

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS LANDFILL, INC.,)
)
) Petitioner,
)
) vs. PCB95-162
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
) Respondent.

The following is a transcript of a hearing held in the above-entitled matter, taken stenographically by BRENDA L. ZEITLER, CSR-RPR, a notary public within and for the County of McLean and State of Illinois, before Deborah L. Frank, Chief Hearing Officer, at Six North Vermilion Street, Vermilion County Board Room, Danville, Illinois, on the 21st day of August, A.D., commencing at the hour of 10:00 a.m.

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HEARING TAKEN BEFORE:

ILLINOIS POLLUTION CONTROL BOARD
Six North Vermilion Street
County Board Room
Danville, Illinois 61832
BY: MS. DEBORAH L. FRANK
CHIEF HEARING OFFICER

APPEARANCES:

DUKES, MARTIN, RYAN, MEYER & KRAPP, LTD.
146 North Vermilion Street
Danville, Illinois 61832
(217) 442-0384
BY: MS. NANCY S. JOHNSON

Appearing on behalf of the Petitioner.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Division of Legal Counsel - Assistant Counsel
2200 Churchill Road, P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
BY: MR. ROBERT J. SCHERSCHLIGT

Appearing on behalf of the Respondent.

GROPPI, McNAMARA & UNDERHILL
414 West North Street
Danville, Illinois 61832
(217) 446-3800
BY: MR. FREDERICK UNDERHILL

Appearing on behalf of William Regan.

ALSO PRESENT:

Mr. Ron Steward, Illinois Environmental
Protection Agency
Mr. Gregory Kugler, Andrews Environmental
Engineering Inc.
Mr. William Regan
Mr. Sam Martin
Mr. Allen Decker

1 THE HEARING OFFICER: Good morning. Welcome to
2 the hearing for Illinois Landfill, Inc., vs. Illinois
3 Environmental Protection Agency, PCB95-162.

4 The hearing before us today is a variance
5 hearing. There has been an objection filed by William
6 Regan, and so we are having a hearing today because of that;
7 there's a board order. And I note for the record there are
8 members of the public present.

9 If the attorneys want to go ahead and make their
10 appearances on the record.

11 MS. JOHNSON: Nancy Johnson on behalf of Illinois
12 Landfill, Inc.

13 MR. SCHERSCHLIGT: Bob Scherschligt, assistant
14 counsel, Illinois EPA.

15 MR. UNDERHILL: Also, I'm an attorney. I'm Fred
16 Underhill for William Regan.

17 THE HEARING OFFICER: Do you guys have opening
18 statements? Do you wish to make an opening statement?

19 MS. JOHNSON: I have a statement to make which I
20 think is going to cover both the opening statement and --

21 THE HEARING OFFICER: Okay. That's fine. Go
22 right ahead.

23 MS. JOHNSON: -- our position on it.

24 THE HEARING OFFICER: Okay.

1 MS. JOHNSON: My name is Nancy Johnson. I'm the
2 attorney for Illinois Landfill, Inc. With me today is
3 Mr. Greg Kugler, the vice president and director of the
4 Environmental Services for Andrews Engineering.

5 We are here today on our amended petition for
6 variance which was filed May 22 of 1996. I would represent
7 to your Honor that we are not going to present any
8 additional evidence or testimony today, and we would be
9 simply standing on our petition. However, I would like to
10 make a few comments about the petition.

11 It was filed pursuant to Section 35(a) of the
12 Illinois Environmental Protection Act. We are requesting a
13 variance from compliance with 35 Illinois Administrative
14 Code 814.104(c) for the reason that compliance would pose an
15 arbitrary and unreasonable hardship on Illinois Landfill,
16 Inc.

17 The variance has already been granted through
18 September 18 of 1995. And the original petition that we
19 filed was filed on June 5 of 1995 before the other variance
20 expired asking for an extension through July 1 of 1996. And
21 then we filed the amended petition asking that the extension
22 run from September 18 of 1995 through September 18 of 1996.

23 We do not foresee requesting any additional
24 extensions. Our application will be filed at the very

1 latest on September 18 of 1996 and probably before that.

2 I don't want to rehash the facts of this case,
3 but suffice it to say that Illinois Landfill, Inc.,
4 submitted an application to the City of Hoopeston for
5 expansion pursuant to 39.2 of the Act in late 1992. And
6 after all the hearings and numerous appeals, it was finally
7 approved by the City in the second half of 1995.

