

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs. No. PCB 98-171

7 VICTOR CORY, (Enforcement)

8 Respondent.

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13 Proceedings held on January 26, 1999 at 10:10

14 a.m., at the Illinois Pollution Control Board, 600

15 South Second Street, Suite 402, Springfield, Illinois,

16 before the Honorable Amy L. Jackson, Hearing Officer.

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A P P E A R A N C E S

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Pro se

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1 PROCEEDINGS

2 (January 26, 1999; 10:10 a.m.)

3 HEARING OFFICER JACKSON: Good morning everyone.

4 My name is Amy Jackson. I am the Board Hearing

5 Officer who will be handling this matter. This is PCB

6 98-171, People of the State of Illinois versus Victor

7 Cory. For the record, it is Tuesday, January 26th,

8 1999, and we are beginning at about ten after 10:00 in

9 the morning.

10 I want to welcome Board Member Elena Kezelis, who

11 will be sitting in for the hearing. I will remind the

12 parties that the Board rules do allow Board Members to

13 ask questions of the witnesses who are on the stand.

14 I will provide Ms. Kezelis with an opportunity to ask

15 any questions that she might have.

16 At issue in this case are allegations contained in

17 a complaint filed by the People of the State of

18 Illinois. The violations alleged in the complaint

19 relate to Mr. Cory's operation of a swine production

20 facility in eastern Adams County, Illinois. Parties

21 have agreed to hold the hearing today in Springfield

22 in Sangamon County.

23 The People allege that Victor Cory has violated

24 the Illinois Environmental Protection Act and the

25 Pollution Control Board rules and regulations by

1 causing or allowing water pollution, by threatening a
2 discharge without a valid NPDES, or a National
3 Pollution Discharge Elimination System Permit, and by
4 failing to ensure adequate storage capacity in the
5 waste lagoons.

6 Mr. Cory did not file an answer in response to the
7 People's complaint and, therefore, according to the
8 Board's regulations the allegations are deemed denied
9 by Mr. Cory.

10 For the benefit of those of you who may not be
11 familiar with the Board's procedures, I want to take a
12 brief moment to let you know what is going to happen
13 today and after the proceeding today. You should know
14 that it is the Board and not me that will make the
15 final decision in this case. My job as a Hearing
16 Officer requires that I conduct the hearing in a
17 neutral and orderly manner so that we have a clear
18 record of the proceedings here today. It is also my
19 responsibility to assess the credibility of any
20 witnesses giving testimony today, and I will do so on
21 the record at the conclusion of the proceedings.

22 We will begin with opening statements from both
23 parties, and then we will proceed with the State's
24 case, followed by Mr. Cory having an opportunity to
25 put on a case in his behalf. We will conclude with

1 any closing arguments that the parties wish to make,
2 and then we will discuss off the record a briefing
3 schedule which will be set on the record at the
4 conclusion of the proceedings.

5 The Board's procedural rules and the Environmental
6 Protection Act provide that members of the public
7 shall be allowed to speak or submit written statements
8 at hearing. Any person offering such testimony today
9 shall be subject to cross-examination by both of the
10 parties. Any such statements offered by members of
11 the public must be relevant to the case at hand. I
12 will call for any statements from members of the
13 public at the conclusion of the proceedings.

14 At this time I will ask whether there are any
15 members of the public present who wish to give
16 statements today. Seeing none, we will proceed at
17 this time, and I will again ask for any comments from
18 members of the public at the end of the proceedings.

19 Before beginning, I will caution everyone that a
20 Board hearing is much the same as being in court, and
21 everyone should act appropriately with proper decorum
22 and with due respect for either side.

23 At this time I will ask the parties to make their
24 appearances on the record, beginning with the State.

25 MS. PERI: I am Desiree Peri with the Attorney

1 General's Office on behalf of the complainant, the
2 People of the State of Illinois.

3 HEARING OFFICER JACKSON: And also sitting at
4 counsel table with you, Ms. Peri, is --

5 MS. PERI: That would be Caryn Nadenbush with the
6 Illinois Environmental Protection Agency.

7 HEARING OFFICER JACKSON: Thank you. Mr. Cory,
8 would you make an appearance on the record?

9 MR. CORY: My name is Victor Cory. I am the one
10 to whom the EPA is directing their complaint.

11 HEARING OFFICER JACKSON: Okay. Mr. Cory, you are
12 not an attorney, correct?

13 MR. CORY: Correct.

14 HEARING OFFICER JACKSON: You have elected to
15 proceed today without the benefit of legal counsel,
16 correct?

17 MR. CORY: By necessity.

18 HEARING OFFICER JACKSON: All right.

19 MR. CORY: Attorneys cost money.

20 HEARING OFFICER JACKSON: Thank you very much.

21 Ms. Peri and Mr. Cory, do we have any preliminary
22 matters that need to be discussed on the record?

23 MS. PERI: Madam Hearing Officer, I would simply
24 like to raise the question of whether an answer was,
25 in fact, filed in this case. I have copies of what

1 appears to be an answer, although I don't have a
2 certificate of service indicating that it was filed
3 with the Board. This was received as a copy in my
4 office, and so I would simply raise that issue with
5 you as to whether the Pollution Control Board, in
6 fact, received an answer on file.

7 HEARING OFFICER JACKSON: I do not have a copy in
8 my file.

9 Mr. Cory, did you submit an answer to the
10 complaint to the Pollution Control Board?

11 MR. CORY: Dated July 13th.

12 HEARING OFFICER JACKSON: Do you have a file
13 stamped copy with you? May I see it, please?

14 MR. CORY: I will bring it up. This was submitted
15 prior to the time that I had been told how to submit
16 an answer, and so its format is different, but that
17 was my answer to the original complaint.

18 HEARING OFFICER JACKSON: Okay. Did you get a
19 copy of this back from the Board with a file stamp on
20 it?

21 MR. CORY: I don't believe so.

22 HEARING OFFICER JACKSON: I note that my name --
23 there is one document dated July 14th, 1998, addressed
24 to Ms. Dorothy Gunn at the Pollution Control Board.

25 There is another document dated July 13th, 1998,

1 addressed to myself and to Ms. Peri.

2 Are those the documents that you have, Ms. Peri?

3 MS. PERI: I do have a document dated August 25th,
4 and the second document I have it appears to be in the
5 form of an answer and that is not dated.

6 HEARING OFFICER JACKSON: Okay. Why don't we take
7 a look at what you have.

8 MS. PERI: This does not appear to be the original
9 answer, but an addendum to his answer.

10 HEARING OFFICER JACKSON: The State has handed me
11 a document addressed to Ms. Peri, dated August 25th,
12 1998, and also a document that is not dated, but is
13 entitled -- it appears to be an answer to the
14 complaint set out by each count. It does not appear
15 from any of these documents that these were actually
16 filed with the Board, meaning there are no date stamps
17 indicating that the Board received copies of these. I
18 do not have them in my file. I will have to check
19 with the Board to see if they did receive them in
20 Chicago.

21 MR. CORY: What I gave you is the copy I kept at
22 the time I mailed them. As far as I know, I got
23 nothing back.

24 HEARING OFFICER JACKSON: Okay. I will hand these
25 back to you. Sorry.

1 Is it your intention, Mr. Cory, to file an answer
2 to the complaint in this case?

3 MR. CORY: Well, obviously, I thought I had.

4 HEARING OFFICER JACKSON: Okay.

5 MR. CORY: And so yes. I mean --

6 HEARING OFFICER JACKSON: Okay. Does the State
7 have any objection to the Hearing Officer accepting
8 the answer today and forwarding it with the copy of
9 the transcript we make today to the Board, if they do
10 not have a copy in the Chicago office?

11 MS. PERI: No objection.

12 HEARING OFFICER JACKSON: Okay.

13 MR. CORY: Does that mean verbally today I am
14 filing a copy?

15 HEARING OFFICER JACKSON: It has been accepted
16 today.

17 MR. CORY: Thank you.

18 HEARING OFFICER JACKSON: I will have to check
19 with the Chicago office, with the clerk's office, to
20 see if, in fact, a copy of that answer was received.
21 But we will take it as submitted if not earlier than
22 as of today.

23 MR. CORY: Thank you.

24 HEARING OFFICER JACKSON: Okay. Any other
25 preliminary matters?

1 MS. PERI: Would you like to be addressed as Madam
2 Hearing Officer in this proceeding?

3 HEARING OFFICER JACKSON: That's fine.

4 MS. PERI: We request, also, if there is no
5 objection from Mr. Cory, that we can be seated during
6 this proceeding.

7 HEARING OFFICER JACKSON: Mr. Cory do you have any
8 objection? She has asked that you be allowed to
9 remain seated during this proceeding.

10 MR. CORY: Please do.

11 HEARING OFFICER JACKSON: That's fine with me.
12 Any other preliminary matters?

13 HEARING OFFICER JACKSON: Let's go off the record
14 for one second.

15 (Discussion off the record.)

16 HEARING OFFICER JACKSON: We will go back on the
17 record.

18 No other preliminary matters needing to be
19 addressed at this time. We will move forward with
20 opening statements. Ms. Peri.

21 MS. PERI: Thank you. Madam Hearing Officer, we
22 are here today on the People's complaint against
23 respondent, Victor Cory, to address allegations
24 concerning a pending threat of water pollution. The
25 respondent owns a parcel of land located in eastern

1 Adams County that was once used to operate a swine
2 production facility. The respondent engaged in the
3 hog farm business off and on for several years and
4 during that time provided for the disposal of liquid
5 livestock waste into two earthen livestock waste
6 lagoons located on his property.

7 Today you will hear a lot about these two lagoons,
8 because although the respondent left behind the
9 business of hog farming in the 1980s, the People of
10 the State of Illinois are still faced with the legacy
11 of pollutants in the two livestock waste lagoons. The
12 People will call four witness to discuss the pollution
13 problem currently before the Board. Those witnesses
14 include three agricultural engineers employed by the
15 Illinois Environmental Protection Agency, who between
16 them have made in excess of ten inspections of the two
17 livestock waste lagoons on the Cory property. They
18 will explain that today, as we sit here, there is a
19 threat of water pollution on and off of the
20 respondent's property.

21 The water pollution threat arises from a
22 combination of the following four factors, which at
23 the close of the People's evidence will solidly
24 support the allegations under the complaint.

25 First, the contents of the lagoons. The two

1 livestock waste lagoons on the respondent's property
2 still contain swine waste contaminants. You can see
3 it, smell it, and test for it.

4 Second, there is a waterway on the property. This
5 is a tributary just west of the lagoons that leads to
6 a creek known as McKee Creek.

7 Third, there is the topography of the respondent's
8 property that is at issue. There are several acres of
9 land on the property that naturally drain down steep
10 slopes to the lagoons and, furthermore, the lagoon
11 contents, if an overflow were to occur, would drain
12 west over other steep slopes down the waterway leading
13 to McKee Creek.

14 Finally, poor maintenance of the lagoon
15 structures. The respondent's failure to properly
16 maintain the lagoon structures is manifested in two
17 important ways. First the People will show that the
18 berm of the south lagoon is eroded and too narrow at
19 the top on the west side of that lagoon. A breach of
20 the berm and overflow of the lagoon contents is
21 possible because of the eroded state of that berm.
22 Bearing in mind that the contents of the lagoon will
23 spill west down steep slopes to the waterway, the
24 threat of water pollution is made clear.

25 There is a second maintenance problem we will

1 address today. The respondent's failure to properly
2 and routinely dewater the lagoons. This is not a
3 static lagoon. There is precipitation moving into it
4 throughout the year, not just water that falls onto
5 the lagoons, but also stormwater draining from several
6 acres into the lagoons. So water is continually
7 added, the water levels rise, and one would expect
8 that the lagoon contents will rise and over top the
9 berms, unless routinely dewatered and applied at
10 agronomic rates to farmland. Such routine maintenance
11 is necessary to prevent an overflow of the lagoon
12 contents to the waterway west of those lagoons.

13 The respondent will likely propose that the
14 lagoons be dewatered to the waterway west of the
15 lagoons. He has made this proposal for years now.
16 The People will present evidence of this act having
17 already been taken on the property. But that is not
18 an acceptable practice, because there are pollutants
19 in the lagoons, and the discharge of pollutants to the
20 waterway threatens aquatic life.

21 The People will offer testimony regarding an NPDES
22 permit, a National Pollution Discharge Elimination
23 System permit. The respondent was issued such a
24 permit in 1987, and that same permit expired in 1991.
25 As the Board is aware, NPDES permits, in general,

1 regulate discharges of pollutants to waters of the
2 State.
3 The permit issued to respondent in 1987 never
4 allowed for a discharge to waters of the State and, in
5 fact, expressly prohibited such a discharge. And yet
6 a discharge of pollutants to waters of the State
7 without an NPDES permit has occurred, and the threat
8 of a discharge of pollutants without a permit
9 continues.

10 Madam Hearing Officer, the People are confident
11 that the People's evidence will show, beyond a
12 preponderance of the evidence, that the respondent has
13 violated Sections 12(a) and 12(f) of the Illinois
14 Environmental Protection Act, and Section 501.504,
15 Subsection C of the Illinois Pollution Control Board's
16 agricultural related regulations. Thank you.

17 HEARING OFFICER JACKSON: All right. Thank you,
18 Ms. Peri.

19 Mr. Cory, do you wish to make an opening statement
20 at this time?

21 MR. CORY: If you noted, in your dissertation and
22 in Desiree's, the word allegation always is appearing
23 before any complaint, allegations, allegations. And I
24 intend to show today that the berms are in good shape,
25 have always been in good shape. And that

1 misidentification of the acreage south and below my
2 lagoons is responsible for their opinion that I cannot
3 legally dewater to that area. We will get into that
4 in detail. Maintenance, I will agree, has not been
5 performed on the berms, because it has not been
6 needed. I will show that today, and ask John Wells to
7 affirm, as a result of his September 1 visit to the
8 site. The other points made will come up and be
9 handled satisfactorily showing that I am not guilty of
10 any pollution ever.

11 And so since I am going to cover the other points
12 as we go through this, let that conclude my opening
13 statement.

14 HEARING OFFICER JACKSON: Very good. Thank you,
15 Mr. Cory.

16 I do want to note also that I neglected earlier to
17 mention that you have someone sitting with you at
18 counsel table. Can you identify for the record who
19 that is?

20 MR. CORY: I sure can. That's my son, Kevin, who
21 is quite familiar, of course, with the hog farm.

22 HEARING OFFICER JACKSON: Okay. I just want to
23 caution you, as not being an attorney -- I assume you
24 are not an attorney, correct?

25 MR. KEVIN CORY: Correct.

1 HEARING OFFICER JACKSON: So we won't ask for any
2 statements from you unless you are sworn in as a
3 witness.

4 Okay. Are we ready to proceed then? Ms. Peri,
5 call your first witness.

6 MS. PERI: The People call Mr. Dale Brockamp.

7 HEARING OFFICER JACKSON: Would the court reporter
8 swear in the witness.

9 (Whereupon the witness was sworn by the Notary
10 Public.)

11 HEARING OFFICER JACKSON: Okay. You may proceed.

12 DALE W. BROCKAMP,
13 having been first duly sworn by the Notary Public,
14 saith as follows:

15 DIRECT EXAMINATION

16 BY MS. PERI:

17 Q Good morning, Mr. Brockamp.

18 A Good morning.

19 Q For a moment we will discuss your educational
20 background and work experience. You have a Bachelor's
21 of Science Degree in agriculture engineering?

22 A Yes, I do.

23 Q Since you received your degree, please
24 describe your work experience.

25 A I began working for the Illinois

1 Environmental Protection Agency in May of 1988. My
2 first job was down in the Marion regional office. I
3 covered 31 counties in Southern Illinois. I responded
4 to citizens' complaints, and I investigated pollution
5 complaints regarding livestock waste and agricultural
6 wastes, and other duties as assigned by my supervisor
7 at that time.

8 Q What was your title in that position?

9 A I began the position as Environmental
10 Protection Engineer I.

11 Q And how long were you with the Marion
12 regional office?

13 A I was in the Marion regional office from May
14 of 1988 until March of 1992.

15 Q When you left the office in 1992, what was
16 the title that you carried?

17 A I believe it was an Environmental Protection
18 Engineer II.

19 Q And when you moved from the Marion office
20 where did you go?

21 A I moved over the weekend immediately up to
22 the Springfield regional office here in Springfield.

23 Q And what were your duties with the
24 Springfield regional office?

25 A My duties -- it was a lateral position. I

1 was doing pretty much the exact same thing. I
2 responded to citizens' complaints. The only
3 difference was that my territory covered 17 counties
4 in west Central Illinois.

5 Q So in the Springfield regional office you
6 also went out and inspected livestock facilities?

7 A That is correct.

8 Q In your estimation, how many livestock
9 facilities have you inspected as an agricultural
10 engineer with the Illinois EPA?

11 A I typically inspected 150 farms over each of
12 the ten years I was employed with the Agency. Many of
13 those were duplicates, so probably 600 to 700 over my
14 tenure.

15 Q In the course of inspecting livestock
16 facilities what, in general, did you look for?

17 A It certainly depended upon the complaint.
18 Some of the complaints were odor related. The
19 majority of the complaints, though, involved water
20 pollution complaints. And so when I went to a site if
21 it was a water pollution complaint, for example, I
22 would check the surrounding environment, look
23 downstream, look upstream, see if I can see anything
24 from the road before I ever went to the farmstead.

25 Q Would you examine livestock waste storage

1 structures?

2 A Yes.

3 Q Would that include lagoon structures?

4 A It would include lagoon structures.

5 Q You indicated that you had ten years

6 experience with the Illinois EPA?

7 A That is correct.

8 Q Did you leave the Agency?

9 A Yes, my last day was December 31st of 1997.

10 Q Why did you leave?

11 A I transferred to the Illinois Department of

12 Natural Resources.

13 Q When you conducted inspections as an

14 agricultural engineer with the Agency, did you make

15 reports based on those inspections?

16 A Yes, I attempted to write an individual

17 report for each inspection that I completed.

18 Q What would be the typical contents of such

19 report?

20 A The format that I typically used was I had

21 three main sections to each report. The first was a

22 background section, and that's where I wrote about how

23 I received the complaint, and what was the basis of

24 that complaint.

