

BEFORE THE 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

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STATE OF ILLINOIS
Pollution Control Board

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

REPLY TO REBUTALS TO BRIEF OF BYRON SANDBERG THIRD PART APPEAL TO PCB.

Petitioner BYRON SANDBERG submits this reply to rebuttals 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 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 facility

NO REBUTAL OF MY BRIEF WAS RECEIVED FROM CITY OF KANKAKEE DESPITE PHONE CALLS ASKING FOR IT. ACCORDINGLY, THE CITY DID NOT REFUTE MY ARGUMENTS THAT THEY DID NOT WEIGH THE MANIFEST WEIGHT OF EVIDENCE APPROPRIATELY IN REGARD TO THE FLOOD PLAIN CRITERIA AND MISLEADING TESTS.

I received no critique of my brief from the City of Kankakee despite telephone calls to the city asking for such a critique. They were simply unable to refute my brief including the following points.

1. The pictures and detailed description of flooding and the flood plain in my brief.
2. My reference to the record of the movie and detailed descriptions of previous flooding in the transcript of the previous hearing which was made a part of the record of this hearing.
3. That they proceeded with two expensive hearings despite their city planner Mr. Sawyer being notified by a copy of a letter from Illinois Department of Natural Resources (DNR) to the applicant, (Mr. Volini) stating that Mr. Volini "must receive a permit from this office (DNR) prior to the initiation of construction" and directing that his firm "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. DNR stated they had a copy of the plan from the application and stated "the project does include work within the floodway and requires a permit from this office prior to the initiation of construction" Based on this letter, it was obligation of the City of Kankakee to not begin hearings until an application was submitted that met the DNR Rules was submitted and approved . Even a city planner without any landfill credentials should have been able to determine from the

bare contents of the letter that this landfill could not be constructed here unless: (1) There was no work in the floodway and (2) An application was submitted and permit granted prior to construction. Therefore the responsibility of the city was to require the DNR application to be submitted and approved before proceeding with any hearing. It was wrongful for the city to hold two hearings for a landfill application and plan contrary to DNR rules that cannot be constructed without a permit from DNR.

4. As a result of holding a hearing for a landfill application that they were informed could not be constructed according to DNR part 3700 Rules, the City of Kankakee caused the Pollution Control Board the expense of two hearings and the research upon which their decision was based. The City caused the Citizen group CRIME to expend \$17,000 for expert Stuart Cravens, Minnie Creek Drainage District to expend \$5000 for a lawyer, Waste Management to expend a larger amount for a lawyer and witnesses, and myself to expend 7 weeks of research, attending hearings, writing briefs, etc for the two hearings and appeals. 350 hours of work if compensated at the modest rate of \$100 an hour is \$35000. In addition, Mark Benoit and Larry O'Connor expended considerable time organizing, collecting and accounting for the funds raised for the crime group and doing research that supported my brief. I was paid \$390 for expenses which I expended for the first hearing by CRIME. They had no money to pay my expenses for the second hearing. The City of Kankakee should be required to reimburse Larry O'Connor, Mark Benoit and myself who served pro bono without any pay except part of my expenses first. Next in order of compensation should be the citizens who contributed the \$17,000 and the Drainage District \$5000.

5. Since the city did not file a critique regarding my facts and arguments of misleading testimony, they did not refute my argument that they did not properly weigh the Manifest Weight of the Evidence on that issue.

TOWN AND COUNTRY UTILITIES WAS UNABLE TO REFUTE MY EVIDENCE AND ARGUMENT ON THE FLOOD PLAIN CRITERIA OR THE ARGUMENT REGARDING THE MISREPRESENTED TESTS.