8 The circumstances that have caused this delay
9 have been totally beyond the control of Illinois Landfill,
10 Inc., and that's why we feel confident that the filing of
11 our amended petition -- our prior petitions for variance and
12 our amended petition for variance is warranted.

13 Pursuant to 35 Illinois Administrative Code
14 814.104(c), Illinois Landfill, Inc., would have to have
15 filed a permit application on the existing facility in 1994,
16 September 18 of 1994.

17 And at that time, Illinois Landfill, Inc.'s,
18 application for expansion was two years old. The time --
19 this would have been time-consuming both for Illinois
20 Landfill, Inc., and the Agency because once the siting was
21 approved, then they would have had to go back and do the
22 whole process over again.

23 ILI as we stand here today knows of no other
24 methods of compliance that we could have suggested or

1 presented.

2 Like I say, the duplicity of the situation would
3 cause additional time and expense for ILI and for the
4 Agency, and it would be an arbitrary and unreasonable
5 hardship on Illinois Landfill, Inc.

6 As I said earlier, we are standing on our amended
7 petition as submitted with the affidavits and exhibits and
8 would note for the record that the Agency recommends that
9 the extension be allowed and basically concurs with the
10 factual allegations that we have represented in our
11 petition.

12 Mr. Kugler is one of our affiants, and he's here
13 to answer any questions that your Honor might have of him
14 regarding the pending siting application or whatever.

15 At this time we would be asking that the
16 regulatory deadline be extended retroactive to September 18,
17 1995, through September 18, 1996. We would reserve the
18 right to submit any supplemental or rebuttal evidence if
19 necessary.

20 Thank you.

21 THE HEARING OFFICER: Mr. Scherschligt?

22 MR. SCHERSCHLIGT: Thank you very much.

23 Members of the Illinois Pollution Control Board,
24 Madam Hearing Officer, Ms. Johnson, and Mr. Underhill, the

1 following is offered as the Illinois Environmental
2 Protection Agency's opening remarks here today.

3 This matter is before the Illinois Pollution
4 Control Board on an amended petition for variance filed by
5 the petitioner, Illinois Landfill, Inc., on May 20 of 1996.
6 Petitioner seeks a 12-month variance from the requirement of
7 35 Illinois Administrative Code Section 814.104(a) and (c).

8 Section 814.104(a) provides that "All owners or
9 operators of landfills permitted pursuant to Section 21(d)
10 of the Illinois Environmental Protection Act shall file an
11 application for a significant modification to their permits
12 for existing units unless the units will be closed pursuant
13 to Subpart (e) within two years of the effective date of
14 Part 814." I would note that the effective date of Part 814
15 was September 18 of 1990.

16 Section 814.104(c) provides that this application
17 for significant modification must be filed within 48 months
18 of the effective date of Part 814; in other words, by
19 September 18 of 1994.

20 By Illinois Pollution Control Board order dated
21 December 1 of 1994, the Board granted Illinois Landfill
22 their initial variance from September 18 of 1994 to
23 September 18 of 1995. Illinois Landfill's amended petition
24 for variance which is the subject matter of this proceeding

1 asked for an extension to September 18 of 1996 for it to
2 file its application for significant modification.

3 Section 104.180 of the Illinois Pollution Control
4 Board's Rules and Regulations provide that "After
5 investigating the variance petition and considering the
6 views of persons who might be adversely affected by the
7 grant of the variance, the Agency shall within 30 days of
8 the filing of the petition, or any amendment thereto, make a
9 recommendation to the Board on the disposition of the
10 petition."

11 Upon receiving the amended petition for variance
12 on May 21 of 1996, the Agency -- namely, myself -- prepared
13 a public notice order and submitted that to the Illinois
14 Press Association on May 22 of 1996. The order requested
15 that notice of Illinois Landfill's amended petition for
16 variance be published in the local newspaper for Vermilion
17 County; in this case, the Commercial News here in Danville.
18 This notice was, in fact, published on June 4 of this year.

19 Prior to the publication of this notice in the
20 Danville Commercial News, the Agency received a letter from
21 a Mr. Frederick Underhill who is present here today and who
22 is Illinois counsel for Mr. Bill Regan. Mr. Underhill's
23 letter to the Agency was dated May 28 and was received by
24 the Agency on May 30.

