analysis demonstrating that your proposed project will meet the applicable standards of the Part 3700 Rules.

If you have any questions regarding this information, please feel free to contact me at 217/782-3863.

Sincerely,

Robert C. Giesing, P.E.
Regional Water Resource Engineer

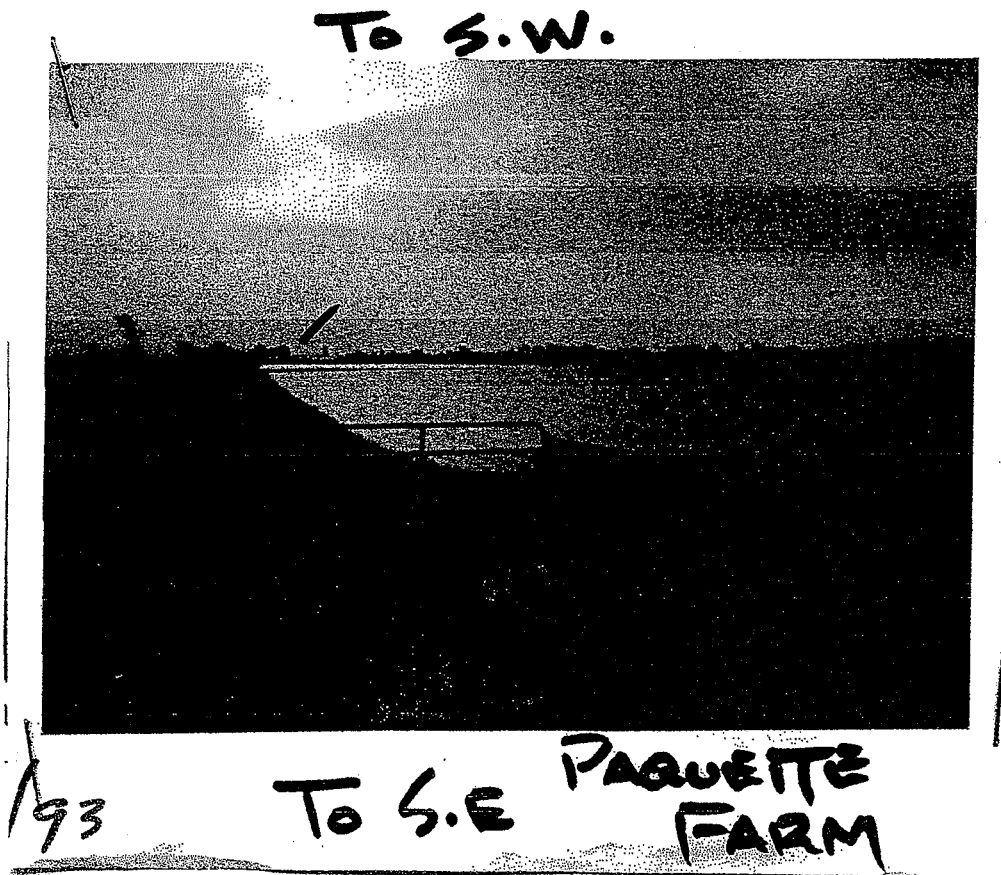
RCG:crw
Enclosures

cc: City of Kankakee, City Planner (Dave Schaffer)
Envirogen, Inc.
bcc: Mr. Lawrence O'Connor

6/

**PICTURE OF FLOODING TAKEN JUNE 8TH, 1993
OF ONE OF THE SMALLER FLOODS
AT THE PROPOSED SITE OF THE LANDFILL**

The proposed landfill location is in the center of this picture. The farmstead of Mr Pawuette who sold the land to the landfill is in the far left background. Picture was taken from the bridge of the highway that runs through the flooded area.



Picture furnished by Mr Lee Milk who has been present at most of the floods of the proposed site. He owns across the road from the landfill to the west that is also flooded.