25 The second part was an observation portion.

1 That's where I began with the moment that I basically
2 arrived at the site and visited and talked with any
3 complainants or the livestock producer.

4 Then the conclusion portion of my report was a
5 summary, and I kind of listed any potential or alleged
6 violations that occurred or no violations that
7 occurred.

8 Q Would your inspection reports typically
9 include photographs?

10 A Yes. In addition to those three main
11 portions of my report, I would include photographs if
12 I took photos. I would include laboratory sample
13 results if I took lab samples. I would also generally
14 include a diagram of the facility.

15 Q Mr. Brockamp, are you familiar with the
16 Victor Cory farm in eastern Adams County?

17 A Yes, I am.

18 Q And how did you become familiar with that
19 farm?

20 A I actually first visited the site two or
21 three months after I began working for the Agency. I
22 was on a training hiatus with the Springfield regional
23 ag engineer at that time, and Mr. Cory's facility is
24 one that I visited, and that was in the summer of
25 1988. My first official -- I mean, that was only a

1 training experience there. Then my first official
2 inspection occurred probably in the summer or fall of
3 1992, after I transferred to the Springfield regional
4 office.

5 Q Was that in your duties as an agricultural
6 engineer for the Springfield regional office?

7 A That is correct.

8 Q What prompted your inspections beginning in
9 1992?

10 A Mr. Cory's facility was one that had had an
11 NPDES permit, and one of our requirements within our
12 office and maybe state-wide, I am not sure, is that we
13 tried to conduct an annual inspection on each of those
14 facilities that had had an NPDES permit, and so I was
15 just trying to follow-up and do my duties.

16 Q Before conducting those inspections that
17 began in 1992, did you review an existing file that
18 related to the Cory farm?

19 A Yes, I did.

20 Q And can you describe for us the contents of
21 that file and -- I will let you answer that question,
22 Mr. Brockamp.

23 A In general. I certainly don't know
24 everything that was written about the farm. But there
25 had been a runoff problem from both lagoons, and it

1 had been ongoing for at least two years, and the
2 regional engineer at that time had submitted this
3 facility to receive an NPDES permit to try to get that
4 stopped.

5 Q Who was the regional inspector at that time?

6 A At that time it was Ross Manning.

7 Q Did you review reports of Mr. Manning prior
8 to conducting your own inspections?

9 A Yes, I did, sure.

10 Q And in the course of reviewing the file
11 inspections of Mr. Manning, did you review a report of
12 Mr. Manning dated October 16th, 1986?

13 A Yes, I believe that was one that I looked at.

14 MS. PERI: May I approach the witness?

15 HEARING OFFICER JACKSON: Yes.

16 (Ms. Peri passed a document to Mr. Cory.)

17 Q (By Ms. Peri) Mr. Brockamp, do you recognize
18 this document, premarked Exhibit Number 2, as the
19 October 16, 1986 report of Ross Manning?

20 A Yes, I do.

21 Q All right. Thank you.

22 MS. PERI: The People move to enter into evidence
23 People's Exhibit Number 2.

24 HEARING OFFICER JACKSON: Are you moving to admit
25 it now?

1 MS. PERI: Yes, I am.

2 HEARING OFFICER JACKSON: Mr. Cory, do you have
3 any objection to the admittance of this document into
4 evidence?

5 MR. CORY: A little louder, please.

6 HEARING OFFICER JACKSON: Do you have any
7 objection to the State's attempt to move this document
8 into evidence?

9 MR. CORY: No.

10 HEARING OFFICER JACKSON: Okay. People's Exhibit
11 Number 2, the inspection report dated October 16,
12 1986, is admitted into the record. And I will note
13 that a copy of the document was provided by Ms. Peri
14 to Mr. Cory.

15 (Whereupon said document was admitted into
16 evidence as People's Exhibit 2 as of this date.)

17 Q (By Ms. Peri) Mr. Brockamp, you inspected the
18 Cory farm on November 8th, 1995, correct?

19 A Yes, I did.

20 Q In the course of your inspection and prior
21 inspections, did you become familiar with the layout
22 of the farm?

23 A Yes, I did.

24 Q Did you observe any buildings on the farm?

25 A Yes, I did.

1 Q And what did that entail?

2 A The facility consisted of three buildings.

3 It was designed as a breeding, gestation, farrowing

4 and nursery type facility. The three buildings are

5 laid in a horseshoe affair, with the two ends of the

6 buildings facing the road. Immediately behind or to

7 the west of the buildings is a rather large hill, and

8 halfway down that hill are two lagoons. We have

9 always referred to them as the north lagoon and the

10 south lagoon. Each of those lagoons are approximately

11 a half acre to a full acre in size. Further on to the

12 west of that is the rest of the hill, and at the

13 bottom of the hill is a natural waterway that is kind

14 of a wetland area.

15 Q In your inspections did you observe any

16 piping structures on the property or evidence of such

17 structures?

18 A You mean from the buildings to the lagoons?

19 Q Yes. I am referring specifically to the time

20 period involving November 8, 1995.

21 A Yes, we -- I had known that there were --

22 from the old file that there were pipes running from

23 the buildings to the lagoons. We found the pipes that

24 went to the south lagoon, but I don't believe that we

25 found the pipes that ran to the north lagoon.

1 Q Okay.

2 MR. CORY: I didn't hear your last comment.

3 THE WITNESS: I said that I don't think that on
4 that date we found any pipes running from the building
5 to the north lagoon.

6 MR. CORY: Okay.

7 THE WITNESS: Covered up or --

8 MR. CORY: They are buried.

9 Q (By Ms. Peri) Mr. Brockamp, I am going to
10 show you what has been premarked as People's Exhibit
11 Number 1.

12 (Ms. Peri passed a document to Mr. Cory.)

13 MR. CORY: Thank you.

14 MS. PERI: I will just attach this one to our
15 easel.

16 Q (By Ms. Peri) Can you adequately see this?

17 A Yes, I can.

18 Q In your opinion, Mr. Brockamp, is this
19 diagram a fair and reasonable representation of the
20 lagoons you described as the north and south lagoons
21 and the waterway located west of those lagoons on the
22 Cory property?

23 A Yes, that's reasonable.

24 HEARING OFFICER JACKSON: Mr. Cory, can you see
25 the diagram?

1 MR. CORY: Yes, I have one.

2 HEARING OFFICER JACKSON: Okay. Very good.

3 MR. CORY: Thank you.

4 Q (By Ms. Peri) Mr. Brockamp, I am going to
5 provide you with a pen and I am going to ask that you,
6 with the Hearing Officer's approval, approach the
7 easel and diagram some features that we have just
8 discussed?

9 A Okay.

10 HEARING OFFICER JACKSON: The witness may.

11 MS. PERI: Thank you.

12 Q (By Ms. Peri) Mr. Brockamp, would you diagram
13 on this map the location of the confinement buildings
14 that you have described relative to the lagoons?

15 A Relative to the lagoons. Okay. (The witness
16 marked on the map.)

17 HEARING OFFICER JACKSON: I will note that the
18 witness is using a black marker.

19 THE WITNESS: That would be approximate.

20 MS. PERI: Please let the record show that Mr.
21 Brockamp has inked a U-shaped structure on the right
22 side of what is marked as People's Exhibit Number 1.

23 Q (By Ms. Peri) Mr. Brockamp, do you recognize
24 the north and south lagoons as being accurately
25 located relative to the waterway that you described?

1 A Yes, I do. The flow of the topography is in
2 that direction. (The witness marked on the map.)

3 Q Does the waterway depicted in this diagram as
4 a thick or black line have a name?

5 A No. As far as I know it is an unnamed
6 tributary of McKee Creek.

7 Q Okay. Where on this map does McKee Creek
8 appear, if at all?

9 A Somewhere down here (indicating).

10 MS. PERI: Let the record show Mr. Brockamp is
11 pointing approximately 12 inches below the bottom of
12 People's Exhibit Number 1. And Mr. Brockamp has also
13 indicated by an arrow located to the left of the thick
14 black line the directional flow of water in what he
15 has called an unnamed tributary.

16 Q (By Ms. Peri) Mr. Brockamp, would you mark
17 the unnamed tributary and label it on this diagram for
18 the People?

19 A Do you want me to spell out unnamed
20 tributary?

21 Q Yes, please.

22 A (Witness complied.)

23 Q Would you please estimate the distance
24 between the confinement buildings you have inked on
25 the right side of the exhibit and the lagoon

1 structures?

2 A I believe when I did the inspections that I
3 estimated the distance to be approximately 500 feet.

4 Q Can you estimate the distance from the lagoon
5 structures to what you have marked as the unnamed
6 tributary of McKee Creek?

7 A I would say 70 feet maybe.

8 Q Okay.

9 MR. CORY: What was the question again, Desiree?

10 MS. PERI: I had asked Mr. Brockamp to estimate
11 the distance from the lagoon structures to the unnamed
12 tributary, and he has indicated approximately 70 feet.

13 THE WITNESS: Yes.

14 Q (By Ms. Peri) Mr. Brockamp, in the course of
15 your November 8, 1995 inspection, did you become
16 familiar with the topography of this property?

17 A Yes, I was.

18 Q And how would you describe the topography
19 between the confinement buildings and the lagoons?

20 A Starting from approximately 20 feet behind
21 the buildings going in a westerly direction, the
22 topography would be roughly ten percent, a ten percent
23 slope.

24 Q In your opinion, is that a steep grade?

25 A Not compared to over here (indicating). I

1 mean, it has some slope to it, but -- it is a pretty

2 good grade, yes.

3 Q Let's move then to the grade to the west of

4 the lagoons and leading in the direction of the

5 unnamed tributary. How would you describe the slope

6 in that area?

7 A The slope between the top of this berm and

8 the unnamed tributary would be in the order of a 20

9 percent slope. At least a 15 --

10 Q Let the record show that --

11 A -- to 20 percent slope.

12 Q I am sorry.

13 A At least a 15 to 20 percent slope.

14 Q Thank you.

15 MS. PERI: Let the record show that Mr. Brockamp

16 pointed to the top of the west side of the north

17 lagoon.

18 HEARING OFFICER JACKSON: Could you please clarify

19 for the record the direction of the slope?

20 MS. PERI: Yes.

21 Q (By Ms. Peri) Mr. Brockamp, in the course of

22 your inspections you said you became familiar with the

23 topography?

24 A (The witness marked on the map.)

25 Q All right. Thank you.

1 MS. PERI: Let the record show that Mr. Brockamp
2 has indicated with arrows pointing in a westerly
3 direction from the buildings and also from the lagoons
4 the direction of those grades.

5 HEARING OFFICER JACKSON: Thank you.

6 Q (By Ms. Peri) Mr. Brockamp, in the course of
7 your inspection, did you assess or evaluate the
8 direction of water flow on the property?

9 A Yes.

10 Q And how would you describe drainage and the
11 direction of drainage of storm waters on this
12 property?

13 A There is somewhat of a little ridge in this
14 area here (indicating) so the flow kind of went that
15 way, and that way, and then in this way. (The witness
16 marked on the map.)

17 MS. PERI: Let the record show that Mr. Brockamp
18 has indicated with additional black arrows pointing to
19 the left just on the west side of the confinement
20 buildings arrows pointing toward the livestock waste
21 lagoons.

22 Q (By Ms. Peri) Mr. Brockamp, you had
23 previously indicated with a couple of other arrows the
24 grade of the slope and the direction of that slope,
25 correct?

1 A Yes.

2 Q Is the direction of the slope consistent with
3 the direction of water flow on the property?

4 A Yes, the water flows in the direction of the
5 slope.

6 Q Do the arrows you have indicated on the west
7 side of the lagoon and pointing in the direction of
8 the unnamed tributary, also indicate the direction of
9 water flow?

10 A Yes, they do. Everything drains to this
11 direction (indicating).

12 Q Okay. You can have a seat, Mr. Brockamp.

13 A Okay.

14 Q Thank you. Mr. Brockamp, in the course of
15 your November 8, 1995 inspection, did you take
16 photographs?

17 A Yes, I did.

18 Q Did you take photographs of the south lagoon
19 in particular?

20 A Yes, I did.

21 Q Mr. Brockamp, I am showing you what is
22 premarked as People's Exhibit Number 3. Do you
23 recognize these photographs as fair and accurate
24 representations of the south lagoon?

25 A Yes, I do.

1 Q Did you take those photographs?

2 A Yes, I did.

3 Q Thank you.

4 HEARING OFFICER JACKSON: Ms. Peri, is there a
5 date on the photographs?

6 MS. PERI: There is. The date is November 8,
7 1995.

8 HEARING OFFICER JACKSON: Thank you.

9 MS. PERI: That date actually appears on the
10 photographs.

11 HEARING OFFICER JACKSON: Okay.

12 Q (By Ms. Peri) I will ask you to look at the
13 photograph marked DWB-9524-01. It is the bottom
14 photograph of what I have just shown you as People's
15 Exhibit Number 3. Does this photograph represent the
16 slope of the south lagoon as you have described it in
17 People's Exhibit Number 1?

18 A Yes, this is approximately a ten percent
19 slope.

20 Q How does water flow in the picture that we
21 are looking at here? I am referring specifically to
22 picture 01 on the bottom of this page.

23 A Water flows from the distance towards the
24 lagoon, downhill.

25 Q So looking at this photograph, is it your

1 opinion that water would flow from the top of this
2 hill, the horizon where we see some artificial
3 structures, down toward the lagoon?

4 A Yes. The structures shown in the picture are
5 the hog confinement buildings in the background. And
6 as I previously said, about approximately 20 feet
7 behind those buildings all the way down to that
8 lagoon, that is where the watershed is for that
9 lagoon.

10 Q Thank you. Let's now talk more about your
11 inspection on November 8th, 1995. Would you describe
12 your observations during that inspection?

13 A Yes. We essentially looked at the buildings
14 and, I mean, they were empty at the time. They were
15 an abandoned facility. Then we proceeded to walk as
16 best we could completely around both lagoons. Our
17 main goal was to determine if there were any outlet
18 structures, pipes or any points of discharge, looking
19 for erosion, for rodent holes, or anything that might
20 cause potential water flow -- excuse me -- a potential
21 pollution type problem.

22 Q When you examined the south lagoon, what did
23 you find?

24 A Approximately in the middle half of the west
25 side of the south lagoon there was an eroded area that

1 had been sloughing down the embankment towards the
2 unnamed tributary of McKee Creek.

3 Q Mr. Brockamp, would you approach again the
4 diagram marked as People's Exhibit Number 1 and
5 indicate with the letter A the approximate area that
6 you referred to as an eroded area on the south
7 lagoon.

8 A (The witness approached the map and marked
9 it.)

10 MS. PERI: Let the record show that Mr. Brockamp
11 has so marked People's Exhibit Number 1.

12 Q (By Ms. Peri) Thank you.

13 A Okay.

14 Q Mr. Brockamp, how wide is the rest of the
15 south lagoon berm as compared with that Point A?

16 A At Point A the width of the top portion of
17 the berm was two to three feet wide, and the remainder
18 of the berm was six to eight feet.

19 Q Okay.

20 MR. CORY: Repeat that, please.

21 THE WITNESS: At Point A the width, the top width
22 of the berm was two to three feet, and the remaining
23 portion of the west side of that berm was six to eight
24 feet.

25 Q (By Ms. Peri) Mr. Brockamp, in your opinion,

1 is there an environmental concern posed by the south
2 lagoon berm being only two to three feet at Point A as
3 opposed to up to six feet at other points along the
4 berm?

5 A Yes.

6 Q What is your opinion?

7 A My opinion is that if it continues to erode
8 away and slough down the embankment, that the entire
9 lagoon structure will fail and the contents of the
10 south lagoon will drain into the unnamed tributary of
11 McKee Creek.

12 Q And where will the -- specifically, where
13 will the lagoon contents flow to?

14 A They will flow in a westerly direction until
15 they reach the bottom of the waterway, and then they
16 will flow in a southern direction until they hit McKee
17 Creek, and then they will go to the Illinois River.

18 Q And by the waterway do you mean the unnamed
19 tributary, as marked on People's Exhibit Number 1?

20 A That is correct.

21 Q You have testified that there is a likelihood
22 of berm failure on the south lagoon at that point; is
23 that correct?

24 A In my opinion, yes.

25 Q In your opinion, is there a possibility that

1 that Point A can become eroded even further?

2 A That is correct, yes.

3 Q Why?

4 A Once an erosion starts like that unless it is
5 stabilized it will continue. There are external
6 forces such as weather, namely precipitation, the
7 freezing, thawing affect, that will likely, you know,
8 assist that erosion to proceed.

9 Q Are there any additional factors that could
10 contribute to additional erosion at that spot?

11 A Yes. When we were out there I noticed a
12 variety of animal tracks; deer, raccoons, possum, that
13 type of thing. They appeared to be using that eroded
14 area to get to the top, and so with the additional
15 footwork or the tracks of the wildlife, I think it
16 will aggravate the erosion problem.

17 Q You have testified that if berm failure
18 occurs at that Point A along the south lagoon berm the
19 lagoon contents of that lagoon could spill to the west
20 toward the unnamed tributary?

21 A Yes.

22 Q In your opinion, is there an environmental
23 problem posed by the spillage of those lagoon contents
24 into the unnamed tributary?

25 A Yes. It is my opinion that the livestock

1 manure will be drained into the waterways of
2 Illinois.

3 Q Is it your conclusion then, Mr. Brockamp,
4 that there are livestock manure constituents in the
5 south lagoon?

6 A Yes, it is.

7 Q And what is your basis for that conclusion?

8 A I was raised on a hog farm myself. I have
9 always been around livestock waste. When you stir
10 that up, you smell it, you see it, and in addition we
11 also collected samples.

12 Q What do you see --

13 A You see a --

14 Q -- in particular?

15 A -- very black septic type sludge. It is very
16 odorous, and it does not take a P.E. to figure out
17 that there is hog manure in there.

18 Q Did you stir up the liquid in the south
19 lagoon during your inspection?

20 A Yes, both just to see what is down there, but
21 in addition to collect samples.

22 Q During your November 8th, 1995 inspection,
23 did you also inspect the north lagoon?

24 A Yes, we did.

25 Q Did you, during that inspection, make any

1 conclusions about whether that lagoon also contained
2 swine waste constituents?

3 A Yes, I did.

4 Q What was your conclusion?

5 A The visual aspects were not quite as obvious
6 as the south lagoon, but the water was still
7 discolored. It had less of a livestock odor, but it
8 still was apparent.