1 In his letter, Mr. Underhill requested that his
2 client, Mr. Regan, be placed on the Agency service list to
3 receive copies of all notices, permits, and other relevant
4 information concerning this matter.

5 The Agency gladly accommodated Mr. Underhill's
6 request by mailing to him and his client a copy of Illinois
7 Landfill's amended petition for variance and a copy of the
8 Agency's recommendation and response to the amended petition
9 for variance. This information was mailed to Mr. Underhill
10 and Mr. Regan on June 7 of 1996. I would just point out
11 that Mr. Regan was cc'd on the letter to Mr. Underhill, but
12 both Mr. Underhill and Mr. Regan, I believe, were provided
13 their own copies of the amended petition as well as the
14 Agency's response.

15 Incidentally, the Agency's response and
16 recommendation was mailed for filing with the Board on
17 June 6 and makes reference to Mr. Underhill's request and
18 the mailing of this information to him and his client.

19 In short, in making its recommendation and
20 response to Illinois Landfill's amended petition, the Agency
21 has fully complied with the provisions of Section 104.180 of
22 the Boards's Rules and Regulations. The Agency believes
23 that Illinois Landfill's request for an extension of time
24 until September 18th of 1996 is reasonable in duration under

1 the circumstances, particularly when taking into
2 consideration the extenuating circumstances beyond Illinois
3 Landfill's control.

4 Accordingly, the Agency recommends that Illinois
5 Landfill's amended petition for variance being granted and
6 in support thereof would stand on the representations made
7 in its recommendation in response to the amended petition.

8 I would also like to point out that subsequent to
9 the filing of the Agency's response and recommendation, on
10 June 19 of this year, I was contacted by Mr. Charlie Marvin
11 who is the California counsel for Mr. Regan. At that time
12 Mr. Marvin requested that I send him a copy of the amended
13 petition for variance and the Illinois Environmental
14 Protection Agency's response and recommendation.

15 I sent him that information on that same day by
16 letter, and I also sent Mr. Marvin a copy of the Illinois
17 Environmental Protection Act, the relevant regulations --
18 particularly, Part 814 -- and a copy of the Illinois
19 Pollution Control Board's Rules and Regulations. On that
20 same day, I also faxed Mr. Marvin a copy of the Board's
21 December 1, 1994, order pertaining to Illinois Landfill's
22 amended petition for variance filed on October 26 of 1994.
23 That December 1 order gave Illinois Landfill their first
24 extension of time to September 18 of 1995.

1 On July 3 of 1996, I was again contacted by
2 telephone by Mr. Marvin, and he requested that I send him a
3 copy of the Illinois Pollution Control Board's June 6, 1996,
4 order that noted, I believe, that the decision deadline in
5 this matter had been restarted since Illinois Landfill had
6 filed their amended petition for variance.

7 I believe I faxed him a copy of that order on
8 that same day. It was then on July 10 of 1996 that
9 Mr. Marvin filed an objection on behalf of Mr. Regan with
10 the Illinois Pollution Control Board. And then this matter
11 was set for hearing by this hearing officer on July 16 of
12 this year.

13 Since that time, I have spoken with Mr. Marvin a
14 couple of times by telephone. He has had questions related
15 to this matter, procedural questions. I have accommodated
16 him when possible. It's my understanding that Mr. Underhill
17 is here today in representation of Mr. Regan.

18 Thank you very much.

19 THE HEARING OFFICER: Okay. Is there anything
20 further from either of the parties?

21 MS. JOHNSON: Not at this time.

22 THE HEARING OFFICER: Mr. Scherschligt, were you
23 planning on calling anyone?

24 MR. SCHERSCHLIGT: We have no evidence to present

1 at this time.

2 THE HEARING OFFICER: Okay. Well, then I open
3 the floor for public comment on the variance proceeding.

4 Mr. Underhill?

5 MR. UNDERHILL: Yes. My client, Mr. Regan, would
6 like to testify.

7 THE HEARING OFFICER: Okay. Mr. Regan, please
8 raise your hand to be sworn.

9 Will the court reporter please swear him.

10 (Witness sworn.)