860-710-1039

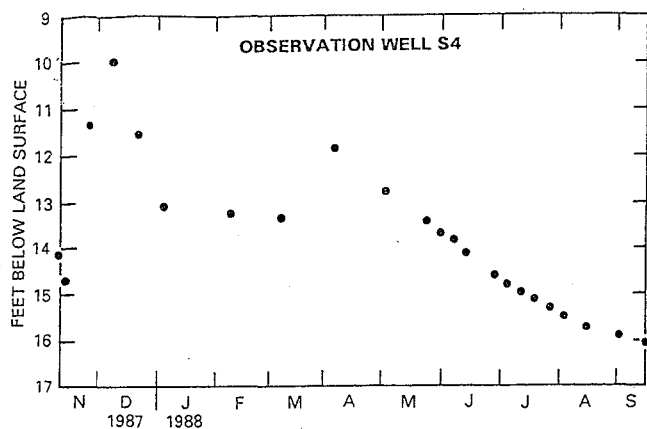


Figure 15. Hydrograph for shallow sand-and-gravel observation well S4

While irrigation caused major water-level declines in observation well S3 in 1988, it was responsible for maintaining water levels in observation well S5 at a higher than natural level through June and July. The water table around well S5 remained higher than expected because of local irrigation and because a large irrigation ditch, used for holding and transporting irrigation water, was located within one-quarter mile of the observation well. The shallow sand and gravel penetrated by well S5 is separated from the dolomite aquifer by a clay confining layer.

The observation well data indicate that in areas with a clay or till confining layer, high-capacity wells do not cause any significant drawdown in nearby water wells installed in shallow sand and gravel. Declining water levels in these shallow wells can be attributed to natural recession of the water table from late spring to early fall, when evapotranspiration and ground-water runoff generally exceed recharge from precipitation.

Clay - Till Aquitard

The fine-grained lacustrine clay or till that underlies the shallow sand and gravel throughout much of the study area acts as an aquitard or confining layer. The low permeability of this layer restricts downward and lateral movement of ground water, inhibiting recharge of the underlying aquifer. Vertical hydraulic conductivity values for the clay and till layers over the dolomite aquifer were computed using the following formula, which was modified from Walton (1965):

$$K' = m'[(Q_c/A_1)/(2.8 \times 10^7) \Delta h]$$

where:

- K' = vertical hydraulic conductivity of deposits in gallons per day per square foot
- m' = saturated thickness of deposits, in feet
- Q_c/A_1 = recharge rate, in gallons per day per square mile
- Q_c = leakage (recharge) through deposits, in gallons per day
- A_1 = area of flow channel between flow lines and flow cross sections, in square miles
- Δh = difference between the head in the aquifer and in the source bed above deposits through which leakage occurs, in feet

Recharge rates were determined for selected areas using flow-net analyses of the spring 1987 potentiometric surface map of the dolomite aquifer. A detailed description of the methods used to calculate recharge rates is presented in Walton (1965). The flow channels chosen for computing recharge rates and vertical hydraulic conductivity are shown in figure 16. Recharge rates, vertical head losses, and clay and till thicknesses for the selected flow