9 Q I am sorry. What was apparent?

10 A That livestock manure was in the north
11 lagoon.

12 Q Mr. Brockamp, did you write a report
13 regarding your November 8, 1995 inspection?

14 A Yes I did.

15 (Ms. Peri passed a document to Mr. Cory.)

16 MR. CORY: Thank you.

17 Q (By Ms. Peri) Mr. Brockamp, do you recognize
18 what is premarked as People's Exhibit Number 5 as a
19 fair and accurate photocopy of your November 8, 1995
20 inspection report?

21 A Yes, this is it.

22 Q All right. Thank you.

23 MS. PERI: The People now move that People's
24 Exhibit Numbers 3 and 5 be entered into evidence.

25 HEARING OFFICER JACKSON: Any objection, Mr. Cory?

1 MR. CORY: None.

2 HEARING OFFICER JACKSON: All right. So

3 admitted. Do the People wish to move Exhibit Number 1

4 at this time?

5 MS. PERI: Not at this time.

6 HEARING OFFICER JACKSON: Okay.

7 MS. PERI: Thank you.

8 (Whereupon said documents were admitted into

9 evidence as People's Exhibits 3 and 5 as of this

10 date.)

11 Q (By Ms. Peri) Mr. Brockamp, did you later

12 inspect the Cory farm on April 17th, 1996?

13 A Yes, I did.

14 Q Did you reinspect the south lagoon on that

15 date?

16 A Yes, I did.

17 Q What were your observations?

18 A It appeared as though the erosion problem was

19 a little bit worse than what I had observed on

20 previous inspection, but not significantly worse.

21 Q In your opinion had any repair of Point A on

22 the south lagoon occurred since your previous

23 inspection?

24 A No, there was no repair efforts shown on the

25 south lagoon.

1 Q Do you have an opinion as to whether the
2 potential for berm failure at that Point A still
3 existed on April 17, 1996?

4 A Yes, it was my opinion that there was still a
5 serious threat of berm failure.

6 Q Was Mr. Cory, the respondent, present during
7 that April 17, 1996 inspection?

8 A I believe he was, yes.

9 Q And did you speak with Mr. Cory during or
10 after that inspection?

11 A Yes, we did.

12 Q Did you discuss your observations at Point A
13 of the south lagoon berm?

14 A Yes, we did.

15 Q Did you make any recommendations to Mr. Cory
16 regarding that Point A area?

17 A Yes, we advised him to repair that as soon as
18 possible, either by having a mechanical device come in
19 and do it or physically repair it himself.

20 Q Do you recall whether the respondent made any
21 response to your recommendations?

22 A Yes.

23 Q And what was that response?

24 A He said that he had had a -- well, I believe
25 this was the occasion, but I believe that he said that

1 he had had a bulldozer operator come in, and he told
2 him at that time that there was just no way you can
3 get any kind of device on that embankment. He said he
4 was not able to fix it himself.

5 HEARING OFFICER JACKSON: Just to clarify for the
6 record two things, if you don't mind. The size of the
7 area that is marked as Point A on People's Exhibit
8 Number 1, you testified as to the width, but you
9 didn't indicate, I don't believe, how long it is.
10 What size of an area is that?

11 THE WITNESS: 12 feet wide, long. I mean, I am
12 saying this part is two feet, and this part is 12 feet
13 (indicating).

14 HEARING OFFICER JACKSON: Okay. You are
15 indicating the width is two to three feet, but then
16 the length of the area that is involved is --

17 THE WITNESS: Is approximately 12 feet, yes.

18 HEARING OFFICER JACKSON: Okay. Thank you. Then
19 also you mentioned physically repairing the berm.
20 Could you please indicate for the Board what would be
21 involved in physically actually getting out there and
22 repairing that berm area?

23 THE WITNESS: Manually carrying or wheelbarrowing
24 soil and packing it in.

25 HEARING OFFICER JACKSON: Okay. Thank you.

1 BOARD MEMBER KEZELIS: I have a follow-up. Will

2 you describe generally the diameter of the two lagoons

3 or the circumference size?

4 THE WITNESS: Generally they are between 200 and

5 250 in diameter. No. Yes, the diameter would be 250

6 feet.

7 BOARD MEMBER KEZELIS: For each of the two?

8 THE WITNESS: Yes.

9 BOARD MEMBER KEZELIS: Are they roughly circular?

10 THE WITNESS: Yes, but that's about as close as it

11 gets.

12 MR. CORY: Are they what?

13 BOARD MEMBER KEZELIS: Circular, roughly.

14 MR. CORY: Okay. Thank you.

15 BOARD MEMBER KEZELIS: Thank you.

16 HEARING OFFICER JACKSON: Anything else?

17 BOARD MEMBER KEZELIS: No. Thank you.

18 HEARING OFFICER JACKSON: All right. Ms. Peri, go

19 ahead.

20 MS. PERI: Thank you.

21 Q (By Ms. Peri) Mr. Brockamp, you testified

22 that you had a conversation with Mr. Cory during that

23 April 17, 1996 inspection?

24 A Yes, we did.

25 Q In the course of your conversation with the

1 respondent, did you also discuss maintenance with
2 respect to the level of liquid in the lagoons?

3 A I believe we did.

4 Q Did you make any recommendations to the
5 respondent regarding maintaining liquid levels in the
6 lagoons?

7 A Yes, we advised him that the appropriate
8 management practice would be to irrigate liquids or
9 haul liquids or whatever he so chose, and apply them
10 to farm ground at an agronomic rate.

11 Q Did the respondent have a response to that
12 recommendation?

13 A Yes, he countered that he would prefer to
14 siphon off the top liquids, because he contended that
15 they were not lagoons. He contended that it was pond
16 water. So he just wanted to siphon them off. Or he
17 also brought up the possibility of just letting the
18 berm erode naturally and just letting it go.

19 Q When you say that the respondent wanted to
20 siphon off the contents of the lagoons, did he
21 indicate where he would siphon them off to?

22 A Yes, down the west embankment towards the
23 unnamed tributary of McKee Creek.

24 Q Did you write a report, Mr. Brockamp,
25 regarding your April 17, 1996 inspection?

1 A Yes, I did.

2 Q I am showing you what is premarked People's
3 Exhibit Number 6. Do you recognize this as a fair and
4 accurate photocopy of your April 17, 1996 inspection
5 report?

6 A Yes, I do.

7 Q You again inspected the Cory farm on April
8 17, 1997, correct?

9 A Yes, I did.

10 Q What did you find out during your inspection?

11 A Well, the thing that stood out most in my
12 mind was that there were two siphon PVC pipes in the
13 north lagoon dewatering the north lagoon into the
14 unnamed tributary of McKee Creek.

15 Q Would you please approach the People's
16 Exhibit Number 1 and mark as Point B the approximate
17 area where you found the siphon pipes you just
18 described?

19 A (Witness complied.)

20 Q And would you mark that area with the letter
21 B?

22 A (Witness complied.)

23 MS. PERI: Let the record show that Mr. Brockamp
24 has so marked People's Exhibit Number 1. Thank you.

25 Q (By Ms. Peri) Mr. Brockamp, approximately how

1 long were these pipes?

2 A I estimated the length to be about 60 feet.

3 Q From your diagraming on People's Exhibit
4 Number 1, is it fair to say that the pipes extend from
5 the northwest side of the north lagoon to the west
6 toward the unnamed tributary?

7 A That is correct.

8 Q Did you observe any flow from the ends of
9 those pipes?

10 A Yes, they were running at the time of my
11 inspection, and I estimated that the total flow was
12 about 40 gallons per minute. There were no pipes
13 involved. This was strictly a siphon. Excuse me. No
14 pumps involved.

15 Q When you were at the site on December 17,
16 1997, and you observed the siphon pipes, did you take
17 photographs of those pipes?

18 A On what date?

19 Q Pardon me. April 17, 1997.

20 A Yes, I did.

21 HEARING OFFICER JACKSON: I am sorry. Is it 1997
22 or 1996?

23 MS. PERI: 1997. There were two inspections with
24 the same April 17 date.

25 HEARING OFFICER JACKSON: Okay.

1 MS. PERI: One is 1996, and one is 1997.

2 HEARING OFFICER JACKSON: Thank you.

3 (Ms. Peri passed a document to Mr. Cory.)

4 MR. CORY: Thank you.

5 Q (By Ms. Peri) Mr. Brockamp, I am showing you

6 what has been marked People's Exhibit Number 7 and 8.

7 First I will show you People's Exhibit Number 7, and I

8 am going to ask you to look at the bottom of the

9 photograph, which is marked DWB-9707-04A. Does that

10 photograph fairly and accurately represent the siphon

11 pipes that you observed on April 17th, 1997?

12 A Yes, these are the pipes.

13 Q Okay. Now I am showing you what is premarked

14 as People's Exhibit Number 8, and I am going to ask

15 you to look at the bottom of the photograph, which is

16 labeled DWB-9707-06A. I am going to ask you to give

17 me your opinion as to whether that is a fair and

18 accurate representation of the ends of the pipes that

19 you have testified that you observed?

20 A Yes, these are the pipes and there was

21 liquids flowing out of them.

22 Q Thank you.

23 HEARING OFFICER JACKSON: I am assuming that all

24 of those photographs are dated April 17, 1997?

25 MS. PERI: Yes, they are.

1 HEARING OFFICER JACKSON: All right. Thank you.

2 Q (By Ms. Peri) Mr. Brockamp, have you formed
3 an opinion as to whether the discharge you observed
4 from those siphon pipes to the westerly lagoons and
5 toward the unnamed tributary pose a threat to the
6 environment?

7 A Yes, I do.

8 Q What is your opinion?

9 A My opinion is that there are livestock wastes
10 in the north lagoon and they were being discharged
11 into the unnamed tributary of McKee Creek.

12 Q What is the concern with that liquid reaching
13 McKee Creek?

14 A The potential for damage to the environment
15 would be, you know -- you would have loss of fish and
16 other aquatic life, and may potentially contaminate
17 ground water, could harm wildlife, could harm domestic
18 cattle, whatever might be downstream within that
19 unnamed tributary.

20 Q Have you formed an opinion as to whether the
21 north lagoon has been similarly dewatered on other
22 occasions?

23 A It is my opinion, yes, that it has been.

24 Q What is the basis of your opinion?

25 A Since I have been visiting the site I have

1 never seen an overflow from either lagoon. By that I
2 mean it has never over topped the embankment. I
3 haven't really been able to figure out why because,
4 you know, with approximately two acres of watershed
5 draining into each lagoon, the water has to go
6 somewhere over time. I mean, evaporation can only
7 take care of so much. But I have never seen a
8 discharge over the top of the berms. It is my opinion
9 that Mr. Cory goes out there once or twice a year and
10 lowers the lagoon two or three feet each time.

11 Q During your April 17, 1997 inspection, did
12 you also examine the south lagoon?

13 A Yes, we did.

14 Q What did you observe?

15 A It was not changed very much. It was at the
16 same elevation or the pool was at the same elevation
17 as before. We checked the eroded area. It might have
18 been a little bit worse again, but there was no
19 significant change at that time.

20 Q In your opinion had that Point A, as marked
21 on People's Exhibit Number 1, been repaired since your
22 previous inspections?

23 A No, there had been no repair work done at
24 Point A.

25 Q During your April 17, 1997 inspection, did
50

1 you take photographs of the south lagoon?

2 A I am sorry. What date?

3 Q On your April 17, 1997 inspection?

4 A I am sure I did.

5 Q I am going to show you what has been

6 premarked as People's Exhibit Number 4, and I am going

7 to point you to both photographs marked DWB-9707-02

8 and respectively 03 at the bottom. Does this set of

9 photographs accurately and fairly represent the Point

10 A area of the south lagoon that you have observed on

11 the April 17, 1997 inspection and previous occasions?

12 A Yes, it shows on the north side of the west

13 mainly where the berm width is a little thicker and

14 then it gets down close to about two or three feet

15 wide and then it widens back up again.

16 Q Okay. Thank you. Mr. Brockamp, you returned

17 to the Cory farm on April 22nd, 1997; is that correct?

18 A Yes, I did.

19 Q What was the purpose of your April 22nd

20 visit?

21 A I was hoping to obtain various samples, water

22 and sediment.

23 Q And did you obtain samples?

24 A Yes, I did.

25 Q How did you collect those samples?

1 A On that date I collected the two water
2 samples, one from each lagoon, water quality samples,
3 and I also collected two sediment samples, one from
4 each lagoon.

5 Q Have you been trained in sampling, Mr.
6 Brockamp?

7 A Yes, I have.

8 Q By whom?

9 A By the other agricultural engineers that I
10 trained under when I first began working with the
11 Agency.

12 Q How many years experience did you have at
13 that time in collecting water quality and sediment
14 samples?

15 A Well, this was in the spring of 1997 and my
16 training occurred in the summer of 1988, so roughly
17 nine years.

18 Q During your April 22nd, 1997 sampling, did
19 you follow Illinois EPA procedures during the
20 collection of both the water quality and sediment
21 samples?

22 A Yes, I did.

23 Q How were the samples handled once they were
24 collected?

25 A Once they were collected, I carried them up

1 the hill to my van, and I put them on ice. I had some
2 ice already in the van, in the cooler. I transported
3 them back to the Springfield regional office. At that
4 point we transfer them into other coolers with
5 long-term ice packs. They are padlocked, shipped
6 overnight by UPS to our Champaign inorganics
7 laboratory.

8 Q Did you receive results back from the
9 Champaign laboratory with regard to those samplings
10 from April 22nd, 1997?

11 A Yes, approximately a month later.

12 Q Did you look at the lab results for those
13 sampling events?

14 A Yes, I did.

15 Q I am going to show you what has been
16 premarked as People's Exhibit Number 13.

17 (Ms. Peri passed a document to Mr. Cory.)

18 MR. CORY: Thank you.

19 Q (By Ms. Peri) Do you recognize this document,
20 premarked as People's Exhibit Number 13, as the lab
21 results received back from the Champaign laboratory
22 for the April 22nd, 1997 sampling events?

23 A Yes, these are the lab result sheets which I
24 received directly from the lab.

25 Q Thank you. Did you re-examine the south

1 lagoon berm when you returned to the site on April
2 22nd, 1997?

3 A I am sure I did, yes.

4 Q Do you recall whether you took photographs of
5 the south lagoon berm on that date?

6 A I am sure I did, yes.

7 Q I am going to show you, Mr. Brockamp, what
8 has been premarked People's Exhibit Number 9, and I
9 want to point you specifically to the bottom
10 photograph marked DWB-9708-11. Do you recognize that
11 photograph to be a fair and accurate representation of
12 the south lagoon berm as it appeared on April 22nd,
13 1997?

14 A Yes, I do.

15 Q Did you, in fact, take that photograph, Mr.
16 Brockamp?

17 A Yes, I did.

18 Q By the way, Mr. Brockamp, did you either
19 during your April 17, 1997 inspection, or April 22,
20 1997 inspection, observe any change in water level at
21 the north lagoon?

22 A The north lagoon on both of those occasions,
23 the north lagoon was two to three feet lower than what
24 I had ever experienced before.

25 MS. PERI: At this time, Madam Hearing Officer,

1 the People will move to enter into evidence People's
2 Exhibit Number 1, and People's Exhibit Numbers 6, 7,
3 8, 4, 13 and 9.
4 HEARING OFFICER JACKSON: Any objection, Mr.
5 Cory?
6 MR. CORY: None.
7 HEARING OFFICER JACKSON: Those items are so
8 admitted.
9 (Whereupon said documents were admitted into
10 evidence as People's Exhibits 1, 6, 7, 8, 4, 13
11 and 9 as of this date.)
12 Q (By Ms. Peri) Based on your inspections, Mr.
13 Brockamp, do you have an opinion as to whether
14 corrective measures are needed at the Cory farm to
15 remove what you have testified to as a threat of
16 discharge of pollutants to the unnamed tributary?
17 A Yes, it is my opinion that the berm needs to
18 be repaired.
19 Q And how should the berm be repaired?
20 A It needs to be stabilized in whatever manner
21 Mr. Cory sees fit.
22 Q You have testified that there is a threat of
23 overflow of the lagoon contents based on the runoff of
24 stormwater toward the lagoons; is that correct?
25 A Could you rephrase that question?

1 Q Certainly. You previously testified
2 regarding the flow of stormwater on the property
3 toward the lagoons and running in a westerly direction
4 from the confinement buildings?

5 A That is correct.

6 Q You have also testified that you advised the
7 respondent to conduct routine dewatering application
8 of the lagoon contents at agronomic rates?

9 A That is correct.

10 Q To clarify, is it your opinion that -- pardon
11 me. I will strike that.

12 Do you have an opinion as to whether there is a
13 water pollution threat, should dewatering on a routine
14 basis not occur?

15 A Yes. If no dewatering is taking place at
16 this facility the amount of runoff precipitation that
17 falls both on top of the lagoons themselves as well as
18 the hillside, which drains into the lagoons, will or
19 should eventually cause those lagoons to overflow.

20 Q Where will the overflow go?

21 A The overflow will go in a westerly direction
22 toward the unnamed tributary of McKee Creek.

23 Q Do you have an opinion as to an appropriate
24 remedy to prevent such an overflow?

25 A The liquid waste should be -- well, the

1 elevation of the liquids within each pond should be
2 monitored on a very regular and constant basis. And
3 when they reach a certain level, they should be
4 dewatered either by an irrigation system or honey
5 wagon or whatever the farmer so chooses to farm ground
6 at the agronomic rate.

7 Q Mr. Brockamp, did you write a report on your
8 April 17, 1997 inspection?

9 A Yes, I did.

10 Q And did you write a report on your April
11 22nd, 1997 inspection?

12 A Yes, I did.

13 (Ms. Peri passed a document to Mr. Cory.)

14 MR. CORY: Thank you.

15 Q (By Ms. Peri) I am showing you what has been
16 premarked People's Exhibit Number 11. Do you
17 recognize this as a fair and accurate photocopy of
18 your April 17, 1997 inspection report?

19 A Yes, this inspection, yes.

20 Q Thank you. Now I am showing you what is
21 premarked People's Exhibit Number 12. Do you
22 recognize this document as a fair and accurate
23 photocopy of your April 22, 1997 inspection?