11 THE HEARING OFFICER: You may proceed.

12 WILLIAM REGAN,
13 called as a witness, after being first duly sworn, testified
14 upon his oath as follows:

15 NARRATIVE TESTIMONY

16 BY MR. REGAN:

17 My name is William Regan, and I live in Southern
18 California. I own land adjacent to the Illinois Landfill.

19 First of all, I'd like to say thanks to you, your
20 Honor, for letting me attend this meeting. I'm not an
21 attorney. I've never been to a hearing before; so I'm sure
22 that I'm not as equipped to proceed as many of you will be.

23 I would like to mention that the farm that's
24 involved is a family farm; it's 241 acres. It's been in the

1 family for many, many years. We have a lot of desire to see
2 that the farm is not affected adversely.

3 I know that you're pressed for time, and I'll try
4 not to ramble on. And if I can have your patience, I'll try
5 to stay on track.

6 THE HEARING OFFICER: We have plenty of time.
7 Take your time.

8 MR. REGAN: So the issue is very important to me.
9 And I think it really should be important to the community.
10 And it appears to us that Illinois Landfill has had adequate
11 time to file a permit; and, for various reasons, they
12 haven't done so. And I think that we're showing effects of
13 that -- not only to our farm, but to the environment --
14 because it hasn't been done.

15 So I know that this takes time. And it's at some
16 expense to us and inconvenience to travel the 2,000 miles to
17 attend here, but I think that I want you to know that I
18 really feel that the Pollution Control Board should not
19 approve the variance.

20 I don't think that -- well, I would -- I'm not
21 saying that that's -- it's very, very difficult for me to
22 understand all the technicalities involved. And in doing my
23 research, it appears that Illinois Landfill has had
24 opportunities to do this; and for reasons only known to

1 them, they have not done it.

2 When the expansion was first offered, I was the
3 first objector to that expansion on November 24, 1992. And
4 as we know or may not know, the expansion was very
5 controversial. It was approved, and then it was rejected by
6 the Pollution Control Board, and then it was approved again.

7 And both times the council was evenly split in
8 approving. And both times the vote was broken by the mayor.
9 So you can see that there is a lot of concern about the
10 environment and the conditions. There was a nonbinding
11 election in the City of Hoopeston, and that was, I think,
12 about 80/20 in favor of not having the landfill.

13 So it's my purpose here today, if I can, to
14 simply say that this is a very important issue to the
15 community and to me as far as our family farm. And I would
16 like to just get into some of the details that we've looked
17 at and feel that we should refer to.

18 Number one, as I mentioned, I have my local farm
19 manager and my farm operator here, and they are more closer
20 to the information and the exposure than I am. And with all
21 due respect, I'd like for them to comment to you, your
22 Honor.

23 THE HEARING OFFICER: They can be sworn and make
24 statements on the record. There's no problem with that.

1 Any member of the public can speak.

2 MR. REGAN: If we can do that, I'd like to start
3 with Mr. Martin, if I could.

4 THE HEARING OFFICER: Can you please swear
5 Mr. Martin.

6 (Witness sworn.)

7 THE HEARING OFFICER: Can you please state your
8 name for the record and kind of tell us who you are.

9 MR. MARTIN: Yes. My name is Sam Martin. I live
10 in Watseka, and I'm a farm manager.

11 THE HEARING OFFICER: Did you wish to go ahead
12 and make a statement?

13 MR. UNDERHILL: Go ahead and state what you know
14 about this situation, what you've observed and, you know,
15 tell them.

16 SAM MARTIN,
17 called as a witness, after being first duly sworn, testified
18 upon his oath as follows:

19 NARRATIVE TESTIMONY

20 BY SAM MARTIN:

21 Well, Illinois Landfill adjoins Mr. Regan's farm
22 on the north. Approximately three years ago, we were
23 starting to have some problems with water ponding in a
24 field. We contacted the Illinois Landfill to inquire if

1 they had cut any tile or whatever when they were doing their
2 digging. They said that they did not. However, they had
3 agreed to dig a diversion channel to allow water to come
4 across our fence line and reroute it down to a little creek.

5 Subsequent to that, the following year, the water
6 was still ponding in that area on various rains. We had
7 noticed that the -- you know, the dirt that was on their
8 berm had, you know, washed down into the ditch and had made
9 a dam of the water. When we notified them of that, they
10 came over and, you know, dug out that dirt. And, anyway,
11 the water had kind of flowed down to the ditch.

