

1 BEFORE THE POLLUTION CONTROL BOARD

2 OF THE STATE OF ILLINOIS

3 LAND AND LAKES COMPANY (RIVER BEND)
 PRAIRIE FACILITY))

4)
) vs.) PCB 96-198

5)
 ILLINOIS ENVIRONMENTAL PROTECTION) (Variance)
 AGENCY)

7 The following is a transcript of a

8 hearing held in the above-entitled matter, at James

9 Thompson Center, 100 West Randolph Street, Room 11-500,

10 Chicago, Illinois, on the 26th of July, 1996 A.D.,

11 commencing at the hour of 10:00 o'clock a.m.

12 BEFORE:

 MS. DEBORAH L. FRANK, Hearing Officer.

13 PRESENT:

 Mr. Emmett Dunham II, Board Member

15 APPEARANCES:

16 Mr. Mark V. Gurnik
 Assistant counsel
 Waste Enforcement
 Division of Legal Counsel
 2200 Churchill Road
 P. O. Box 19276
 Springfield, IL 62794
 appeared on behalf of the Illinois
 Environmental Protection Agency;

21 Ms. Kelly A. O'Connor,
 Mr. James R. Carroll and
 Mr. John F. Kennedy
 Quinlan & Crisham, Ltd.
 161 North Clark Street
 Suite 2300
 Chicago, Illinois 60601
 appeared on behalf of Land and Lakes.

1 ALSO PRESENT:

2 ENVIRONMENTAL PROTECTION AGENCY
3 Ms. Joyce Munie
4 Environmental Protection Engineer
5 Permit Section
6 Bureau of Land

7 LAND AND LAKES COMPANY
8 Mr. Jay Goldstein
9 Environmental Director
10 Land and Lakes Company

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1 HEARING OFFICER FRANK: Good morning. Welcome to
2 our hearing today in Land and Lakes versus the Illinois
3 Environmental Protection Agency. The number is PCB
4 96-198.

5 I'm Debra Frank. I'm the Hearing
6 Officer for this matter. And to my right is Emmett
7 Dunham. He is a Board Member with the Illinois
8 Pollution Control Board.

9 I note for the record that it is
10 10:45 on July 26th -- my watch is wrong -- and that we
11 have waited the fifteen minutes because there was an
12 objector in this matter, but seeing that there are no
13 members of the public present, we are going to go ahead
14 and begin. If they come in later, then they can voice
15 whatever objection they have at that time.

16 Noting all of that, I'll have you
17 guys go around the room and introduce yourselves for
18 the record and state who you're with.

19 MR. CARROLL: My name is James Carroll. I'm with
20 Quinlan & Crisham on behalf of Land and Lakes.

21 MR. GOLDSTEIN: I'm Jay Goldstein. I'm
22 Environmental Director of Land and Lakes.

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1 MS. O'CONNOR: Kelly O'Connor with Quinlan &
2 Crisham on behalf of Land and Lakes.

3 MR. KENNEDY: John Kennedy with Quinlan & Crisham
4 also on behalf of Land and Lakes.

5 MS. MUNIE: Joyce Munie, Solid Waste Unit
6 Manager, Illinois EPA.

7 MR. GURNIK: Mark V. Gurnik, attorney for the
8 Illinois Environmental Protection Agency.

9 HEARING OFFICER FRANK: Okay. Why don't we go
10 ahead then and begin.

11 Jim, I don't know if you have -- I
12 should say "Mr. Carroll" on the record. Do you have
13 anything for an opening statement or how do you want to
14 handle this?

15 MR. CARROLL: I think maybe I'll make a short
16 opening statement and we can go from there. How's
17 that?

18 HEARING OFFICER FRANK: Okay.

19 OPENING STATEMENT

20 BY

21 MR. CARROLL: I think the issue that we are here
22 before is a very narrow issue and, that is, whether
23 Land and Lakes' Petition which seeks a variance from
24 the filing requirements of 814.104(c) of the Illinois

1 Administrative Code should be extended for an
2 additional period of six months.

3 As you indicated, there was an
4 objection from the City that was filed in this. And,
5 for the record, we would like to renew our Motion to
6 Strike for the purposes of the Board, not only for
7 those records which we espoused in the motion to
8 strike, but, also, because now we have a written
9 document before the Board which is not subject to
10 cross-examination, at least at this point in time
11 because no one is here, so we would renew our motion to
12 strike for the record.