24 A Yes, this document here shows the laboratory
25 results and the photographs.

1 Q You have testified, Mr. Brockamp, that you
2 did take photographs of the south lagoon berm during
3 your April 22, 1997 inspection?

4 A Yes, I did.

5 Q I am showing you what is premarked as
6 People's Exhibit Number 10. There is one photograph
7 on this page marked DWB-9708-12. Do you recognize
8 this as a fair and accurate representation of the
9 south lagoon berm and in particular Point A, as marked
10 as People's Exhibit Number 1?

11 A Yes, this is the eroded area at Point A of
12 the sought lagoon. This is on the back side of the
13 embankment.

14 Q Does this photograph, Mr. Brockamp, indicate
15 the length of the eroded area as you have described as
16 being approximately 12 feet?

17 A Yes, it would be at least 12, maybe 15.

18 Q Was this photograph taken by you?

19 A Yes, it was.

20 MS. PERI: The People now move to enter into
21 evidence People's Exhibit Number 11. Excuse me. Back
22 that up. Exhibits 10, 11 and 12.

23 HEARING OFFICER JACKSON: What was the date on
24 People's 10?

25 MS. PERI: Also April 22, 1997.

1 HEARING OFFICER JACKSON: Thank you. Any
2 objection, Mr. Cory?

3 MR. CORY: None.

4 HEARING OFFICER JACKSON: Those documents are
5 admitted.

6 MS. PERI: Thank you.

7 (Whereupon said documents were admitted into
8 evidence as People's Exhibits 10, 11 and 12 as of
9 this date.)

10 MS. PERI: No more questions, Mr. Brockamp. Thank
11 you.

12 HEARING OFFICER JACKSON: Mr. Cory, you have an
13 opportunity now to conduct cross-examination of the
14 witness. Do you wish to?

15 MR. CORY: Yes, I do want to cross-examine. I
16 have a question, though. Will I have to complete my
17 questioning to him, or can he be recalled later even
18 though I ask some questions now?

19 HEARING OFFICER JACKSON: You did not identify Mr.
20 Brockamp as a potential witness when you filed your
21 witness disclosure with the Board.

22 MR. CORY: So my cross-examining should be
23 completed now?

24 HEARING OFFICER JACKSON: Would the State have an
25 objection to Mr. Cory recalling Mr. Brockamp?

1 MS. PERI: No.

2 HEARING OFFICER JACKSON: I will ask you this,
3 then, Mr. Cory. Is it possible for you to conclude
4 your questions of Mr. Brockamp during your
5 cross-examination?

6 MR. CORY: You mean now or when I recall?

7 HEARING OFFICER JACKSON: Now, in order to avoid
8 having to recall him later.

9 MR. CORY: I have a drawing that I have made of
10 the berm area that I wanted to show before I asked
11 Dale questions, but I can ask them of Mr. Wells, too,
12 so let me cross-examine now.

13 HEARING OFFICER JACKSON: And you can show him the
14 diagram that you brought as well on your
15 cross-examination.

16 MR. CORY: Oh, sure. It will be here.

17 HEARING OFFICER JACKSON: Okay.

18 CROSS EXAMINATION

19 BY MR. CORY:

20 Q I am looking now at the People's Exhibit
21 Number 2. Throughout the day I am going to try to be
22 as apologetic, one thing or another, as I can, but I
23 am going to make people here aware of the situation.
24 And there is a couple of examples.

25 Dale has stated his report, October 16th, and says

1 that on that date he completed a follow-up survey of
2 the above facility, meaning my hog farm. That the sow
3 heard had been reduced to about 280 sows. Dale --

4 HEARING OFFICER JACKSON: Can I interrupt you for
5 a second, Mr. Cory? Okay. For your cross-examination
6 you need to direct questions at the witness. You have
7 not been sworn in at this point, so we can't allow you
8 to testify.

9 MR. CORY: Okay.

10 HEARING OFFICER JACKSON: But if you have
11 questions for Mr. Brockamp, you can ask those at this
12 time.

13 MR. CORY: I was just looking at -- okay.

14 Q (By Mr. Cory) My question to Dale is, aren't
15 you aware that as of May of 1985 my hog buildings were
16 empty?

17 A That is what you told me on one of the
18 occasions, but that report there is by Ross Manning.
19 That is not my report.

20 Q Thank you for saying that.

21 A Okay.

22 Q But as of May of 1985 my hog buildings were
23 empty.

24 HEARING OFFICER JACKSON: Again, Mr. Cory, you
25 need to direct a question at the witness. Okay. You

1 are trying to give testimony.

2 MR. CORY: I think I am understanding now what you
3 are saying. Okay.

4 HEARING OFFICER JACKSON: Okay. You will be
5 allowed an opportunity in your case to be sworn in and
6 to give testimony on your own behalf. But right now
7 you just need to direct your questions to the witness.

8 MR. CORY: Okay.

9 Q (By Mr. Cory) Is this your observation or
10 someone else which says both lagoons were discharging
11 black septic hog waste?

12 A That is someone else. That was Ross Manning,
13 who was my predecessor.

14 Q Thank you. Because that is an outright
15 falsehood.

16 HEARING OFFICER JACKSON: Again, Mr. Cory, you
17 please have to restrict your remarks to questions
18 directed at the witness.

19 Q (By Mr. Cory) Is it your opinion that that
20 statement is true?

21 A I have no idea. I was not there.

22 Q Did you ever see hog waste spilled at my
23 farm?

24 A I have not seen it over top the berm at your
25 farm, no.

1 Q How many visits do you suppose you have made
2 to my farm?

3 A Roughly ten, eight to ten.

4 Q How many times do you feel you have called me
5 to meet you there when you were on to visit the farm?

6 A I only recall of two times.

7 Q Isn't it in the EPA regulations that an
8 inspector is supposed to call and notify the owner
9 each time he is going to visit?

10 A No, it is not.

11 Q Oh? Is it in the regulations that each time
12 an inspector does appear on a hog farm that he should
13 don protective clothing for disease prevention?

14 A I suppose if there were livestock present it
15 would be a very valuable thing to do, but there was no
16 livestock present on this farm.

17 Q Are you saying -- did you say that is not in
18 the regulations?

19 A No, I did not say that.

20 Q Then you agree with me when I say it is in
21 the regulations that you are supposed to don
22 protective clothing?

23 A The regulations have a statement that says
24 that we should protect ourselves as investigators, and
25 protect the livestock on the livestock farm. But in

1 this particular case there was no livestock on the
2 livestock farm, therefore, I did not feel it was
3 necessary to wear protective clothing.

4 MR. CORY: Okay. I will direct my remaining
5 questions to another party after I have shown my
6 chart.

7 HEARING OFFICER JACKSON: You do not wish to show
8 your chart to Mr. Brockamp?

9 MR. CORY: I can show it now.

10 HEARING OFFICER JACKSON: Okay.

11 MR. CORY: If I may.

12 HEARING OFFICER JACKSON: Why don't we mark this
13 as an exhibit also.

14 MR. CORY: Okay. Please do.

15 (Whereupon said document was duly marked for
16 purposes of identification as Complainant's
17 Exhibit B as of this date.)

18 HEARING OFFICER JACKSON: Ms. Peri, do you want to
19 take a look at this?

20 MS. PERI: Sure.

21 MR. CORY: Do you have any objection to my showing
22 this.

23 MS. PERI: No, sir.

24 Q (By Mr. Cory) What I have drawn here is a
25 cross-section of the berm that Dale has been

1 describing, and John Wells and I were at this point

2 and --

3 HEARING OFFICER JACKSON: Mr. Cory, I am going to

4 interrupt you here, okay. You are testifying right

5 now. What I need you to do if you have questions for

6 Mr. Brockamp, based on what you are showing him, go

7 ahead with those questions. But I am going to have to

8 restrict you from testifying at this point in time,

9 because you have not been sworn in as a witness.

10 Okay.

11 MR. CORY: In other words, I -- well, all right.

12 I will try and comply.

13 HEARING OFFICER JACKSON: I know you are doing the

14 best you can. We are trying to be patient.

15 Q (By Mr. Cory) Dale, are you familiar with the

16 fact that there is a plastic pipe that goes from the

17 south lagoon to the north lagoon that is buried?

18 A Yes, I am aware of that.

19 Q And the purpose of that pipe is what?

20 A I am assuming that it is a -- so that the two

21 lagoons will be plumb together, so that they will

22 balance each other.

23 Q Well, to balance, do you remember that the

24 water surface in the south lagoon is at least 10 to 12

25 feet more higher than the water surface in the north

1 lagoon?

2 A I would agree that it is higher. I think 10
3 to 12 feet is a bit extreme, but it would be higher.

4 Q Therefore, the lagoons cannot balance as a
5 result of the pipe between them?

6 A They would balance at any point above the
7 elevation of the pipe in the south lagoon.

8 Q Actually, the pipe was installed to drain the
9 south lagoon.

10 HEARING OFFICER JACKSON: Mr. Cory, you need to
11 direct a question if you are -- I am sorry to keep
12 interrupting you like this, but we can't have you
13 testify at this point.

14 MR. CORY: Okay.

15 Q (By Mr. Cory) Do you feel that is an accurate
16 cross-section of the berm, as it was originally built,
17 seven feet flat on the top?

18 MS. PERI: I will object. Mr. Brockamp was not at
19 the site when the berm was constructed.

20 HEARING OFFICER JACKSON: I will allow Mr.
21 Brockamp to answer if he has any personal knowledge of
22 what the berm was actually constructed as.

23 THE WITNESS: I have no personal knowledge, as to
24 how the berm was constructed, but for the most part it
25 is roughly seven feet wide.

1 Q (By Mr. Cory) From the testimony you have
2 just given, are you going to disagree with the
3 measurements I have there?

4 A Yes, I will disagree with those measurements.

5 HEARING OFFICER JACKSON: And let me just clarify
6 for the record. You are pointing to the measurements,
7 the five feet and the two feet up at the top of the
8 chart?

9 MR. CORY: Yes. The original berm was actually
10 over seven feet flat on top, but the damage that has
11 occurred eroded about two foot by 10 or 12.

12 HEARING OFFICER JACKSON: And you are asking Mr.
13 Brockamp if he agrees with that?

14 Q (By Mr. Cory) Do you agree that that is the
15 situation?

16 A No. At the point where -- at Point A is what
17 we have already said. The damaged area is only two to
18 three feet solid at the top, and it has sloughed away
19 the remaining portion of that.

20 Q This drawing and the pertinent facts about it
21 are very pertinent to whether or not effluent
22 threatens to pollute, correct?

23 A Yes, you must look at the cross-sectional
24 area to determine whether or not that is going to fail
25 or not.

1 MR. CORY: If there is sufficient disagreement on
2 whether or not this is accurate, am I not empowered to
3 ask for an adjournment and we go to the farm and
4 look?

5 HEARING OFFICER JACKSON: Certainly you can ask
6 for an adjournment. I would ask for a response from
7 the Attorney General's Office. At this point I am not
8 inclined to grant an adjournment, even without hearing
9 a response from the State, simply because --

10 MR. CORY: And at this point I don't intend to
11 ask.

12 HEARING OFFICER JACKSON: Okay.

13 MR. CORY: But I could if there is enough of a
14 disagreement as I understand the rules.

15 HEARING OFFICER JACKSON: My reluctance at this
16 point, and I will just let you know, I will finish my
17 thought. We have had this hearing scheduled for some
18 time. I think there is plenty evidence that is going
19 to be introduced and that has been introduced that can
20 adequately inform the Board as to the situation at
21 your farm. So I would proceed on that basis at this
22 point in time, and if a problem comes up later on let
23 us know about it. I think we have enough information
24 right now.

25 Q (By Mr. Cory) Dale, in view of your education

1 and work experience, there is no question but what you
2 could easily recognize erosion if it had occurred,
3 correct?

4 A Yes, I feel I am qualified to recognize
5 erosion.

6 Q Have you ever seen any evidence of erosion on
7 this total berm or the north one?

8 A Yes, I have evidenced erosion on the south
9 lagoon, the west berm.

10 Q Caused by escaping effluent?

11 A No, I would not say it was caused by escaping
12 effluent.

13 Q I will modify my question. Has escaping
14 effluent ever caused erosion on either one of my
15 berms?

16 A Yes, where the pipes overflowed on the north
17 lagoon where the water was discharging from the ends
18 of the pipes, it has caused minor erosion at the north
19 lagoon. That is not the case for this particular
20 diagram that you are showing me, though.

21 Q Was that erosion that you are describing on
22 the berm or at another point?

23 A It is on the berm, but it is more than
24 halfway down.

25 Q And you are saying that you believe that the

1 north lagoon berm is on the west as well as the north?

2 A No, it is on the west side of the north

3 lagoon.

4 Q And when you saw siphon pipes, were they not

5 on the north side of the lagoon?

6 A They were on the northwest side of the north

7 lagoon. So where -- the erosion is occurring below

8 where the water was trickling out of the siphon pipes.

9 Q And I have another drawing, a plat map, that

10 I want to explain and then ask questions about it.

11 But let's go into the area of surface water, rain

12 water, draining into these lagoons.

13 A Okay.

14 Q The north lagoon has a little bit of timber

15 hillside that drains to it on the east side between

16 the building and the lagoon, no more than a quarter

17 acre.

18 HEARING OFFICER JACKSON: We need to direct a

19 question to the witness.

20 Q (By Mr. Cory) Would you agree?

21 A No, there would be more than a quarter of an

22 acre.

23 Q On the south side of the north lagoon, there

24 is still timber and a hillside, and that total

25 hillside is constantly covered with silt, do you

1 agree?

2 A It is --

3 Q Leaves, et cetera?

4 A Sure. It is very wooded, and there is lot of
5 underbrush.

6 Q The total area that drains into the north
7 lagoon is less than the lagoon surface itself, yes or
8 no?

9 A No. It would be -- in my opinion, it would
10 be slightly more than what the surface lagoon is. If
11 the lagoon is approximately one acre, there would be
12 more than one acre of surface water draining into it.
13 It would be less than two, but more than one acre.

14 Q But when rain falls in permanent timber areas
15 it can rain an awful lot before any runoff occurs,
16 correct?

17 A I am sure there is some absorption into the
18 soil.

19 Q Now, let me switch over to the south lagoon.
20 And we jumped over an area between the lagoons that
21 you have seen and you have noted that it is severely
22 eroded?

23 A Uh-huh.

24 Q But the water that goes from that eroded area
25 between the two berms goes where?

1 A The area that is severely eroded?

2 Q Yes.

3 A I believe it does drain between the two
4 lagoons, the area that is severely eroded. Well,
5 could you show me where you are talking about by
6 flipping up the other diagram?

7 Q Yes. I should remember this is here. This
8 area here, when it rains where does this water go?

9 HEARING OFFICER JACKSON: For the record, you are
10 indicating the area in between the north lagoon and
11 the south lagoon.

12 MR. CORY: Thank you.

13 THE WITNESS: From where the lettering is to the
14 west, yes, it drains to -- it does not go into the
15 lagoons, from the lettering on.

16 Q (By Mr. Cory) As many times as you have
17 visited the farm, didn't you ever notice that this
18 lagoon was protected by a bulldozed berm around it to
19 direct rain water (indicating) around the lagoon so
20 that it didn't go into the lagoon?

21 HEARING OFFICER JACKSON: And, again, for the
22 record you are referring to the south lagoon,
23 correct?

24 THE WITNESS: May I approach?

25 HEARING OFFICER JACKSON: Yes, go ahead.

1 THE WITNESS: There is a slight berm starting from
2 right about there (indicating).

3 HEARING OFFICER JACKSON: The witness is
4 indicating up to the northwest tip of the south lagoon
5 an arch line indicating the location of the berm.

6 THE WITNESS: It is a very short one.

7 MR. CORY: May I show Dale what originally was
8 constructed?

9 HEARING OFFICER JACKSON: No.

10 Q (By Mr. Cory) The topography that was
11 described in your reports indicates that if effluent
12 escaped, it would go to this unnamed tributary?

13 A Yes.

14 Q For effluent to actually pollute, where would
15 it go from this point before it became pollution?

16 HEARING OFFICER JACKSON: When you refer to "this
17 point," you are pointing to a line on the unnamed --
18 or a point on the unnamed tributary directly west of
19 the south lagoon?

20 MR. CORY: Correct.

21 THE WITNESS: In my opinion, it would become
22 pollution the moment it is discharged from the lagoon.

23 Q (By Mr. Cory) I am trying to think how to --
24 are there other names for this unnamed tributary?

25 A Not to my knowledge, and I could not find any

1 on the map.

2 Q In my later testimony I will produce several
3 alternate names. My point that I was talking about --
4 there is no drainage that goes into the berm -- I mean
5 into the lagoon from the north side of this lagoon; is
6 that true?

7 HEARING OFFICER JACKSON: We are talking about the
8 north lagoon.

9 MR. CORY: Right.

10 THE WITNESS: Yes, that is true. I agree with
11 that.

12 Q (By Mr. Cory) I mentioned the small areas of
13 timberland which are on the east and south side of the
14 north lagoon. But we are in disagreement as to
15 whether or not the combination of those two areas
16 exceed the size of the lagoon or not. We are in
17 agreement that it is a very minor source of area that
18 drains into the lagoon. And the --

19 HEARING OFFICER JACKSON: Excuse me. Why don't we
20 let the witness answer, okay.

21 THE WITNESS: In my opinion, I am not sure it is
22 minor. That's a very subjective term. I feel that
23 the watershed to the north lagoon is larger than the
24 surface area of the north lagoon. Does that make it
25 minor or not? I don't know.

1 Q (By Mr. Cory) The up hill area from the south
2 lagoon and the hillside area from the north side of
3 the south lagoon, and the hillside area on the south
4 side of the south lagoon were all protected, or did
5 you ever notice the berm that went all the way around
6 the south lagoon to divert that surface water?

7 A No, I have never noticed a berm that went all
8 the way around the south lagoon.

9 Q Did Ross Manning tell you what complaints he
10 found?

11 A No, not really. I mean, no, he never told
12 me. I read some things in his reports.

13 Q I will cover that later. But Ross Manning,
14 on his second or third visit to the farm, found
15 effluent flowing from the south lagoon over to the
16 surface drainage protection berm. Did he ever point
17 that out to you?