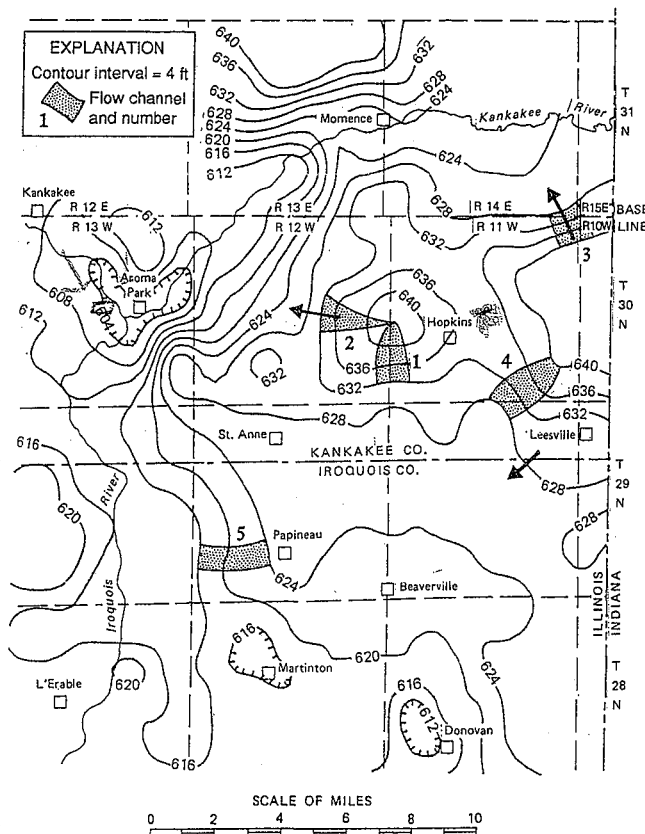


Figure 16. Potentiometric surface of the dolomite aquifer, May 25-28, 1987, and locations of flow channels

Illinois Water Survey Investigation
Report #111 by
STUART CLAVENS

(gaining or effluent stream) and recharge the aquifer (losing or influent stream) at various places. On the other hand, the aquifer may be isolated from the river when impermeable materials such as clays occur beneath the riverbed. To delineate zones of potential recharge and discharge between the Kankakee and Iroquois Rivers and the bedrock aquifer, water elevations were measured in 22 bedrock wells adjacent to the two rivers. Water elevations in the wells were then compared to river elevations. Measurements were conducted over a three-day period during the first week of May 1988.

The Illinois State Geological Survey conducted extensive mapping of materials below the Kankakee River and the lower portion of the Iroquois River near its confluence with the Kankakee River (Gross and Berg, 1981). The geologic mapping showed that the Kankakee River channel is underlain by sand and bedrock. At those stretches of river not directly underlain by bedrock, varying thicknesses of sand deposits lie over the bedrock. No significant fine-grained deposits, which would separate the surface water from the ground water in the bedrock, were mapped. Figure 18 shows how the four-mile stretch of the Kankakee River channel at Momence, the two-mile stretch downstream of Aroma Park, and a small stretch of the Iroquois River upstream from Aroma Park flow directly over Silurian Dolomite bedrock.

Although geologic mapping of the Iroquois River channel terminated about one mile south of Aroma Park, geologic maps from drillers' logs show that surficial deposits along the northern stretch of the river are predominantly coarser grained. Beginning about two miles north of the Kankakee-Iroquois county line, the deposits adjacent to the river change to finer grained materials. Surficial deposits over most of northern Iroquois County, through which the Iroquois River flows, are primarily finer grained, although coarser grained material is often found near the surface.

Comparing ground-water elevations to river elevations, the ground-water level is above the Kankakee River elevation all the way downstream from the beginning of the bedrock high near Momence. Figure 19 illustrates ground-water elevations relative to river elevations along the Kankakee River. Assuming a hydraulic connection between the Silurian Dolomite and the river channel, the entire Kankakee River downstream from Momence is recharged by ground water from the bedrock. This is also true of the Iroquois River, where ground-water elevations in the surrounding bedrock are 4 to 18 feet above the elevation of the river channel. However, finer grained deposits along much of the Iroquois River isolate the river channel from the bedrock, limiting the upward flow of ground water from the bedrock to the stream.

Conversely, the entire stretch of the Kankakee River channel upstream from the bedrock high near Momence is

higher than the ground-water levels measured in ad bedrock wells. This indicates that when measure were taken in May 1988, the river was influent; that is, of the river water was migrating into the Silurian Dol. As shown in figure 19, the magnitude of the head diffe of the river over ground-water levels increases ups from the bedrock high. Proceeding upstream from