12 This spring, as everyone is well aware, we had
13 substantial amounts of rainfall which the pond in our field
14 was probably the largest that it's ever been in the last
15 three years, you know, destroying the corn that had been
16 planted.

17 We had a local contractor, Bob Voyles from
18 Wellington, who brought his backhoe out to our farm. We dug
19 up along the fence row and found where we had a clay tile
20 that was running northward into the landfill that, when we
21 hit the tile, filled the trench full of water and, you know,
22 obviously was causing all of the damage to the crop both in
23 the pond and the whole tile system that drains into that.

24 And going across the fence line, the ditch that

1 had been dug three years ago was completely silted in with
2 the erosion coming off of the berm, not allowing any water
3 whatsoever to go anywhere. Thus, it created a problem for
4 us.

5 One of the problems that was noted this year,
6 particularly, there's about 25 or 30 feet of hedge -- I
7 shouldn't say -- there's a hedgerow of trees that is the
8 fence line between the Regan farm and the Illinois Landfill.
9 And there is about 25 or 30 feet of trees in the hedgerow
10 that are now dead because of the water that had stood there
11 and so forth.

12 You know, that's really the problems that we have
13 noticed as a result of the berm. I don't know how many more
14 trees in the hedgerow will be affected. That obviously, you
15 know, would have an effect on our environment with the
16 wildlife and whatnot.

17 We have pictures that we have taken. I don't
18 know if we --

19 MR. UNDERHILL: We do have some photographs,
20 if we can use them.

21 THE HEARING OFFICER: We can mark them as public
22 comments and have them submitted into the record if you so
23 wish.

24 MR. UNDERHILL: Yes, we would.

1 THE HEARING OFFICER: You just need to bring them
2 up to me.

3 MR. UNDERHILL: I think we better refer to them
4 and explain what they are on the record first of all.

5 THE HEARING OFFICER: That's fine. I'm going to
6 mark them when I receive them all as "Public Comment
7 Number 1" as a group exhibit.

8 MR. MARTIN: I don't know if anybody wants to see
9 the pictures, but we can just look at these.

10 This is where we hit the tile.

11 THE HEARING OFFICER: For the record, this is a
12 picture that's marked Number 1.

13 MR. MARTIN: And if you look right in there, you
14 can see the tile. When we hit it with the backhoe, that's
15 what caused this trench to suddenly fill up with water.

16 And there is a picture of the tile, Number 2,
17 that, obviously, this buildup of clay has been caused by the
18 tile being severed on the other side. So when that was not
19 allowed to drain, the dirt backed up in there. And
20 that's -- it's about half full of dirt.

21 Number 3 is really just a picture of the area of
22 our cornfield that was affected this year. Actually,
23 Number 4 is a similar area that was affected.

24 Number 5 shows the distance of trees that are

1 dead along there.

2 Number 6 is more of an area of the cornfield that
3 had, you know, obviously been flooded.

4 Number 7, this is on the Illinois Landfill's side
5 of the hedge, and this is their berm. And this was the
6 original channel that they had cut in there that obviously
7 had been silted in, thus causing the problems.

8 Here are some better pictures of the dead trees.
9 These are the dead trees.

10 THE HEARING OFFICER: For the record, the first
11 group were Instamatics. The next group are not numbered.
12 They are just normal pictures of the area.

13 MR. MARTIN: So I think you can see here the big
14 effect of not only the corn that's gone; but, also, through
15 the tile system that drains through there, the water has
16 backed it up. And you can see there's standing water which
17 occurs quite often.

18 MR. SCHERSCHLIGT: Excuse me. Perhaps maybe we
19 should mark those individually so the Board will know what
20 he's referring to.

21 THE HEARING OFFICER: I think it's obvious from
22 the pictures.

23 MR. SCHERSCHLIGT: Okay. Fair enough.

24 THE HEARING OFFICER: There's pictures of trees,

1 and there's pictures of cornfields. It's pretty easy to --

2 MR. SCHERSCHLIGT: All right.

3 MR. MARTIN: So those are the pictures.

4 THE HEARING OFFICER: Let's go off the record for
5 a moment.

6 (Discussion off the record.)