18 A No, he did not.

19 Q And because -- I don't know. I am getting
20 confused on when I am testifying and when I am
21 pointing out information. But Ross Manning did find
22 pollution at this point (indicating near the south
23 lagoon). I will rephrase that. He did find effluent
24 escaping from the lagoon here (indicating the south
25 lagoon).

1 HEARING OFFICER JACKSON: You need to ask the
2 questions of the witness.

3 Q (By Mr. Cory) But he never did tell you about
4 that?

5 A Not personally, no.

6 Q I will cover the rest of that when we get
7 into it later. I want to point out --

8 HEARING OFFICER JACKSON: Again, make sure you are
9 asking a question of the witness rather than pointing
10 out something for the Board.

11 Q (By Mr. Cory) Did you notice from my drawing,
12 Dale, that there is 16 feet of berm at water level
13 which prevents water from the south lagoon to escape?
14 Did you ever --

15 A No, but I don't really agree with that four
16 foot figure there either. I mean, I have seen it --
17 the permanent water level should be -- in my opinion,
18 should be higher up on that embankment.

19 Q You don't think there is a four foot berm
20 being maintained?

21 A There is not four feet of freeboard being
22 maintained in the north lagoon or in either lagoon,
23 for that matter.

24 Q This is the south lagoon?

25 A Okay. Particularly the south lagoon there is

1 not four feet. At times the north lagoon might have
2 four feet after it has been dewatered, but the south
3 lagoon has never gotten that high.

4 HEARING OFFICER JACKSON: Without getting too far
5 off track, can you explain briefly what you mean by
6 freeboard, for the Board's consideration?

7 THE WITNESS: I guess in my opinion the amount of
8 freeboard is the volume -- well, it is really the
9 level between the surface water and the very, very tip
10 top of the berm.

11 HEARING OFFICER JACKSON: Thank you.

12 Q (By Mr. Cory) In other words, the drawing
13 indicates four foot of freeboard?

14 A The drawing does, yes.

15 Q And as a result of the buried pipe between
16 the south and the north lagoons, that pipe does keep
17 the freeboard at a constant level?

18 A It keeps the freeboard at a constant level,
19 but I do not believe it is four feet.

20 Q Okay. We will get into what that is later.

21 But, obviously, you agree that the plastic pipe buried
22 between the two lagoons does keep this water level
23 from ever overflowing the berm?

24 A For the most part that is true. The problem
25 is on the back side of the berm where it continues to

1 keep sloughing away down the hill. And so if the berm
2 is going to fail, it is going to fail on the back side
3 of the berm. It is not going to fail on the front
4 side of the berm.

5 Q So you are saying this is the problem with
6 that berm?

7 A That's correct.

8 Q And I agree. I would like to ask are you
9 aware of any repairs that has been made to that since
10 this lagoon was built in 1978?

11 A I am not aware of any repairs.

12 Q 1978 to 1998, are you afraid of any problem
13 that is going to be occurred by this in view of what
14 has happened over the past 20 years?

15 A Yes, I am concerned. I am concerned that
16 that embankment will slough off during a soil
17 saturated condition, during a heavy rain storm, and
18 that the entire berm will fail, and the contents of
19 the lagoon will drain into the unnamed tributary of
20 McKee Creek.

21 Q Let me conjecture with you a second. Assume
22 that the connector pipe between the two lagoons has
23 never been there, has never been installed.
24 Therefore, under those conditions effluent could rise
25 and flow over the top of the berm. But if that

1 happened, how fast can a berm self-destruct?

2 A Very quickly under the right conditions.

3 Q What are the right conditions?

4 A Saturated soils.

5 Q And rainfall like 20 inches in less than 24
6 hours?

7 A It would not take that much rainfall.

8 Q For water in a pond or a lagoon to flow over
9 the berm, and erode fast enough to not be absorbed by
10 the downstream unnamed area would be extremely
11 difficult, do you agree?

12 A Yes. I have already said that my concern is
13 on the back side of the berm. It is not on the front
14 side of the berm.

15 Q I am aware of that. But I am saying if the
16 lagoon effluent overflowed this --

17 A Then it would deteriorate very rapidly.

18 Q It would depend on how much it was raining,
19 wouldn't it?

20 A No, it would depend on the amount of flow,
21 which I guess is dependent on how much it was raining.

22 Q Because the effluent in this lagoon has not
23 had any hog manure added to it since May of 1985.

24 HEARING OFFICER JACKSON: Mr. Cory, you are --

25 Q (By Mr. Cory) Do you agree?

1 A Yes, I agree.

2 Q You took samples of the lagoon water?

3 A Yes.

4 Q How did those samples compare to water that

5 you took from typical farm ponds?

6 A We do not sample typical farm ponds. We

7 sample creeks, if that's what you are questioning.

8 Q How did the water in this lagoon compare to

9 the water in McKee Creek?

10 HEARING OFFICER JACKSON: You are talking about

11 the south lagoon.

12 Q (By Mr. Cory) Either one?

13 A The water in both lagoons had excess nutrient

14 levels compared to what we would consider clean stream

15 water.

16 Q You are saying excess nutrients?

17 A That is correct.

18 Q Do you remember what the N analysis was of

19 the lagoon water, south and north?

20 A What do you mean by N analysis?

21 Q Nitrogen.

22 A Oh, nitrogen. No, I do not recall what that

23 was.

24 Q You don't recall that throughout your reports

25 and the other reports made by the EPA that you have

1 analyzed for N and found it .1, .01, .02, .03?

2 A I don't recall the --

3 MS. PERI: I will object. I believe this line of

4 questioning is beyond the scope of the direct

5 examination. Mr. Brockamp did testify to obtaining

6 samples but provided no specific testimony on the

7 analysis of the samples.

8 HEARING OFFICER JACKSON: However, the sample

9 results were admitted into evidence, and I am going to

10 allow this line of questioning to the extent that Mr.

11 Brockamp feels he can answer the questions.

12 Q (By Mr. Cory) One final question. Since you

13 have taken the water samples and had them analyzed, if

14 one of the samples of the surface water analyzed .03

15 N, meaning milligrams per liter, how would you

16 interpret the quality of that water?

17 A I am not --

18 Q Good, bad or worse?

19 A I am not sure if I am qualified to interpret,

20 but it would not be that significant. We would not be

21 overly concerned. I don't call it good, but I

22 don't -- there is worse. Much worse.

23 Q If you contacted the State Department of

24 Health here in Springfield, and asked them what

25 constitutes a good nitrogen analysis of water, what do

1 you think they would say?

2 A On surface water, I don't know. There are
3 groundwater standards. The groundwater standard would
4 be 10, but that's apples and oranges.

5 Q Ten milligrams?

6 A Parts per million. I am not sure how
7 relevant that number would be for surface water,
8 though.

9 MR. CORY: Well, maybe I can present that in some
10 testimony I want to give later.

11 HEARING OFFICER JACKSON: That's fine.

12 Q (By Mr. Cory) When you say that this lagoon
13 water should be land applied agronomically, what is
14 the definition of agronomically?

15 A Agronomically is dependent upon the crop to
16 be grown, and the amount of the yield which that crop
17 is anticipated to produce. So it is a floating
18 number. There is no set agronomic rate. It is
19 totally dependent upon the soils in your particular
20 area, the crops that you intend to grow, and how much
21 nitrogen that yield will uptake on an annual basis.

22 Q So you are saying that the nitrogen content
23 of the effluent is what determines the agronomic rate
24 that can be applied?

25 A In Illinois, yes, we look solely at the

1 nitrogen level.

2 Q If you are applying effluent per the nitrogen
3 rate agronomically, of what significance are the other
4 analysis from that same body of water?

5 A I am not sure I understand the question.

6 Q If my neighbor was applying lagoon effluent
7 to his land agronomically, to do so he would have to
8 know the nitrogen content of that effluent?

9 A Yes.

10 Q He would not be required to know of any other
11 analysis, yes or no?

12 A Required, I don't believe so.

13 Q I don't think so either.

14 A I mean, it would be in his best interest to
15 do so, because if he over applies on phosphorus or
16 potassium he could reduce his yield, which it just --

17 Q Agreed. But you are talking about potential
18 future law, not current?

19 A Yes.

20 Q And in your testimony you said that when you
21 saw siphoning pipes running, the water was clear.
22 That's in your report?

23 A It was fairly clear, yes.

24 Q Not at that specific time, but at another
25 time that water had been tested by the EPA for

1 nitrogen. Do you remember what the test result was?

2 A No, I do not.

3 HEARING OFFICER JACKSON: What water are you
4 talking about, Mr. Cory.

5 MR. CORY: Lagoon water, from north and south.

6 HEARING OFFICER JACKSON: From in the lagoon
7 itself or the effluent?

8 MR. CORY: The water inside the lagoon itself was
9 tested for N as well as other things. But N is what
10 is important to the agronomic rate.

11 THE WITNESS: N is important to the agronomic
12 rate, but there are other constituents that can cause
13 pollution.

14 Q (By Mr. Cory) Agreed, if they are high
15 enough. But now you took -- the EPA. I don't know
16 that it was you. The EPA took samples of both the
17 south and north lagoon, and had them tested for N, and
18 I believe we could go through the summary of the
19 analysis and find that some were as low as .01.

20 HEARING OFFICER JACKSON: Is there a question
21 there, Mr. Cory?

22 Q (By Mr. Cory) Some were .02. Some were .03.
23 Are any of those going to stop a man from applying it
24 agronomically?

25 A No. No, but these wastes were not applied

1 agronomically. They were discharged in a concentrated
2 form.

3 Q I was talking about a hypothetical man,
4 establishing that N analysis in current law is the
5 analysis that makes it important whether or not you
6 are applying agronomically; is that true?

7 A That's true.

8 Q Last summer in 1998, are you aware of what
9 the samples tested that the EPA took in 1998 and 1997,
10 the N analysis?

11 A I certainly -- no, I am not. I was not
12 there. I was not even with the Agency at that time.

13 MR. CORY: So how can I establish what it was?

14 HEARING OFFICER JACKSON: I can't tell you that.

15 Q (By Mr. Cory) Anyway, you observed clear
16 water coming out of the siphon pipes. Your report
17 says the opposite ends of the pipes was weighted?

18 A Correct, to keep the siphon flowing.

19 Q Don't you realize why the other end of the
20 pipes had those empty plastic bottles on them? They
21 were not weights. So why would they be used?

22 A There had to be a mechanism to keep the pipe
23 submerged under water level to keep the siphon
24 flowing.

25 Q The weight of the pipe provided the weight to

1 submerge it. The floats were to make sure that all of
2 the water being discharged came out of the top 14 or
3 15 inches.

4 HEARING OFFICER JACKSON: Mr. Cory, you are
5 testifying again, and if you continue to do this I am
6 going to have to strike your comments from the
7 record. And if the Attorney General's Office makes a
8 motion to strike those comments, I would grant it.

9 We are trying to give you some leeway here, but
10 you need to restrict your remarks solely to questions
11 directed to the witness. You will be given an
12 opportunity to testify later once you have been sworn
13 in.

14 MR. CORY: Okay.

15 Q (By Mr. Cory) Well, in summary, the testimony
16 that you made about water going from the lagoon to the
17 unnamed tributary, are you aware of the approximate
18 size of that that is on my property?

19 A The size of what?

20 Q The unnamed tributary, how many square feet,
21 how big an area?

22 A Well, we discussed it when we were out
23 there. It was roughly 100 feet wide, and a total of
24 1,500 feet long. But I am not sure how much is on
25 your property and how much is on your neighbor's

1 property.

2 Q A total of eight acres, with one acre on me

3 and seven on him, sound okay?

4 A I honestly don't have any idea.

5 Q But if lagoon effluent goes to that unnamed

6 tributary on my property, and goes down the unnamed

7 tributary to where it could enter McKee Creek, how far

8 did the water travel?

9 A Approximately 1,500 feet.

10 Q Even more. There are --

11 MS. PERI: Move to strike that last comment as

12 argument.

13 MR. CORY: Beg your pardon?

14 HEARING OFFICER JACKSON: The last comment should

15 be stricken, the "even more."

16 MR. CORY: Okay. Let me take my chances on being

17 able to ask the other questions I have from other

18 witnesses or recall. I will conclude my testimony

19 with Dale right now.

20 HEARING OFFICER JACKSON: All right, Mr. Cory.

21 Very good.

22 Ms. Peri, any redirect?

23 MS. PERI: Yes, I have just a few follow-up

24 questions.

25 HEARING OFFICER JACKSON: Okay.

1 REDIRECT EXAMINATION

2 BY MS. PERI:

3 Q Mr. Brockamp, you testified that there are
4 livestock waste constituents in the north and south
5 lagoons, correct?

6 A Yes.

7 Q You also testified that you observed lagoon
8 contents being discharged from the north lagoon to the
9 unnamed tributary on April 17, 1997, correct?

10 A That is correct.

11 Q In your discussion with the respondent
12 regarding runoff to the north and south lagoons, you
13 estimated that at least one acre drains into the north
14 lagoon; is that correct?

15 A That is correct.

16 Q Can you estimate approximately the total
17 acreage of watershed that drains into the north and
18 south lagoons?

19 A There would be at least two acres draining
20 into the south lagoon, and one acre draining into the
21 north. So the total would be three acres.

22 Q Let's talk briefly again about that Point A
23 along the west side of the south lagoon berm. You
24 previously testified that this is an eroded area,
25 correct?

1 A Yes.

2 Q And that this area may be subject to berm
3 failure?

4 A Yes.

5 Q Okay. Mr. Brockamp, does the presence of
6 what has been discussed here as this balancing pipe
7 between the two lagoons impact your conclusion that
8 there was a threat of berm failure along the west side
9 of the south lagoon?

10 A No, that pipe makes no difference
11 whatsoever.

12 Q You have also testified that it is your
13 opinion that with the amount of runoff that leads to
14 the north and south lagoons, that there is a threat of
15 an overflow of the lagoon contents to the west to the
16 unnamed tributary, correct?

17 A Yes.

18 Q Does the presence of the balancing pipe
19 impact that conclusion?

20 A In general, no, it just says that the surface
21 water will not overflow the south lagoon, but it will
22 overflow the north lagoon, because it is going to
23 drain from the south to the north.

24 Q So the south lagoons contents will make the
25 way to the north lagoon and then discharge to the --

1 A Then it will discharge to the unnamed
2 tributary of McKee Creek.

3 Q Does the width of the berm along Point A, at
4 the water level in particular, bear on your conclusion
5 earlier that there is a threat of berm failure at
6 Point A? I can break down that question if you would
7 like.

8 A Yes, I would like that.

9 Q You have testified that at Point A there is a
10 threat of berm failure?

11 A Yes.

12 Q Does the width of the berm at Point A at the
13 water level change your conclusion that there is a
14 threat of berm failure at that Point A?

15 A No, it does not change my conclusion.

16 Q Why not?

17 A At the water level that is where you are
18 going to begin getting forces on that embankment. And
19 as you go below there, then you are going to be
20 getting hydrostatic forces trying to push against that
21 berm. As the side of the embankment is sloughing
22 away, your cross-sectional area becomes less and less,
23 and there is less support for that, the embankment.
24 As erosion proceeds, there is going to be less
25 stability and the potential for a berm failure will

1 increase.

2 MS. PERI: Thank you. No more questions.

3 HEARING OFFICER JACKSON: Okay. Why don't we go

4 off the record for one second here.

5 (Discussion off the record.)

6 HEARING OFFICER JACKSON: All right. Back on the

7 record.

8 RE CROSS EXAMINATION

9 BY MR. CORY:

10 Q I think my first question had to do with on

11 the above date, the follow-up, you did not -- well,

12 you admitted accepting a report that we now know is

13 erroneous?

14 A No. I am not sure what you are saying.

15 HEARING OFFICER JACKSON: Mr. Cory, I want to

16 remind you again that this is recross-examination, so

17 to speak. The questions have to be limited to the

18 scope of what Ms. Peri just asked Mr. Brockamp in her

19 follow-up. Okay. We can't go beyond those

20 structures.

21 MR. CORY: Okay. Just one question.

22 Q (By Mr. Cory) Ross Manning is the one that

23 told you both lagoons were discharging black septic

24 liquid hog waste into the draw?

25 MS. PERI: Objection. Beyond the scope.

1 MR. CORY: I beg your pardon?

2 MS. PERI: I will object. It is beyond the scope.

3 HEARING OFFICER JACKSON: Do you understand what I

4 am trying to explain? The follow-up that Ms. Peri

5 asked, okay, just these few questions that she just

6 asked, you can ask any follow-up to those questions

7 only. She did not ask anything about the October of

8 1986 report by Ross Manning. So you are not allowed

9 to ask any questions on that. Those could have been

10 asked earlier, but we are not taking any new questions

11 on that. Does that make sense?

12 MR. CORY: Well, yes. But earlier -- well, I will

13 get to it some way later.

14 HEARING OFFICER JACKSON: Okay. All right. The

15 witness may be excused.

16 (The witness left the stand.)

17 HEARING OFFICER JACKSON: We will go off the

18 record again for another minute.

19 (Discussion off the record.)

20 HEARING OFFICER JACKSON: All right. Back on the

21 record.

22 It is five after 12:00. We are going to take a

23 short recess for lunch. Can we be back here in one

24 hour and resume again at five after 1:00? Is

25 everybody in agreement?

1 MS. PERI: Yes.

2 HEARING OFFICER JACKSON: Okay. We will go off

3 the record then, and we will resume in an hour. Thank

4 you.

5 (Whereupon a lunch recess was taken.)

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1 AFTERNOON SESSION

2 (January 26, 1999; 1:13 p.m.)

3 HEARING OFFICER JACKSON: Back on the record. We
4 are reconvening. It is Tuesday, January 26th. It is
5 about 1:13 in the afternoon. We have just concluded
6 with the State's first witness when we broke off for
7 lunch. So now we will come back and the State will
8 call their second witness.

9 MS. PERI: The People will call John Wells.

10 HEARING OFFICER JACKSON: If you would, let the
11 court reporter swear you in, please.

12 (Whereupon the witness was sworn by the Notary
13 Public.)