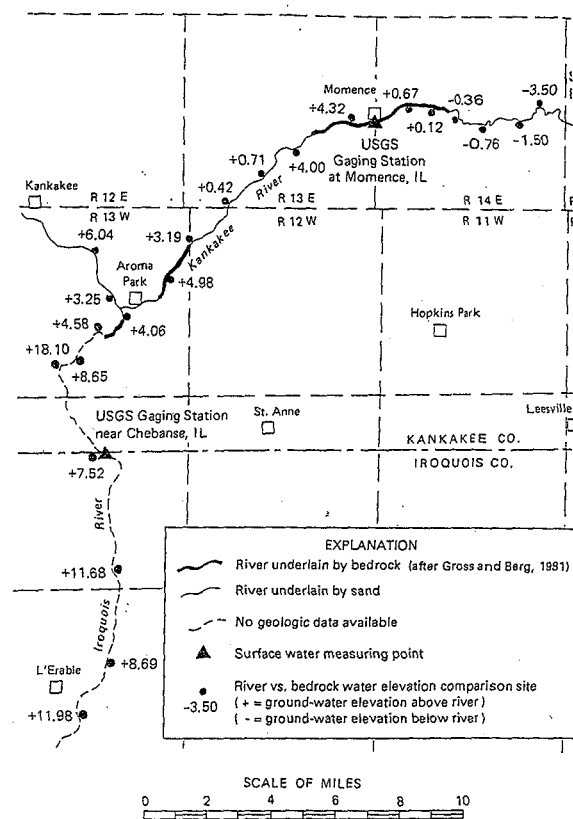


Figure 18. Comparison of surface water levels with ground-water levels in dolomite wells along the Kankakee and Iroquois Rivers, May 3-5, 1988

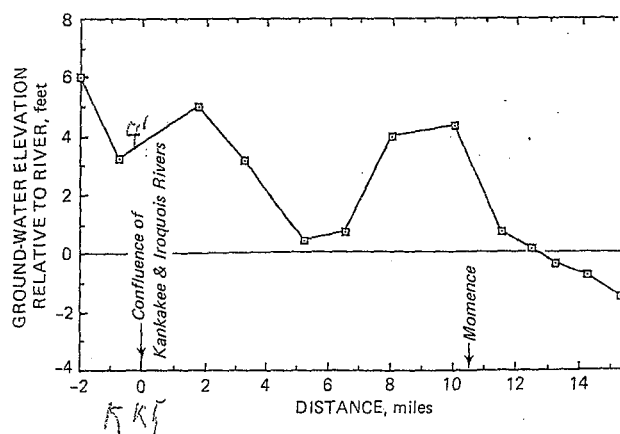


Figure 19. Ground-water levels in the Silurian Dolomite relative to surface water levels along the Kankakee River

BYRON SANDBERG
109 Raub Ave, Donovan, Ill 60931

**BRIEF AND ANALYSIS OF THE 2d KKK CITY LANDFILL HEARINGS
AND ATTACHMENTS SUPPORTING THE EVALUATION**

I have constructed this analysis and supporting attachments so that you will know that if you place a landfill in this Minnie Creek flood area, you will go down in infamy as the Mayor and City Council who approved the landfill that polluted the water supply of Kankakee, Bradley, Bourbonnais, and Aroma Park.. cities. These pollutants will be more expensive to treat and remove from the city water and the aquifer because they are a variety of pollutants, not one as in the case of the pipeline pollutant situation to the west of Kankakee. You can't get them all out. I enclose evidence and pictures that establish: (1) This landfill site floods at a frequency of every 3 or 4 years according to Mr. Mosier who placed barricades on the road next to the landfill for the fifty years of his employment as a township highway employee. These are not all large floods, but they are enough to fill the 30 feet of the landfill below ground and soak the trash with water, making it produce pollutants faster than they can self destruct as in a dry landfill. (3) The pollutants will go to the location where the Kankakee and Iroquois Rivers join upstream of the cities water intakes. Pollutants in several nearby spills in an identical aquifer situation move relatively fast at about a mile per year. Thus, pollutants will appear in the Kankakee river about four years after the flooding. According, these pollutants will be in the Kankakee River upstream of the city water intakes in 7 to 10 years, depending on when the landfill floods. This is earlier than most landfills that cause pollution start to cause pollution. This is because of the unusual situation of flooding and an aquifer that carries pollutants faster than most. The situation is worse here than at Waste Management because the river is no bare to entry of pollutants there. There is unlikely to be any warning of the escape of pollutants from the landfill because there are only monitoring wells in the 2 to 9 foot dolomite levels, not in the lower level where the pollutants will travel. Monitoring wells are ineffective in fractured dolomitic limestone aquifers because the pollutants travel with the water in the fractures between the monitoring wells.