7 THE HEARING OFFICER: As I said earlier, for the
8 record, these pictures will be marked as Public Comment
9 Number 1, and they were introduced by Sam Martin.

10 Mr. Martin, did you have anything further you
11 wished to say on the record?

12 MR. MARTIN: No. I think that's pretty much all.

13 MR. UNDERHILL: It's been over a three-year
14 period.

15 MR. MARTIN: It has been over a three-year period
16 that that's happened. And it's obviously gotten
17 progressively worse over the last three years.

18 THE HEARING OFFICER: Do the attorneys for either
19 ILI or the Agency have any questions for --

20 MR. SCHERSCHLIGT: I have no questions.

21 MS. JOHNSON: I have no questions.

22 THE HEARING OFFICER: How about for Mr. Regan? I
23 didn't ask if you had any questions for him when he was
24 speaking.

1 MR. SCHERSCHLIGT: No questions.

2 MS. JOHNSON: No questions.

3 THE HEARING OFFICER: Okay.

4 MR. UNDERHILL: Then we'd like to have Mr. Decker
5 sworn now.

6 MR. REGAN: Allen is the one that farms the land
7 and has been for many years, and I think he'd like to
8 comment.

9 THE HEARING OFFICER: Could you please swear the
10 witness.

11 (Witness sworn.)

12 THE HEARING OFFICER: Please state your name for
13 the record.

14 ALLEN DECKER,
15 called as a witness, after being first duly sworn, testified
16 upon his oath as follows:

17 NARRATIVE TESTIMONY

18 BY MR. DECKER:

19 I'm Allen Decker from Wellington, Illinois. I've
20 farmed Bill's partial since 1991. I've been farming since
21 1981 and come from a farm background, family farm.

22 In 1994, when the Landfill project at that time
23 was in corn and we got stuck in this area, the rest of the
24 farm was dry and able to get through. And at that time, I

1 brought it to Bill's attention that there is definitely a
2 problem there.

3 When this berm was put through, it's kind of held
4 the surface water back in that area which in turn has caused
5 this ponding. So we met with the Landfill people -- I think
6 Dave Geier (phonetic) was his name, at the time was the head
7 operational manager as such, and he said that he'd try to
8 work with us on it. And that's when he cut this ditch to
9 try to alleviate the problem. And in turn it has silted in
10 since.

11 So the next year, which would be '95, it was in
12 soybeans, and we had a ponding area again. And up until
13 this time, we'd always farmed this area. And that's why I
14 kept telling Bill that there's probably a problem here; and,
15 to my knowledge, I thought there probably should be a tile
16 in this area because it was never wet before.

17 So then, again, here in '96, we did plant through
18 the area but not in the best conditions. And we did get a
19 crop to come up. And then with the heavy rains and, like I
20 said -- so we finally went and exposed the tile here
21 probably, I'm going to say, a month ago possibly.

22 MR. MARTIN: End of June or July.

23 MR. DECKER: End of June. We did find the tile,
24 and it is backlogged with clay. I'm going to say that tile

1 probably goes into that farm, to the best of my knowledge, a
2 quarter of a mile. So it's probably -- to drain, I'm going
3 to say, 40, 50 acres.

4 I don't know whether you're familiar with tile,
5 but it's kind of like if your basement drain was plugged;
6 it's the same theory on farmland. To raise a crop, first
7 you have to have a drainage and then your nutrients and then
8 your seed.

9 So, basically, we found the tile was having some
10 problems. And more so, I think the surface drainage --
11 there's probably, I'm going to say, a 60-acre watershed that
12 used to go that way. And now with the berm, it just swings
13 back around and comes back on the farm. So it's almost been
14 a diversion of water, too, on top of it.

15 THE HEARING OFFICER: Is there anything further?

16 MR. REGAN: If I could just maybe comment about
17 the berm. When you say a "berm," sometimes we think a berm
18 of maybe 4 or 5 feet. This berm is probably, what, 25 feet
19 in the air?

20 MR. DECKER: Yeah.

21 MR. REGAN: So it's a huge berm. We don't want
22 to bore you with more detail than what you need, but it's
23 changed the whole complex of that area with this vertical
24 berm that's probably, what, half a mile by half a mile each

1 way?

2 MR. MARTIN: Uh-huh.

3 MR. REGAN: And it's clay; it's strictly clay.
4 And that clay, whenever it moves, there's moisture. It
5 moves, and then it goes into tile. And we're not the only
6 ones affected. There have been other neighbors that have
7 been involved.