14 HEARING OFFICER JACKSON: You may begin, Ms. Peri.

15 MS. PERI: Thank you.

16 J O H N D. W E L L S,
17 having been first duly sworn by the Notary Public,
18 saith as follows:

19 D I R E C T E X A M I N A T I O N

20 B Y M S. P E R I:

21 Q Good afternoon, Mr. Wells.

22 A Good afternoon.

23 Q Let's briefly discuss your educational
24 background and work experience. You have a Master's
25 Degree and a Bachelor's of Science Degree in

1 Agricultural Engineering; is that correct?

2 A That is correct.

3 Q You also have a license under the State of

4 Illinois in professional engineering?

5 A Yes.

6 Q When did you obtain that license?

7 A In 1993.

8 Q Tell me about your work history since you

9 obtained your Master's Degree.

10 A Since I obtained my Master's Degree I have

11 worked for the University of -- excuse me -- I worked

12 for the Illinois EPA.

13 Q Since which year?

14 A Since 1988.

15 Q In which capacity did you begin with the

16 Agency?

17 A I started in 1988 as the agricultural

18 engineer at the Springfield region, and I did that job

19 for -- well, until March of 1992.

20 Q At that point, what was your role?

21 A Well, actually before that I had started

22 taking on duties of inspecting municipal and

23 industrial sewage treatment plants in November of

24 1990. So I did both the agricultural engineering job

25 and the municipal and industrial wastewater treatment

1 plant inspection job at the same time.

2 Q After 1992, what was your role with the
3 Illinois EPA?

4 A I have been inspecting municipal and
5 industrial wastewater treatment plants until December
6 of 1997, when I started also doing some of the
7 agricultural inspections again.

8 Q Would you explain further your duties as the
9 agricultural engineer with the Springfield regional
10 office during those time periods?

11 A My duties as the agricultural engineer were
12 to respond to complaints, to inspect livestock and
13 agrichemical facilities.

14 Q During the course of those inspections what
15 might you be looking for?

16 A Our primary focus and most of our focus is on
17 water pollution. And so I would look at the water
18 pollution threat from a facility. Sometimes we also
19 get complaints about odors, and we would also look at
20 that occasionally.

21 Q Let me go back. Prior to your joining the
22 Illinois EPA, did you participate in any work programs
23 or internships or other study opportunities with the
24 University of Illinois?

25 A I was employed by the University of Illinois

1 for three years.

2 Q In what capacity?

3 A As an engineer.

4 Q What type of work did you do for them?

5 A I conducted research for the University.

6 Q In what particular area?

7 A Most of my research was in agricultural land

8 drainage, specifically subsurface tile drainage.

9 Q Okay. Moving then to your inspections that

10 you conducted as an agricultural engineer for the

11 Springfield regional office, do you generally make

12 reports following your inspections?

13 A Yes.

14 Q What would typically be the contents of those

15 reports?

16 A They would be the -- well, they would

17 generally have an introductory paragraph just giving

18 the background of what is going on, a narrative

19 describing what I observed, and sometimes analysis of

20 sample results if I have the results back, and finally

21 a summary or conclusion citing apparent violations, if

22 I had noted such, and sometimes the recommended

23 actions and follow-up recommendations.

24 Q Mr. Wells, are you familiar with the Victor

25 Cory farm?

1 A Yes, I am.

2 Q How did you become familiar with that site?

3 A I visited it, I think the first time, in 1990

4 as a routine follow-up inspection of an NPDES

5 permitted facility.

6 Q Would you explain the NPDES permit?

7 A An NPDES permit is -- the NPDES stands for

8 National Pollutant Discharge Elimination System. And

9 it is a system of permits that is set up for anyone

10 that discharges to waters of the State, to control

11 those discharges. In the case of a livestock

12 facility, it has conditions that govern what, when,

13 and how a livestock facility could discharge.

14 Q Now, you inspected the Cory farm on May 20th,

15 1998, correct?

16 A That's correct.

17 Q What was the purpose of that inspection?

18 A To check on the status of the facility.

19 Q Prior to conducting that inspection, did you

20 review an existing file relating to that site?

21 A Yes, I did.

22 Q Would that file have included reports of Mr.

23 Dale Brockamp?

24 A Yes.

25 Q Okay. Let's move, then, to that date, May

1 20th, 1998. What did you observe during your
2 inspection?

3 A That the livestock facilities were still
4 empty. That the lagoons were not discharging. I
5 noted the erosion that I had seen pictures of in the
6 file in the --

7 Q I am sorry to interrupt, but which lagoons
8 were you referring to?

9 A That would have been the west berm of the
10 south lagoon.

11 Q Okay. So you inspected the west side of the
12 south lagoon on this particular date?

13 A Yes.

14 Q In the course of that inspection did you
15 familiarize yourself with the layout of the facility?

16 A Yes, I did.

17 Q Did you observe the location of buildings
18 during that inspection?

19 A (Nodded head up and down.)

20 Q And the location of the lagoons?

21 A Yes.

22 Q I am going to go ahead and show you, Mr.
23 Wells, what has already been entered into evidence as
24 People's Exhibit Number 1. Can you see this exhibit
25 clearly from where you are sitting?

1 A Yes, I can.

2 Q Based on your inspections of the Cory farm,
3 does this exhibit fairly and reasonably depict the
4 location of the lagoons on the Cory farm?

5 A Yes.

6 Q Are you familiar with what has been marked on
7 this exhibit as the unnamed tributary of McKee Creek?

8 A Yes.

9 Q In your opinion, does the location of that
10 creek on this particular exhibit, is it fairly and
11 accurately represented in terms of its location
12 relative to the lagoons?

13 A Yes.

14 Q In the course of your inspection on May 20th,
15 1998, or prior to that date, did you assess or
16 evaluate how stormwater drains on the Cory property?

17 A Yes, I did.

18 Q In looking at People's Exhibit Number 1, do
19 you believe that the arrows drawn on that exhibit
20 fairly and accurately describe the direction of water
21 flow on the Cory property?

22 A For the most part, yes.

23 Q How would you agree or disagree?

24 A I think that from my observations of the site
25 that there might be a little more area -- the area

1 between the lagoons probably also drains to the north
2 lagoon, based on my observations.

3 Q Mr. Wells, I am going to provide you with a
4 blue ink pen, and I am going to ask that you approach
5 the exhibit, and not only indicate with an arrow the
6 water flow you are referring to, but explain to us
7 further with more specificity the area that --

8 A This is not a great -- this is not a really
9 large area involved, but --

10 HEARING OFFICER JACKSON: Why don't we turn the
11 exhibit so that Mr. Cory can see.

12 THE WITNESS: Okay.

13 MR. CORY: That's good.

14 HEARING OFFICER JACKSON: Thank you.

15 THE WITNESS: I would say that this area right in
16 here probably drains down and then comes over to the
17 north lagoon, based on observations not only on May
18 20th but other times, too. And on May 20th I did see
19 stormwater drainage from a portion of the field that
20 is north of the north building into the north lagoon.

21 Q (By Ms. Peri) About how large of the field is
22 that that you are describing?

23 A The whole field it no more than three acres.

24 And the portion that drained to the north lagoon was
25 just a small fraction of that, probably not more than

1 half an acre or an acre.

2 Q Would you please indicate with an "X" the
3 general area of that field that you have just
4 described?

5 A Yes. (Witness complied.)

6 MS. PERI: Let the record show that Mr. Wells has
7 so marked the Exhibit 1.

8 Q (By Ms. Peri) So then, Mr. Wells, you have
9 drawn an arrow that moves from east to west and then
10 north, just west of the unnamed tributary, correct?

11 A That's correct.

12 Q Okay. This arrow is in blue?

13 A Yes.

14 HEARING OFFICER JACKSON: I am sorry. Just west
15 of the unnamed tributary?

16 MS. PERI: To the west.

17 THE WITNESS: Towards the west.

18 MS. PERI: Toward the unnamed tributary. Thank
19 you.

20 HEARING OFFICER JACKSON: Okay.

21 Q (By Ms. Peri) Is this arrow marked in blue
22 and shows an east-west line graded? And by that I
23 mean sloped?

24 A Yes.

25 Q And what is the approximate slope of that
102

1 area?

2 A It is 15 to 20 percent. It is an area where
3 soil was removed, I believe -- it looks like an area
4 where soil was removed to buildup as a source of soil,
5 you know, or fill.

6 Q And how does the water reach this point? And
7 I am now pointing to the eastern tip of this blue
8 line.

9 A How does the --

10 Q Where is the water coming from that now moves
11 in a westerly direction along that arrow?

12 A From direct rainfall or there is a small area
13 that may be tributary to the above that is wooded or
14 is vegetated, anyway.

15 Q Thank you. You may sit down now. Thank
16 you. Mr. Wells, have you indicated that during your
17 May 20th, 1998 inspection you inspected the south
18 lagoon berm?

19 A Yes, I did.

20 Q And would you explain again the area of that
21 berm that you observed?

22 A It was -- well, I looked at the -- I observed
23 the west berm that is parallel to the unnamed
24 tributary. Approximately in the middle of that berm
25 is an eroded area where, as Mr. Brockamp had

1 described, an area where soil has sloughed or eroded
2 away from the berm, starting at top of the berm all
3 the way down essentially down to the bottom of the
4 berm, close to it, anyway.

5 Q That area that you have described as eroded
6 on the west side of the south lagoon, is that the same
7 area, in your opinion, as what has been marked as
8 Point A on People's Exhibit Number 1?

9 A Yes.

10 Q How wide would you estimate Point A to be at
11 the top of the berm during that inspection?

12 A It was approximately three feet wide. And by
13 wide I mean in a direction perpendicular to the bank.
14 It was three feet wide at the very top of the berm
15 where it had -- the area that had not yet been eroded.

16 Q How does a three to four foot width at the
17 top of the berm at Point A compare to the width of the
18 berm throughout the rest of the perimeter?

19 A The top width of the berm for the rest of it
20 is approximately six to eight feet wide.

21 Q Is three to four feet width at the top of the
22 berm on a lagoon structure of this type adequate?

23 A No.

24 Q Why not?

25 A In addition to -- well, if the water level

1 gets to that height, three to four feet really is not
2 enough to assure that you won't get some seepage
3 through the berm. If you get seepage through the berm
4 that will accelerate any erosion that would take
5 place, and you would likely have failure at that
6 point.

7 Q In your opinion, is it possible that the
8 erosion that you observed at Point A can be eroded
9 further in the future?

10 A Yes.

11 Q Would this be due to natural causes?

12 A Certainly.

13 Q Of what nature?

14 A From direct precipitation, from freezing and
15 thawing, from being broken down by the wildlife
16 traffic that I have seen evidence of. There is -- the
17 erosion processes are certainly going to work on it.
18 It is a steep slope and subject to erosion.

19 Q In your opinion, Mr. Wells, is there a threat
20 of berm failure at that Point A, based on your
21 observations of May 20, 1998?

22 A Yes.

23 Q And what is the basis of your opinion?

24 A My experience with erosion and earthen
25 structures as an engineer, and from a practical

1 standpoint of having worked with earth and banks,
2 stream banks.

3 Q How do you anticipate the berm at Point A
4 could fail?

5 A It is -- well, if the water level comes up,
6 and notwithstanding Mr. Cory's connecting pipe, which
7 can plug, the water level could come up to a depth
8 where it would possibly over top the berm somewhere.
9 If it was at that point it could easily accelerate any
10 erosion. Otherwise, it is likely that over time the
11 thing will erode more and more, and eventually could
12 reach the existing water level.

13 Q In your opinion, is there a minimum width
14 that would be appropriate to withstand berm failure at
15 that point?

16 A I think that the six to eight feet top width
17 would probably be a minimum width that would be
18 reasonable. So if it was repaired to the width of the
19 rest of the berm, it would be in good shape.

20 Q You have testified that it is your opinion
21 that there is a threat of berm failure at Point A,
22 right?

23 A Yes.

24 Q In your opinion, should the berm fail at
25 Point A, are there environmental consequences?

1 A Yes.

2 Q And what do you believe those consequences to
3 be?

4 A If the berm failed at Point A, there is a
5 good likelihood that the entire contents of the lagoon
6 could be released, not just the water, but also the
7 sludge and bottom sediments that are present in the
8 lagoon, which have a high nutrient and oxygen using
9 load. That would flow into -- it would certainly
10 affect the unnamed tributary, and possibly affect
11 McKee Creek.

12 Q Affect in which way?

13 A It would likely, at the very least, use up
14 the oxygen in the unnamed tributary. It could be
15 toxic possibly from ammonia in the sludge or other
16 constituents, but mostly from the oxygen demand that
17 it would put on the streams. It would be possible
18 that given certain flow conditions, it could use up
19 enough oxygen to kill off any oxygen breathing
20 organisms in the streams in possibly the unnamed
21 tributary and possibly McKee Creek.

22 Q You have just testified that there are what
23 you call nutrients in the south lagoon --

24 A Yes.

25 Q -- that could overflow to the unnamed

1 tributary. Please explain further what you mean by
2 nutrients?

3 A Well, the nutrients that we usually identify
4 in livestock waste would be nitrogen in various forms,
5 phosphorus, potassium, and those are the ones we
6 usually refer to as nutrients. There are other
7 constituents, of course.

8 Q So by nutrients you mean livestock waste
9 constituents?

10 A They would be livestock waste constituents,
11 sure.

12 Q How did you conclude that livestock waste
13 constituents were present in the south lagoon?

14 A I knew from the history of the site that
15 there should be some present. I have stirred up the
16 sediments, and observed the characteristics of what is
17 there, and concluded that this was livestock waste. I
18 know from reviewing the file that in particular the
19 November of 1985 sampling that, in fact, they had the
20 characteristics of livestock waste.

21 Q In reviewing the file did you also review
22 sampling results from April 17, 1997?

23 A Yes, I did.

24 Q Pardon me. I will strike that. Did you
25 observe sampling results from samples collected on

1 April 22nd, 1997?

2 A Yes, that is more right. That is when the
3 samples were collected.

4 Q Mr. Wells, I will show you what has already
5 been entered into evidence as People's Exhibit Number
6 13. Is this the set of lab results that you examined
7 in the file from that April 22, 1997 collection event?

8 A I believe so, yes.

9 Q Did your review of those sampling results in
10 any way impact your conclusion that livestock waste
11 constituents were present in the lagoons?

12 A Yes.

13 Q How so?

14 A Based on those results it did appear that
15 there was still an effect of livestock waste on the
16 water and the sediment in the lagoons.

17 Q Can you explain further the parameters or
18 constituents that you would examine in order to reach
19 that conclusion?

20 A In the sediment I looked at phosphorus as
21 being indicative of livestock waste or there is other
22 sources of phosphorus, human waste, but those were the
23 numbers that I could look at and say this is higher
24 than what I would expect to find in say a farm pond,
25 or a lake, or a stream.

1 Q Did you look at the particular phosphorus
2 levels analyzed in this particular sampling event of
3 April 22, 1997?

4 A Yes, I did.

5 Q And do you recall what those results were?

6 A It seems to me they were approximately 4,000
7 or 5,000 parts per -- excuse me -- milligrams per
8 kilogram of phosphorus -- yes, phosphorus.

9 Q Again, these were sediment sample results?

10 A Yes.

11 Q Did you find those results to be true in both
12 the north and south lagoons?

13 A As I recall they were essentially the same,
14 yes.

15 Q If this were not a livestock waste lagoon,
16 what sort of phosphorus levels would you expect to
17 see?

18 A I consulted with our water planning section,
19 and they indicated that whenever they see phosphorus
20 at the 300 milligrams per kilogram level, they
21 consider that there is a source of contamination to
22 that body of water from some source. So when I
23 compare the 300 to the 5,000 I would say that there
24 is -- you know, there is something that shows that
25 there has been livestock waste or some other source of

1 phosphorus coming into that body of water.

2 Q Is a phosphorus level of 4,000 to 5,000, as
3 you have testified, consistent with the use of lagoons
4 for livestock waste storage?

5 A Yes, that would be.

6 Q Mr. Wells, do you know when the livestock
7 waste facility was abandoned? And I am specifically
8 referring to the removal of livestock from the
9 facility.

10 A I know only from what I was told, I thought
11 by Mr. Cory, I think the first time I met him in 1990,
12 and from what I read in the files.

13 Q And when was that?

14 A I have got two dates that I recall, and one
15 was from 1989 and the other was from 1985. It may be
16 that the 1989 date was a mistake in hearing on my
17 part, because I think that is what Mr. Cory told me
18 when I visited with him in 1990.

19 Q Even supposing the facility was abandoned of
20 all livestock in 1985 --

21 A Yes.

22 Q -- are you surprised to find high phosphorus
23 levels in these lagoons?

24 A Not at all.

25 Q Why?

1 A It is -- the sludge that settles there is not
2 really going anywhere. It does not breakdown beyond
3 what it is broken down. It will be there, I expect to
4 see it in another ten years, if those are sitting
5 there as they are.

6 Q Will the erosion point that you have
7 described and that you have identified as being
8 consistent with Point A on Exhibit 1 correct itself?

9 A No, it will not.

10 Q During your May 20th, 1998 inspection of the
11 Cory farm, did you also inspect the north lagoon?

12 A Yes, I did.

13 Q What did you find?

14 A I found conditions essentially as they were
15 described by Mr. Brockamp in his inspection reports.
16 I noted that I believe approximately two feet of
17 freeboard was present in the lagoon, that it didn't
18 appear that they had been maintained at all. In fact,
19 it was difficult to walk on the berms because of all
20 of the vegetation. And I noted a place where there
21 had been erosion, and from Mr. Brockamp's report I
22 assumed was where the siphoning had taken place. And
23 I noted the steep slope of the berms on not only the
24 north lagoon but also the south lagoon, which makes
25 chances of erosion and chances of damage from trees

1 falling over much more likely.

2 Q Where along the north lagoon did you observe
3 steep slopes?

4 A Essentially anywhere where a berm had been
5 constructed to hold in the lagoon. So on the north
6 lagoon that would be the west side, or what on this
7 diagram is showed as the west side, parallel to the
8 unnamed tributary. It is quite a bit less steep and
9 this is much smaller berms along the north side. And
10 there is no berm at all essentially on the south or on
11 the east, because in those areas the lagoon backs up
12 on to the hillside itself.

13 Q So is it your opinion that the west side of
14 the north lagoon poses a greater risk of erosion along
15 the berm?

16 A Yes.

17 Q You testified that you observed what you
18 believed to be the erosion area where Mr. Brockamp had
19 observed piping --

20 A Yes.

21 Q -- in 1997? Would you agree with the marking
22 of that area as roughly what Mr. Brockamp has marked
23 as Point B on Exhibit Number 1?