Mr. Mueller's critique contained no substance,. Mr. Mueller should spend more time reading and less time writing and raising pointless and inappropriate questions. It is not true that I ignored citations and references to transcripts except in the first few explanatory paragraphs. I referred in my brief to Mr. Moran's brief for references to the misrepresented tests, but now I find they are in the brief of Mr. Porter of the Helston Firm that represented Kankakee County.. His numbers differ a bit from mine, but they support my conclusion that the tests were in six cases faked and in the rest misrepresented.. The numbers differed because I referred to the number of wells and Mr. Porter refers to the number of tests. Mr. Porter also refers to a number of tests that were done and should have been included in the report, but were not. I did not know about this serious problem of the applicant picking out only the tests that supported the point he wanted to make and disregarding the others or I would have included it. I saw no point in extending my analysis to duplicate the work of Mr. Moran and Mr. Porter so I went no further than counting the number of wells as they appeared on the application.

Mr. Mueller said the landfill site was not in a floodplain because it was not a NEMA determined floodplain. It may be news to Mr. Mueller, but floods are determined by excess rainfall which is an natural event or an Act of God, not by NEMA. . The letter from the Illinois DNR was part of my brief that Mr. Mueller commented on. "The letter states DNR rules apply "whether or not the stream has been included in the typical mapping from the Federal Emergency Management Agency (FEMA)" There is no requirement in the Pollution Control Board rules that require a flood plain to be designated by FEMA. Regarding Mr. Mueller's allegations that the landfill is protected from the flood plain. Mr. Moose first testified in reply to my questions stating that the ditch spoil banks protected the landfill. Then It was brought out later that afternoon after I had left the hearing that they will going to fill to the 628 level. This is on page 80, volume 5A of 6/28/03 transcript. I enclose a copy of that page of my brief. Briefly, it states

that the DNR rules do allow fill to be placed in the floodway and questions that fill will protect from flooding. An embankment of fine grained material that met specifications for the liner would be required instead of fill, but neither would be permitted by the DNR in the floodway. In fact, most of the landfill falls in the floodway. . Mr. Mueller's comments ignore the enlargement of the floodplain by the water displaced by the landfill. This is the concern of the DNR and should be that of the PCB. .

Mr. Muller did not comment on my statements regarding that the test wells readings were faked and misrepresented in the application. Instead, he again glorified the supposed credentials of his witnesses who faked and represented the test well readings and Mr. Daniels who was naïve enough to base his testimony on these readings. A license to practice engineering or hydrology does not require a graduate school education which I have. My graduate school education was only place I was really taught to think and do research. At 72, I can still do it better than these licensed engineers. It does not require a graduate school education to acquire an engineer degree. One only has to have an undergraduate degree and pass an open book multiple choice test. If one does not pass the test the first time, he or she has another chance to take it. Apparently, one does not learn it is wrong to fake and misrepresent tests in an undergraduate education or by this test. . My cousin who has both a graduate school education and an engineering license said we have this kind of problem because we have made it too easy to become a licensed engineer and that there are too many of them. Due to this surplus of engineers compared to legitimate jobs, some find it necessary to pervert their skills to misrepresent tests to serve the interests of their employer as in this case. I plan to file complaints with the Illinois Licensing Board against the engineer and hydrologist regarding this incident. After that I will file a complaint against Mr. Daniels for not properly checking the data on which he based his testimony. The EPA tells me that they only check the output of the computer programs, not the inputs so if trash is put in the computer as in this case, trash comes out.

**MR VOLINI WASTED THE TIME OF THE POLLUTION CONTROL BOARD AND THE
REST OF US BY NOT OBTAINING PERMISSION TO BUILD IN A FLOOD PLAIN FROM THE**

ILLINOIS DNR BEFORE SUBMITTING HIS APPLICATION TO THE CITY OF KANKAKEE

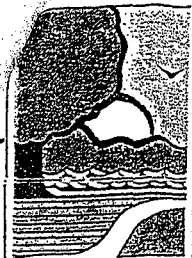
The same arguments and liability apply here as were stated on the section on the city.



Byron Sandberg..

Enclosed:

1. Letter from DNR
2. Page of brief.



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:cw
Enclosures

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

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 map or 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