13 Contrary to that, I think the City
14 did indicate that there were seven variances -- or six
15 prior variances that were granted to Land and Lakes in
16 this matter, and I think that's totally incorrect.
17 This is the first variance that Land and Lakes has
18 petitioned for in this matter. In regard to its
19 filing, Land and Lakes feels that it has been very
20 diligent in fulfilling the filing requirements of the
21 Act and Regs.

22 On March 18th, 1996, Land and Lakes
23 did file its Petition for Variance requesting that
24 six-month extension of time because it is currently

1 seeking and has filed, and, actually, the hearing has
2 been completed in Dolton for local siting for a
3 significant expansion of Land and Lakes' facility there
4 which is known as River Bend Prairie.

5 At the time, Land and Lakes knew that
6 if it was going to expand that facility and file, it
7 would be necessary for them to file a very different
8 significant modification to its permit application, if
9 that siting was granted.

10 The preparation of two permit
11 applications, both in March and subsequently, after the
12 siting, would have involved substantial expense and
13 justification. And possibly the second or the first
14 filing would have become obsolete or moot, had the
15 second one become necessary. The filing of both
16 applications would have involved a comprehensive
17 reengineering of the design plans for the landfill.

18 Land and Lakes estimates that the
19 cost of preparing a second application would have been
20 at least \$250,000, when you consider all the additional
21 engineering costs associated with the groundwater
22 modeling, redesigning the leachate, and gas and methane
23 collection systems, and other major systems that would
24 have been involved.

1 The filing of both applications would
2 have had an affect on the Agency. The Agency would
3 have had to review and would have had a significant
4 increase in the amount of work because of the filing of
5 both petitions unnecessarily, if a second one would
6 have been filed.

7 We are only requesting an extension
8 of time for six months from the period of March 19th to
9 September 19, 1996, which is now less than two months
10 away.

11 The granting of this variance will
12 have no adverse impact on the environment or no adverse
13 impact on the public health and safety.

14 The requested variance is not
15 inconsistent with any federal laws and regulations.

16 The Environmental Protection Agency
17 in its response that's present before the Board
18 generally agrees with Land and Lakes's facts as they
19 have set forth and is not opposed to the granting of a
20 variance. And I think that's evidenced not only by
21 their filing with the Board, but also a stipulation
22 that we will enter into this morning.

23 Whether or not Land and Lakes and,
24 most importantly, I think whether or not Land and Lakes

1 does receive local siting for the expansion of its
2 facility, Land and Lakes will file its significant
3 modification for its permit on or before September
4 19th, so we will comply with the schedule.

5 To require Land and Lakes to file
6 these two significant modifications within a very short
7 six-month period of time, I think, would cause Land and
8 Lakes to suffer an arbitrary and unreasonable hardship
9 because of the expense and time involved, when only one
10 application would be necessary.

11 I believe that Land and Lakes' Dolton
12 facility has been found to be in general compliance
13 with all Land and Lakes's -- Agency's inspections and
14 that there has been and there will be no prejudice to
15 the People of the State of Illinois, the County of
16 Cook, the City of Chicago, or the City of Dolton if
17 such a significant modification is granted by the
18 Board.

19 HEARING OFFICER FRANK: Okay.

20 MR. CARROLL: For those reasons we would ask the
21 Board to grant our six-month extension of time.

22 HEARING OFFICER FRANK: Mr. Gurnik, did you have
23 any type of opening?

24 OPENING STATEMENT

Sally A. Guardado, C.S.R. * (708) 614-7742

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BY

MR. GURNIK: For an opening statement, I would simply note that the Agency filed its recommendation on April 9th, 1996, and its position has not changed since that date and it will stand upon the recommendation that is given to the Board.

HEARING OFFICER FRANK: Okay. Then, let's go ahead and begin.

MR. CARROLL: I guess the only evidence that we would have in the Petitioner's case would be to stand on the petition. And, as you may recall, there is an Affidavit of Jay Goldstein, who is here, that has been attested to and notarized and we would stand on that.