24 A That is roughly where I observed what I
25 understood to be the erosion caused by the siphoning.

1 Q Would you describe further the erosion area
2 that you mentioned?

3 A On the north lagoon?

4 Q Yes.

5 A Yes. It is approximately 15 to 20 feet or
6 probably 15 feet from the water's edge into what
7 appears to be a native hillside, not fill from the
8 lagoon that was placed and built in the lagoon berm,
9 but in native hillside. It is approximately three to
10 four feet deep and perhaps five to six feet wide, and
11 maybe 10 to 15 feet long. It is eroding under the
12 root of trees, so it is difficult to tell exactly how
13 far it goes under the trees. It appears to be
14 actively eroding from runoff, seepage.

15 Q Is it your opinion that --

16 MR. CORY: Excuse me. Could you repeat that
17 question for me? I missed the question.

18 MS. PERI: Could I ask the --

19 HEARING OFFICER JACKSON: Would the court reporter
20 read it back, please.

21 (Whereupon the requested portion of the record was
22 read back by the Reporter.)

23 Q (By Ms. Peri) Mr. Wells, do you have an
24 opinion as to what caused the erosion in that area
25 marked B on People's Exhibit Number 1?

1 A I believe, from what I observed in Mr.
2 Brockamp's reports, and I saw the pictures of the
3 siphon tubes discharging, that likely that has been
4 causes had by siphoning over time. There is really no
5 reason for an eroded area like that to be present
6 where it is located from any other source. There is
7 no great watershed that focuses water to that point.
8 It is quite a bit larger than what I would expect to
9 see from wildlife burrows. So in my opinion it was
10 probably from the erosive action of the siphoned
11 water.

12 Q In your opinion, would one incident involving
13 the siphoning of water at that location give rise to
14 the eroded condition that you saw on May 20th of 1998?

15 A I would say probably not. It would take more
16 than one incident or at least one incident long ago to
17 cause the erosion that I saw present.

18 Q Mr. Wells, you have indicated that you are
19 familiar with what is marked as the unnamed tributary
20 of McKee Creek as labeled on People's Exhibit Number
21 1?

22 A Yes.

23 Q Does this tributary have water in it all year
24 round?

25 A Probably not.

1 Q Approximately what portion of the year would
2 it contain water?

3 A Depending on the year, it could easily have
4 water of some sort in it five to six months a year.

5 Q Where does that tributary drain to when it
6 does contain water?

7 A It drains directly to McKee Creek.

8 Q Have you visited McKee Creek?

9 A Yes, I have.

10 Q Does McKee Creek have water in it all year
11 round?

12 A Yes.

13 Q Okay.

14 A At least I would think that a stream as large
15 as it is should have some water present. It may not
16 be flowing but there will be water in pools if nothing
17 else.

18 Q Does the water in McKee Creek, as you have
19 described it to be present all year round, support
20 aquatic life?

21 A Yes.

22 Q Would that include fish populations?

23 A I certainly think it would.

24 Q Would aquatic life be found in the unnamed
25 tributary to McKee Creek, in your opinion?

1 A Yes.

2 Q You stated that you examined the north lagoon
3 on May 20th, 1998?

4 A Yes.

5 Q You have stated that you examined the
6 direction of flow of surface waters, including
7 stormwater, across the Cory property?

8 A Yes, I did.

9 Q Do you have an opinion as to whether the
10 drainage of water across the Cory property creates a
11 threat of an overflow of the north and/or south
12 lagoons?

13 A Yes, I would think it does create a threat of
14 discharge.

15 Q Why?

16 A Evaporation and precipitation in Illinois are
17 approximately equal, so in addition to water falling
18 directly onto the lagoon, any water that runs off into
19 the lagoon from a watershed will likely fill and
20 overflow any impoundment that -- especially one like
21 Mr. Cory's that appears to hold water pretty well, and
22 it does not seep out the bottom. So I would expect
23 that over time those lagoons will fill up and
24 discharge eventually.

25 Q Assuming that the lagoons have not been

1 dewatered and applied at agronomic rates since the
2 closure of the facility, and I mean the abandonment of
3 the livestock, would you anticipate that the lagoons
4 would have filled and over topped the berms by this
5 date?

6 A Yes.

7 Q Why?

8 A Since 1985 when the last livestock were said
9 to have been there, there have been -- there has been
10 enough time pass that runoff and accumulation should
11 have filled those. Even if they were empty, I would
12 have expected them to fill and overflow by now. I
13 don't believe they were empty in 1985 and, in fact, I
14 have read in reports since that time that there have
15 been discharges since 1985. So that would lead me to
16 believe that not only would they fill up and overflow,
17 but they have, based on Mr. Manning's reports that I
18 read in the file.

19 Q Did you write a report on your May 20th, 1998
20 inspection?

21 A Yes, I did.

22 Q I am showing you what is premarked as
23 People's Exhibit Number 14. Do you recognize this as
24 a true and accurate photocopy of your May 20th, 1998
25 inspection?

1 A Yes, I believe that is.

2 Q Thank you. Did you reinspect the Cory farm
3 on September 1, 1998?

4 A Yes, I did.

5 Q And did you conduct any samplings on that
6 date?

7 A I measured dissolved oxygen in both the north
8 lagoon and the south lagoon.

9 Q What did you find?

10 A I found dissolved oxygen of less than two
11 parts per million in the north lagoon at a depth of
12 about a foot. And I found the dissolved oxygen in the
13 south lagoon to be less than one half part per million
14 in the south lagoon at a depth of approximately one
15 feet.

16 Q I am sorry? One --

17 A One foot. At a depth of one foot.

18 Q Are these dissolved oxygen results
19 consistent, in your opinion, with the presence of
20 livestock waste constituents in the lagoons?

21 A Yes.

22 Q How so?

23 A They are low for a body of water. The one
24 that is less than the south lagoon, which had less
25 than half a part per million, that is lower than what

1 would support any oxygen breathing life that I know
2 of. And that would be consistent with a body of water
3 that has livestock waste in it. Livestock waste has
4 many constituents which bacteria can use as fuel to
5 use up the oxygen in the water. The same thing is
6 true of the north lagoon, only to a lesser extent.
7 Still, two parts per million on a bright, late summer,
8 early fall day is low. And that really wouldn't be
9 enough to support many oxygen breathing organisms.

10 Q Did you make a report of your September 1,
11 1998 inspection?

12 A Yes, I did.

13 Q Let me show you what is premarked as People's
14 Exhibit Number 15. Do you recognize this to be a fair
15 and accurate photocopy of your September 1998
16 inspection?

17 A Yes.

18 MS. PERI: We will move to enter into evidence
19 People's Exhibits 14 and 15.

20 HEARING OFFICER JACKSON: Any objection, Mr.
21 Cory?

22 MR. CORY: I didn't hear the question. I am
23 sorry.

24 HEARING OFFICER JACKSON: She is moving to
25 introduce into evidence People's Exhibits 14 and 15.

1 Do you have any objection?

2 MR. CORY: No.

3 HEARING OFFICER JACKSON: They are so admitted.

4 MR. CORY: Sorry.

5 HEARING OFFICER JACKSON: That's quite all right.

6 (Whereupon said documents were admitted into

7 evidence as People's Exhibits 14 and 15 as of this

8 date.)

9 Q (By Ms. Peri) Mr. Wells, did you return to

10 the Cory farm on January 25th, 1999?

11 A Yes, I did.

12 Q And did you inspect the north and south

13 lagoons during your visit?

14 A Yes, I did.

15 Q Did you find any change from your September

16 of 1998 inspection?

17 A Yes, there was less freeboard in the north

18 lagoon, meaning that the water table -- the water

19 level was higher. It was approximately 15 inches of

20 freeboard, meaning it was 15 inches from the point

21 where I thought it would overflow the berm.

22 Q What had been the level of the lagoon

23 contents of the north and south lagoons during your

24 previous inspection?

25 A I believe I estimated them at that time to be

1 approximately two feet in both lagoons.

2 Q Did you during your inspection of yesterday
3 observe what we have marked as Point A in People's
4 Exhibit Number 1?

5 A Yes, I did.

6 Q And did you notice any change in that area
7 since your previous inspections?

8 A It was difficult to tell. There was some
9 snow on the ground, but they looked essentially as
10 they had in September. It is possible -- I think
11 there may have been a little bit of crumbling of the
12 soil at the very top of the gully, and I did note even
13 more so the animal tracks there going up the gully to
14 the top of the berm.

15 Q In your opinion, how is the tracking of
16 animals up the berm toward the top important?

17 A Their hooves, their feet trampling on the
18 surface, on the vegetation, on the edge of the lip of
19 the gully, knock soil down and just accelerate the
20 erosion.

21 Q During your inspection of January 25, did you
22 also reinspect what has been marked as the area Point
23 B on People's Exhibit Number 1?

24 A Yes, I did.

25 Q What did you find?

1 A I found fresh evidence of recent erosion,
2 probably from snow melt and rain over the weekend.
3 There was a considerable amount of fresh -- what
4 appeared to be fresh silt in the bottom of the eroded
5 area, and the -- and some undercutting of trees and
6 vegetation at the head of the eroded area, meaning
7 closest to the lagoon, furthest up slope.

8 Q You have testified that it is your opinion
9 that there is a threat of berm failure at Point A; is
10 that correct?

11 A Yes.

12 Q You have also testified that you -- strike
13 that.

14 You have also testified that in your opinion there
15 is a threat of overflow of the lagoon contents from
16 the flow of stormwater and other runoff into the
17 lagoons?

18 A Yes.

19 Q Do you have an opinion as to an appropriate
20 remedy to correct those threats?

21 A Yes, I do. As we have advised all along, the
22 liquid contents of the lagoon and the sludge, for that
23 matter, should be land applied at an agronomic rate.
24 That could be done by irrigation or a honey wagon or
25 some manner like that.

1 Q Are you referring to all of the lagoon
2 contents?

3 A Well, I guess to keep them from over flowing,
4 to maintain a safe level in the lagoons, just the
5 liquid portion could be removed and land applied so
6 that it does not cause a problem, in a farm field. As
7 Mr. Brockamp said, at an agronomic rate, which in this
8 case would probably be limited by how much water you
9 can put on a farm field at any one time. But to
10 maintain those lagoons, that's what needs to be done.
11 The level needs to be managed. The water level needs
12 to be managed, and the berms need to be maintained and
13 repaired on a regular basis.

14 Q In your opinion, is another solution to
15 remedying the threat that you have described to
16 completely dewater these lagoons?

17 A That would be another way of remedying the
18 threat of a discharge, would be to remove the lagoons'
19 contents, and abandon the facility.

20 Q And what would a proper abandonment of the
21 facility entail?

22 A That would require removal of all of the
23 liquid, land apply them to crop land at an agronomic
24 rate, removal of any sludge, also land applied at an
25 agronomic rate, and removal of -- I believe the

1 requirements now are six inches of soil, at which
2 point the lagoons would be considered clean, and the
3 berms could be breached so that water no longer
4 accumulates in them, or it could be allowed to be
5 filled with water and become ponds.

6 Q In your opinion, Mr. Wells, how do the
7 long-term costs of completely abandoning the lagoons
8 today compare with the long-term costs of constantly
9 dewatering the lagoons and maintaining the berms?

10 A Well, it is difficult to say because the
11 long-term cost of maintaining the berms and
12 maintaining the level of water in the lagoons would
13 have to include essentially forever maintaining them.
14 So I would think that cleaning them out and
15 abandoning, whenever you look at the truly long-term
16 picture, would be more economical. But that is not a
17 choice that I have to make.

18 MS. PERI: I understand. No more questions.

19 HEARING OFFICER JACKSON: Mr. Cory, do you have
20 any questions for Mr. Wells?

21 MR. CORY: Sure.

22 CROSS EXAMINATION

23 BY MR. CORY:

24 Q How are you today, John?

25 A I am doing pretty well.

125

1 Q What did you say the last date was?

2 A I was there yesterday.

3 Q I thought Title 35 regulations says that EPA

4 inspectors should notify the landowner?

5 A Not that I am aware of.

6 Q They are in there. You ought to read them.

7 You mentioned that you have been an NPDES inspector or

8 followed-up on NPDES?

9 A Yes.

10 Q You are aware that I had an NPDES for this

11 farm from 1985 to 1991?

12 A Those dates sound correct. Or 1987 to 1991

13 maybe. Whatever. You had a permit.

14 Q It expired in 1991?

15 A Yes.

16 Q Just prior to the expiration of that NPDES, I

17 took it to the appropriate office here in Springfield

18 and talked to them, and they said no need to renew.

19 Now, why is it coming up again at this time?

20 A I am not -- I am not aware that you had done

21 that. But I would imagine that -- well, actually, I

22 know that in 1992 you did receive a letter, at least

23 there is one in our file, asking you to reapply for

24 that permit. And I think there was a reply from you

25 asking that it be terminated, but it was not

1 terminated. It is just expired.

2 Q True. It expired, and I heard no more.

3 A Yes.

4 Q Anyway, on your most recent trip, you did not
5 find any evidence of the lagoons discharging?

6 A No, I did not.

7 Q Have you ever seen either lagoon discharge
8 other than through a siphon pipe?

9 A Well, I have never -- I have not seen them
10 discharge, and I have never seen them discharge from a
11 siphon pipe. I only know from pictures.

12 Q I thought you said --

13 A I know from pictures where I observed on the
14 picture discharge from the siphon pipe.

15 Q Okay. Prior to yesterday, when was the last
16 time you saw the south berm?

17 A It would have been September 1st, 1998.

18 Q September 1st. Which is one time, rare, that
19 we met at the farm?

20 A I believe I met with you twice there, yes.

21 Q I understood you to say that you took samples
22 on September 1st?

23 A No, sir, I did not collect a sample. I used
24 a dissolved oxygen probe and meter to measure
25 dissolved oxygen in both lagoons. You were present.

1 Q I had forgotten. I knew you didn't take a
2 sample. I had forgotten the other. On the dissolved
3 oxygen, if you measured the dissolved oxygen in both
4 the north and south lagoons now, went on down the road
5 where there has never been any livestock, but there
6 has been a lot of dead weeds and cattails, et cetera,
7 die and decompose, what would you expect to find as a
8 comparative dissolved oxygen in those two ponds?

9 A On September 1st if I had gone to a pond,
10 even a pond in poor condition, as you described, I
11 would have expected to find dissolved oxygen near
12 saturation. It would have been in the range of eight
13 to ten parts per million.

14 Q But the agronomic application of lagoon
15 effluent is based primarily on its nitrogen content?

16 A That is a limiting nutrient.

17 Q According to Title 35 regulations it is the
18 only one. There are others that can cause problems.

19 A Yes, this is true.

20 Q But they are not a limiting, correct?

21 A They would be limiting if you put on too much
22 phosphorus to the point where it was toxic to the
23 crop, but I don't believe we -- that's for you to
24 worry about.

25 Q We have agreed that it can be toxic if you

1 put on too much?

2 A Yes.

3 Q But the regulations does not stop you from

4 applying it, right?

5 A That's probably true.

6 MR. CORY: May I ask him to go back to the chart

7 one more time?

8 HEARING OFFICER JACKSON: Sure.

9 Q (By Mr. Cory) Would you approach the chart?

10 A Yes.

11 HEARING OFFICER JACKSON: We are talking about

12 People's Exhibit Number 1 that is up there right now?

13 MR. CORY: Yes.

14 HEARING OFFICER JACKSON: Okay.

15 MR. CORY: Thank you.

16 Q (By Mr. Cory) And designate where McKee Creek

17 is.

18 A It would be located approximately down here

19 off this map a foot or two (indicating).

20 Q Okay. If you want to step it off, it would

21 be how far?

22 A Based on my review -- I did step it off

23 yesterday, and based on my review of USGS topographic

24 maps, I would guess that as the crow flies it is

25 approximately 1,500 feet from the south lagoon to

1 McKee Creek.

2 Q You took awful long steps, but be that as it
3 may. You mentioned awhile ago that in the unnamed
4 tributary --

5 A Yes.

6 Q -- it would support aquatic life?

7 A Oh, certainly.

8 Q And, yet, you also said that --

9 A I would expect to find crayfish there and
10 other invertebrates.

11 Q It would be without water approximately half
12 of the year?

13 A That's true.

14 Q Okay.

15 A There is nothing inconsistent with that.

16 Water life lives in intermittent streams just as well
17 as permanent streams.

18 Q And I agree. I tried to point that out to
19 Ross Manning many times, but he said no. The berm
20 threat, the day we met, you and I, on September -- and
21 Kevin was there, too?

22 A Yes.

23 Q We met to take a sample, which is why we were
24 there?

25 A I was there, yes.

1 Q And you decided that you didn't want to take
2 a sample from the same place at the same time to get
3 analyzed yourself?

4 A Yes, I didn't see any point for me to grab a
5 sample at the same time. I didn't feel that it would
6 add any information to what I already knew.

7 Q What it could have done was -- in a meeting
8 here in Springfield, but not in this room, I brought
9 the analyses from two ponds and this north and south
10 lagoon and tried to present them to the EPA, and they
11 refused to take them. I think you were at that
12 meeting.

13 A Actually, I have a copy of those analyses so
14 I have looked at them.

15 Q But you refused to accept them as official
16 and compare them. Those four samples --

17 A Well, I guess the reason being --

18 Q As you looked at the four samples, if they
19 hadn't been labeled, could you have selected which two
20 were lagoons and which two were ponds?

21 A I had no way of knowing where you grabbed
22 those samples, whether you grabbed them, in fact, from
23 the lagoons or not. So I --

24 Q This is what I am saying.

25 A And so they are very interesting, but I --

1 Q My point is that the EPA --

2 A I guess I trust the samples that I know I
3 have collected.

4 Q And you should.

5 A And I believe that the information on them
6 was correct, and from what I saw on those I saw that
7 these two lagoons have been impacted and still contain
8 livestock waste.

9 HEARING OFFICER JACKSON: Mr. Cory, I want to give
10 you enough latitude on your cross-examination, but
11 please, again, be careful not to give testimony at
12 this point.

13 MR. CORY: Okay.

14 HEARING OFFICER JACKSON: If these are areas you
15 want to get into when you are testifying on your own
16 behalf, that is fine. Make sure you direct questions
17 to the witness.