8 And that's one of the reasons that -- when I was
9 here in June, I saw this condition that Allen and Sam were
10 talking about. And we had corn planted, and I said, "Well,
11 I think we ought to get a backhoe in here and see where the
12 tile is that's stopped.

13 And they didn't think that was a very wise
14 decision. I don't make very many wise decisions. But I
15 said, "Let's find out where the tile is." And we had to
16 knock some corn down, destroy some corn, in getting the end
17 loader into the field.

18 And, sure enough, they did that. And that's
19 where they found the tile had been cut off. And that's the
20 reason we weren't getting drainage.

21 So that's the reason we think that extension
22 shouldn't be granted because we're not the only ones
23 affected. There are other people affected, also.

24 So I don't know if you have any questions. But I

1 think Allen is saying, in summary, this has been a condition
2 that's gone on for at least three years.

3 MR. DECKER: Three crop years.

4 MR. REGAN: Thank you very much.

5 THE HEARING OFFICER: Are there any questions for
6 any of the members of the public?

7 MR. SCHERSCHLIGT: No. Thank you.

8 MS. JOHNSON: No questions, your Honor.

9 THE HEARING OFFICER: Is there anyone else who
10 wishes to speak?

11 Let's go off the record for a moment.

12 (Discussion off the record.)

13 THE HEARING OFFICER: The members of the public
14 have requested a written public comment period. Because of
15 the current decision deadline and the fact that the
16 objection was received so late -- and we set a hearing as
17 quickly as we could, but we are close to the Board's
18 decision deadline -- we have decided kind of amongst
19 ourselves that the public comment period will run until
20 August 23 which is this Friday. And then ILI and the Agency
21 will have time until August 30 for any kind of response to
22 the public comment or any type of brief, if they wish to
23 file. If they don't wish to file anything, that's fine.
24 But that way it gives them a chance to do that.

1 MS. JOHNSON: Copies of the public comment will
2 be sent to us?

3 THE HEARING OFFICER: Copies are sent by the
4 Board if anything is filed in writing. I am not going to
5 request that the Board reproduce these photographs unless
6 you feel that you --

7 MS. JOHNSON: No. I mean of the comments made
8 after the hearing.

9 THE HEARING OFFICER: Yes. They will be sent to
10 you. I will let the Board know that they need to go out as
11 quickly as possible since you only have a week. But we'll
12 do our best. They copy them and send them out usually the
13 same day that they get them.

14 MS. JOHNSON: Okay. Thank you.

15 THE HEARING OFFICER: Mr. Underhill?

16 MR. UNDERHILL: Should the public comment be sent
17 to the Board or to your attention or --

18 THE HEARING OFFICER: They need to be filed with
19 the Board. The Board usually -- I mean, you can send me a
20 copy, but the Board usually sends me a copy of public
21 comments; so I would receive them.

22 And mailed is "filed" for the Board. So if you
23 mail it on Friday, it counts, although I would encourage you
24 to get it in as quickly as possible because the other side

1 does need a chance to look at it and respond to it.

2 And we will get it out to you guys as quickly as
3 we can. If it looks like it's going to be cutting it close
4 and it's something that's easily faxable, I will try and
5 take care of getting it faxed to you. We'll have to keep in
6 contact over the next couple weeks. Okay?

7 Is there anything else?

8 (No response.)

9 THE HEARING OFFICER: Then I will note for the
10 record that on August 30 the record will close, and that way
11 the Board will have a short time but will have time to make
12 its decision in this matter.

13 Thank you all for coming. The hearing is
14 adjourned.

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16 (Which were all of the proceedings
17 had in the above-entitled cause.)

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1 STATE OF ILLINOIS)
)
2 COUNTY OF McLEAN)

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7 I, Brenda L. Zeitler, CSR-RPR, do hereby state
8 that I am a court reporter doing business in the City of
9 Bloomington, County of McLean, and State of Illinois; that I
10 reported by means of machine shorthand the proceedings held
11 in the foregoing cause, and that the foregoing is a true and
12 correct transcript of my shorthand notes so taken as
13 aforesaid.

14

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 Brenda L. Zeitler, CSR-RPR
18 Illinois License No. 084-004062

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