In addition, we would like to present to the Hearing Officer, the Statement of Agreed Facts that we have reached with -- I don't know how many copies you want, but this is the original copy. The Statement of Agreed Facts that we have reached with the Agency in this matter.

HEARING OFFICER FRANK: I'm going to just call this Joint Exhibit 1 for the record.

And if you have extra copies, that would be great. It would save the Board from --

MR. CARROLL: I would be happy to. How many more

1 would you like?

2 HEARING OFFICER FRANK: Do you have seven?

3 MR. CARROLL: I'll check. One, two, three, four,
4 five, six.

5 HEARING OFFICER FRANK: And we have one here.

6 MR. CARROLL: We have seven.

7 HEARING OFFICER FRANK: Great.

8 MR. CARROLL: Seven copies for the Board, so
9 there won't be any need for us to file it separately?

10 HEARING OFFICER FRANK: Right. And there
11 wouldn't be, anyway, because this is an exhibit. But
12 this way there will be copies for all of the Board
13 members.

14 (Whereupon, Agency Exhibit No. 1
15 was marked for identification.)

16 MR. CARROLL: Based on the petition that you have
17 before us with the affidavit and the stipulation of
18 agreed facts with the Agency that we presented before
19 the Board today, the Petitioner would rest.

20 HEARING OFFICER FRANK: Okay.

21 The exhibit is entered. There is no
22 objection, I'm assuming, since it is a Joint Exhibit.

23 (Said document, heretofore marked
24 Agency Exhibit No. 1 for

1 identification, was admitted into
2 evidence, to wit, as follows:)

3 HEARING OFFICER FRANK: Does the Agency have any
4 witnesses or anything?

5 MR. GURNIK: The Agency does not have any
6 witnesses.

7 HEARING OFFICER FRANK: Okay. Well, it is five
8 to eleven and there are still no members of the public
9 here, so, at this time, unless you have any
10 questions --

11 BOARD MEMBER DUNHAM: No.

12 HEARING OFFICER FRANK: -- the hearing is
13 adjourned. Thank you all for coming.

14 Before we do that -- Thanks.

15 Do you guys wish to file any briefs
16 in this matter?

17 MR. CARROLL: I think, given the nature of the
18 record -- Would the record close today if we said no?

19 HEARING OFFICER FRANK: Well, what I am going to
20 do, since there was an objection and no one has showed
21 up, I am going to have a week public comment period,
22 just in case there is anyone who wishes to make a
23 statement, so we will have a public comment period.

24 If you want, what we could do is

1 reserve, maybe, simultaneous briefs that are due a week
2 later just in case something happens in public
3 comments.

4 MR. CARROLL: I think that's perfectly fine.

5 If there is no public comment, we do
6 not anticipate filing any post-hearing briefs.

7 HEARING OFFICER FRANK: Okay. Well, then, we'll
8 close public comment on the 2nd. And we'll have
9 simultaneous briefs due, if any, on August 9th.

10 MR. CARROLL: Does the Agency anticipate a
11 post-hearing brief?

12 MR. GURNIK: At this point in time, no, the
13 Agency does not. However, if there are any public
14 comments that it feels need to be addressed, it
15 appreciates the opportunity to do so.

16 HEARING OFFICER FRANK: Okay. And the decision,
17 deadline, I believe, it's due September 6th.

18 MR. CARROLL: September 6th, I believe. There's
19 a September 5th Board hearing and then --

20 HEARING OFFICER FRANK: September 5th Board
21 meeting so that is about a month for the Board. And,
22 since you are not anticipating filing, that should not
23 be any problem.

24 Also, we did not have any witnesses

1 so I don't have a credibility statement at this point.

2 The hearing is adjourned. Thank you
3 very much.

4 (HEARING CLOSED.)

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1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS:

3 Sally A. Guardado hereby certifies that
4 she is the Certified Shorthand Reporter who reported in
5 shorthand the proceedings had in the above-entitled
6 matter, and that the foregoing is a true and correct
7 transcript of said proceedings.

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10 Certified Shorthand Reporter
11 Notary Public, County of Cook, State of Illinois

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