I am part of a good Republican family who understand Illinois politics. I am working in your interest, trying to keep you out of the situation my cousin Ron Swanson is in. He could go to jail if he cannot satisfy the federal prosecutors that he has told everything that he knows about a deal they think he made for Governor Ryan. He was one of the top four in Governor Ryan's inner circle. Now he is being charged with perjury by federal prosecutors who are trying to make him talk about the unusual siting of a state prison in Greenville, IL. There was no logical reason to site a prison in a small town in that low crime area when prisons are being shut down because the state does not have the money to staff the prisons it already has.

Federal prosecution and maybe jail is a possible threat for the mayor and members of the city council because there is no more reason to site a landfill in this place that floods and pollutes than there was to build a prison at Greysville. The feds or maybe even the present Democratic administration are going to see something unusual about all the unanimous City Council votes. Some of your political enemies or the objectors may call about them. It looks too much like there could be the kind of connivance they suspect in the Greyville prison situation. Remember that Mr Scott said that he couldn't understand why he was going to prison for what is common practice in Illinois politics. The feds are putting Illinois politicians in jail for what they didn't know was a crime. You need to seek impartial legal advice and look at what you do more critically. Don't ask the lawyers who have been advising you in this because they have been in Illinois politics so long like Mr Scott that their sense of right and wrong has been distorted. The prosecutors are not going to understand why you went to great trouble to annex this terrible flooding and polluting site in a hole that floods between the two branches of Minnie Creek. You could have annexed a good high ground site with plenty of clay east of town by using the highway much easier. You can still vote against this site and go for this other location to make as much money for the city, if not for yourself. It has plenty of clay to protect the aquifer where this site does not have enough. It is not going to flood.

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We are two of the three board members of the Minnie Creek Drainage District and as such have been asked to make a statement regarding the flooding of Minnie Creek in the area where the landfill is to be built.

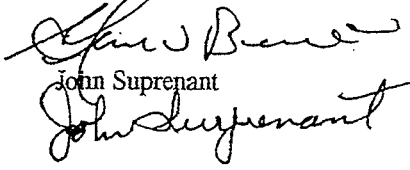
The flooding is caused by the railroad embankment and trestle (bridge) which forms a dam to back up the water and cause flooding in the area where the landfill is to be built. The landfill is to be built in the deepest part of the flooding near and about centered on the railroad trestle. Both the width and structure of the trestle cause the flooding. It is not possible to change this except by replacing the trestle with one that is wider and designed more efficiently. Replacing the rail road trestle would be a major expense that would cause interruption of railroad traffic. The grade of Minnie Creek upstream of the trestle is also part of the problem. It cannot be improved because the land is so flat.

Mr. Volinni of the firm that would like to build the landfill has offered to clean the part of Minnie Creek that runs beside the railroad embankment. He has not offered to build a new railroad trestle. There is also a bridge under Interstate 57 that is next to the railroad trestle that may be part of the problem so replacing the railroad trestle may not be enough. Cleaning any part of Minnie Creek will not reduce the flooding because the railroad trestle causes the flooding. The Minnie Creek Drainage District has cleaned the rest of Minnie Creek to improve the drainage of the members of the district. This cleaning will increase the flooding problem because the more water will come down the Creek during and immediately after a heavy rain than before the cleaning. There is more than 15,000 acres in the Minnie Creek Drainage District. Land that drains into Minnie Creek in addition to the 15,000 acres that should be annexed into the District is not included in the 15,000-acre figure.

The spoil banks beside Minnie Creek have not prevented flooding in the past. They were not intended for that purpose. With the exception of the Lee Milk property they are only the dirt from work on Minnie Creek. Nothing has been done to reduce the flooding so they will not prevent flooding in the future.

The landfill is in the deepest area of the flood between the two branches of Minnie Creek. It will displace a considerable volume of water. This can be estimated accurately from the testimony of the depth of floodwater on the adjacent road at the last landfill hearing and the surveyed elevations of the proposed landfill, which include the land adjacent to the road. Considering the elevation of the houses along the road northwest of the landfill, these houses will be flooded above floor level in a similar future flood if a landfill is built. They also may be flooded in a lesser flood because of the floodwater displaced by the landfill.

Mark V. Benoit


John Suprenant