18 MR. CORY: Okay.

19 Q (By Mr. Cory) On September the 1st you and I
20 walked the berm over to the south lagoon?

21 A Yes, we did.

22 Q Do you remember the exact words you said?

23 A No, I don't.

24 Q The exact words said, not much changed since
25 I saw it before, whenever that was?

1 A That could be.

2 Q And --

3 A And that is true. That does not mean there
4 was no change, and that does not remove the fact
5 that --

6 Q Agreed, but the first time --

7 MS. PERI: May my witness continue answering the
8 question?

9 HEARING OFFICER JACKSON: Let's --

10 THE WITNESS: Yes, there is still the threat. And
11 if you look at my report I stated that there is still
12 a severe threat to the safety of that south lagoon
13 berm from that erosion.

14 Q (By Mr. Cory) When did you first see the
15 south berm?

16 A May 20th, 1998.

17 Q You were there long before that.

18 A I was there in -- with you in 1990, I
19 believe, it was. I made an inspection.

20 Q Somewhere about that --

21 A Yes.

22 Q At which time was the south berm damaged?

23 A I don't recall it being damaged. It may have
24 been, and I don't -- it may not have been damaged at
25 all at that time. I don't know. I don't recall.

1 Q I could tell you, but I am not supposed to.

2 A If it had been damaged -- if I had seen the
3 erosion that I saw on May the 20th and on September
4 the 1st, 1998, on the date in 1990, when I did the
5 inspection, I would have noted it.

6 Q You testified that the current freeboard is
7 two foot or more?

8 A That's what I estimate the freeboard in the
9 north lagoon to be or the south lagoon. Excuse me.
10 The south lagoon.

11 Q If you will remember, you -- do you remember
12 when Kevin and myself and you got in a boat to take a
13 sample?

14 A Yes, I do.

15 Q You still think it was only two foot down
16 from the top of the dam to the boat?

17 A There is a difference between the top of the
18 dam and freeboard. Freeboard is that lowest point in
19 the berm where water could flow over. It very well
20 could be higher over where we put the boat in than
21 where the lowest point of the berm is. It is the
22 water level to the point where it will overflow is
23 what I call freeboard, what most people call
24 freeboard. And I estimate that --

25 Q The point at which it will overflow?

1 A And I believe that the freeboard is
2 approximately two feet from where the water level is
3 now to where it would run over if it raised.

4 Q As you walked across the south pond berm, how
5 much variation is there in the surface from the high
6 point to the low point?

7 A It is difficult to tell. I don't believe --
8 well, I don't know. It couldn't be more than a foot
9 or two.

10 Q It could be as little as three or four
11 inches, couldn't it?

12 A That is possible, but that --

13 MS. PERI: Argumentative?

14 A -- is rather unlikely in any structure that
15 old.

16 HEARING OFFICER JACKSON: The witness has already
17 answered, but I will allow the question. Go ahead.

18 MR. CORY: Thank you.

19 Q (By Mr. Cory) Again, if you will remember
20 going from the top of the berm down into the boat, we
21 went considerably more than two feet, did we not?

22 A It is on a slope. Vertically it would be two
23 feet. It could have been two feet.

24 Q And --

25 A So I remember going two feet.

1 Q You observed and knew ahead of time that
2 there is a plastic pipe connector from the south
3 lagoon --

4 A Yes.

5 Q -- to the north lagoon?

6 A Yes, I observed it.

7 Q And that that connector maintains a water
8 level?

9 A At the times I have been to that lagoon, it
10 is maintaining a water level at the height of the
11 pipe.

12 Q Right. And you don't feel you could be
13 mistaken on how much freeboard?

14 A Oh, I could misestimate the amount of
15 freeboard. I did not have surveying equipment with
16 me. I think that's the only way you can really and
17 truly accurately measure such a thing, is with
18 surveying equipment.

19 Q One of the things you mentioned was
20 employment at the University of Illinois --

21 A Yes.

22 Q -- in research?

23 A Yes.

24 Q Did you ever conduct or hear of research
25 where the answer being wanted was how long it takes an

1 abandoned lagoon to become a pond?

2 A No, sir, I don't recall such research, no.

3 Q Have you ever been on a farm in a sequence of
4 visits and observed a farm pond in the process of
5 self-destruction?

6 A I am not sure what you mean by
7 self-destruction.

8 Q If a pond is going to self-destruct, it would
9 overflow, would it not?

10 A Oh, you mean where the berm is being over
11 topped, water is flowing over it, it is eroding and
12 failing? Oh, yes, I have been to ponds like that.

13 Q In your opinion, from the time a pond like
14 that first overflows the berm, how long is it before
15 there is nothing left but three or four foot of
16 bottom?

17 A There is no way to tell. Every pond is
18 different. It depends on how well the berm is
19 constructed. I would expect that it could easily be a
20 very short period of time, meaning a day. If the berm
21 is not well constructed it could erode very quickly as
22 the water level -- as it erodes from the top, the
23 water level will provide all the flow you need to
24 erode more. And it is quite possible it could
25 essentially destroy itself in a very short period.

1 Q Have you ever seen a farm pond that had

2 totally self-destructed to where it was --

3 A Yes.

4 Q -- as far gone as it could be?

5 A Sure.

6 Q Was there any water in it?

7 A No.

8 Q Okay. You mentioned nutrients, and the EPA

9 has written me many times with analyses, but really

10 are the analyses, other than the N content, of real

11 importance?

12 A Certainly they are, in fact, from my

13 opinion. The BOD is more interesting in the water,

14 from the water.

15 Q Important to a man applying lagoon effluent

16 agronomically?

17 A No, not land applying water. But it is

18 important to what water might get into the

19 environment. In the environment, in a stream, in that

20 unnamed tributary, in McKee Creek, it is the BOD that

21 will use up oxygen and cause damage.

22 HEARING OFFICER JACKSON: Mr. Wells, can you

23 explain for us what BOD stands for?

24 THE WITNESS: BOD stands for biochemical oxygen

25 demand. Usually we measure what is called BOD 5.

1 That means it is a test to where you measure the
2 amount of oxygen that is used up in a five-day period
3 at a certain temperature and certain conditions. It
4 is a measure that roughly gives an estimate of how
5 damaging it will be in a stream, how much oxygen that
6 waste will use up in a body, you know, once it gets
7 out into a stream. It is an indicator as much as
8 anything.

9 HEARING OFFICER JACKSON: Thank you.

10 Q (By Mr. Cory) Anything that is decomposing
11 uses oxygen?

12 A This is true.

13 Q And that's where the BOD comes in?

14 A That's right.

15 Q And how long does it take for manure to
16 decompose?

17 A It depends on the conditions entirely. It
18 could take -- under certain conditions it might not
19 decompose. In other conditions it can decompose
20 rather quickly.

21 Q In your opinion, what is it that farmers find
22 so valuable about applying hog manure to their land?

23 A It is the nutrients that are present in the
24 hog manure.

25 Q Do those nutrients disappear each year?

1 A Well, they are taken up by a crop in a
2 field. Nitrogen type compounds can denitrify, turn
3 into nitrogen gas, and go into the atmosphere.

4 Q Therefore, hog manure put on crop land
5 essentially decomposes in one year?

6 A No, that's not true. Whenever you land apply
7 sludge or manure most of the nitrogen -- not all of
8 the nitrogen is available to the crop that year. It
9 does decompose over time and becomes available later.
10 But any given application of manure won't provide all
11 its nitrates and nitrogen to the crop that year.

12 Q I have not made you aware of what the
13 nitrogen analyses was of the south pond of the sample
14 we collectively took --

15 A On September 1st?

16 Q -- on September 1st?

17 A Yes.

18 Q The reason I didn't write N in evidence was
19 because since I was the only one that took the sample,
20 I knew you would not accept it anyway.

21 A That's not true. I was interested to find
22 out what you had.

23 Q But the analysis was the same as you had
24 found in 1998, and 1997, and 1996. Do you remember
25 what that N analysis was?

1 A N as nitrates and nitrites?

2 Q Yes.

3 A I would imagine it would be near zero.

4 Q And, yet, that is what the limiting factor is

5 for agronomic application of fertilizer?

6 A That's right. What that would tell me is

7 that you could apply that water onto a crop field at

8 the hydraulic limit, which would be whatever the field

9 could take in water, and never come close to having a

10 problem with nitrogen, too much nitrogen.

11 Q Okay. Because the previous analysis for N of

12 the lagoons was .03?

13 A (The witness shrugged.)

14 Q That was your analysis, not mine.

15 A If you say so.

16 Q What do you think the total nitrogen content

17 of the two lagoons is at that rate --

18 A I have no idea.

19 Q -- at that analysis?

20 A I would have to sit down with a calculator

21 and calculate it.

22 Q I will tell you later how much.

23 A Certainly. As I said before, for my money,

24 the BOD in the water samples shows me that there is

25 still livestock waste in that water, even with all of

1 the water that has -- even with the time that has
2 passed since you had livestock in there, and all of
3 the water that may have flown through those, there is
4 still livestock waste in the water and still affecting
5 the water, anyway.

6 Q Do you still believe that a pond, such as
7 either the south or north lagoon, is materially
8 different two years after it was abandoned than a farm
9 pond that has never had any manure, but has had a lot
10 of weeds and cattails and stuff like that?

11 A I would say that the lagoon would still be a
12 lagoon unless materials have been removed.

13 Q You mentioned that throughout this area the
14 rainfall annually and the evaporation annually are
15 similar?

16 A Yes, the rates are essentially -- they
17 essentially balance out in Central Illinois.
18 Evaporation from an open pan of water and
19 precipitation onto an open pan of water in any given
20 year in Illinois usually is about the same.

21 Q I am glad you mentioned that, because that
22 has been my experience. These lagoons were abandoned
23 in May of 1985, and not 1989, as you said.

24 A Yes. I will accept your time.

25 Q And I later will explain how I modified the

1 drainage area, but because of the pipe connecting the
2 two lagoons, I should never have seen water levels in
3 the south lagoon above the entry to that pipe, should
4 I?

5 A Pipes plug. I don't know that it has never
6 plugged. And certainly it has the potential to plug
7 anytime. It is only approximately four inches in
8 diameter, I believe, which is really a small pipe. A
9 turtle, wild animal, whatever, could get in there and
10 plug it up today. That's always a possible problem.
11 Or the thing could collapse.

12 Q And at one point you mentioned that some of
13 the reports you had came from Mr. Manning?

14 A That's correct.

15 Q As you know, one of the reports that Dale had
16 came from Mr. Manning, too. Totally false. I have
17 many examples of --

18 HEARING OFFICER JACKSON: Mr. Cory, please refrain
19 from those types of statements. They don't help the
20 record at all.

21 MR. CORY: Strike it. I am sorry. I will save my
22 others for presentation. No more questions of the
23 witness.

24 HEARING OFFICER JACKSON: Okay, Mr. Cory. Very
25 good.

1 Any redirect, Ms. Peri?

2 MS. PERI: Just one point.

3 REDIRECT EXAMINATION

4 BY MS. PERI:

5 Q Just now, Mr. Wells, you testified that if a
6 livestock waste lagoon contents over top the berms of
7 such a lagoon, there may be a chance for additional
8 erosion and an increased rate of overflow over the top
9 of those berms; is that correct?

10 A That's a potential thing. That is a problem
11 that could occur.

12 Q And you also indicated that a release of
13 lagoon contents could occur within a one-day period
14 under those circumstances; is that correct?

15 A Yes, if the conditions are such that the berm
16 is very erodible, then the entire contents -- the berm
17 could erode away to essentially nothing, and you could
18 release most of the contents of the lagoon, including
19 the loose sludge that is present in there.

20 Q In your opinion, could those conditions arise
21 with respect to the south lagoon on the Cory property?

22 A That is a possibility.

23 Q Why?

24 A Because of the erosion that is present there,
25 if that pipe does get plugged, if the water runs over

1 at that spot, then that would be a prime target or a
2 prime place for such a catastrophic erosion to take
3 place.

4 Q And by catastrophic erosion, what do you
5 mean?

6 A That would be a case where the water -- the
7 erosion has reached the water in the lagoon, and the
8 water from the lagoon can discharge at an increasing
9 rate as the berm erodes downward releasing more water,
10 eroding more, releasing more water, until it gets to
11 the bottom.

12 MS. PERI: Thank you. That's all.

13 HEARING OFFICER JACKSON: Okay. Mr. Cory, on your
14 witness disclosure statements you indicated that Mr.
15 Wells would be one of the individuals you would call
16 on your own behalf. Do you still intend to do that?

17 MR. CORY: No.

18 HEARING OFFICER JACKSON: No? So the witness may
19 be excused?

20 MR. CORY: Bye.

21 HEARING OFFICER JACKSON: Okay. Thank you very
22 much.

23 (The witness left the stand.)

24 HEARING OFFICER JACKSON: Why don't we take a
25 short recess at this point. We will go off the

1 record, and before we all break why don't we discuss
2 whether we can get completed today. We will go off
3 the record now.

4 (Whereupon a short recess was taken.)

5 HEARING OFFICER JACKSON: We will go back on the
6 record.

7 (Board Member Kezelis is not present in the
8 hearing room after the recess.)

9 HEARING OFFICER JACKSON: The State may call its
10 third witness.

11 MS. PERI: Thank you. The State calls David
12 Ginder.

13 HEARING OFFICER JACKSON: Please let the court
14 reporter swear you in.

15 (Whereupon the witness was sworn by the Notary
16 Public.)

17 D A V I D P. G I N D E R,
18 having been first duly sworn by the Notary Public,
19 saith as follows:

20 DIRECT EXAMINATION

21 BY MS. PERI:

22 Q Good afternoon, Mr. Ginder.

23 A Good afternoon.

24 Q Real briefly I will touch on your educational
25 background and your work experience with the Illinois

1 Environmental Protection Agency. You have a
2 Bachelor's of Science Degree in agricultural
3 engineering; is that correct?

4 A That's correct.

5 Q Do you have another Bachelor's Degree?

6 A I have another Bachelor's Degree in
7 agriculture.

8 Q How long have you been with the Illinois EPA?

9 A A little over five years.

10 Q In what capacity did you start with the
11 Agency?

12 A I started as an Environmental Protection
13 Engineer I in the Permit Section, writing permits for
14 ag-chem facilities, livestock facilities, sand and
15 gravel pits.

16 Q You are now an Environmental Protection
17 Engineer III?

18 A I am a III now, yes.

19 Q That is with the Permit Section?

20 A The same section, the same unit?

21 Q And that is with the Bureau of Water of the
22 Illinois EPA?

23 A The Bureau of Water, yes.

24 Q You mentioned that as an Environmental
25 Protection Engineer III in the Permit Section you

1 examine permit issues related to livestock facilities?

2 A I do, yes.

3 Q Explain to me a little more about your duties
4 in the Permit Section?

5 A Review permit applications, determine if the
6 permit applications are complete, if they meet the
7 regulations and requirements that we have, make any
8 necessary recommendations or ask for additional
9 information as needed, write permits if appropriate,
10 if possible.

11 Q Will you visit sites if permit issues arise?

12 A On occasion, yes.

13 Q In the course of your duties as an
14 environmental Engineer III with the Permit Section,
15 did you become familiar with a facility known as Pork
16 Factory, Inc.?

17 A Yes, I did.

18 Q Was an NPDES permit issued to that facility?

19 A An NPDES permit was issued to Pork Factory,
20 Inc.

21 Q When was that permit issued?

22 A In 1987.

23 HEARING OFFICER JACKSON: Mr. Cory, can you hear
24 the witness?

25 MR. CORY: Not then.

1 HEARING OFFICER JACKSON: Keep your voice up,
2 please.

3 THE WITNESS: Okay. It was issued in 1987.

4 Q (By Ms. Peri) Have you visited the facility
5 then known as Pork Factory, Inc.?

6 A Yes, I have on two occasions.

7 Q Is that facility located approximately 15
8 miles east of Quincy and 4 miles west of Kellerville
9 in eastern Adams County?

10 A Yes.

11 Q Did you review the permit issued to Pork
12 Factory, Inc. in November of 1987?

13 A Yes, I have.

14 Q Who applied for the permit issued to that
15 facility?

16 A Mr. Cory.

17 Q Will you describe the purpose of an NPDES
18 permit generally?

19 A The purpose of an NPDES permit is to limit
20 the discharges that are discharged from a livestock
21 facility. There are a couple requirements that we
22 have where discharge is appropriate. One of those
23 situations is if we have a catastrophic or chronic set
24 of rainfall events. There is a certain set of
25 circumstances where they can discharge. Another

1 allowable discharge is when we have a storm event in
2 excess of a 25 year, 24 hour precipitation event.

3 Q Was the permit issued to Mr. Cory on November
4 1987 consistent with those purposes you have
5 described?

6 A Yes, it was.

7 Q You have indicated that you have reviewed
8 that permit of Pork Factory, Inc.?

9 A I am familiar with it, yes.

10 Q I am going to show you what has been
11 premarked as People's Exhibit Number 16.

12 (Ms. Peri passed document to Mr. Cory.)

13 MR. CORY: Thank you.

14 Q (By Ms. Peri) Do you recognize this document
15 as the November of 1987 NPDES permit issued to Pork
16 Factory, Inc.?

17 A Yes.

18 Q This is the NPDES permit applied for by
19 Victor Cory?

20 A That's correct.

21 Q When did this NPDES permit expire?

22 A It expired in 1991, December of 1991.

23 Q I am sorry?

24 A December of 1991.

25 Q Where is the expiration date of an NPDES

1 permit generally listed?

2 A On the first page of the permit in the upper
3 left-hand corner or left-hand area.

4 Q I am going to ask you to look at this NPDES
5 permit already identified by you as the Pork Factory,
6 Inc. permit, marked People's Exhibit Number 16. On
7 page one will you please indicate for the record the
8 expiration date of this permit?

9 A The expiration date is October 1st, 1991.

10 Q October 1, 1991. Thank you. Was this NPDES
11 permit issued on November of 1987 and expiring on
12 October 1, 1991, ever extended beyond that date of
13 October 1, 1991?

14 A No, it was not.

15 Q If an NPDES permit had been renewed or
16 extended, would it have been done by you or another
17 permit section engineer?

18 A More than likely me. Possibly someone else.

19 Q Did the respondent, Victor Cory, ever request
20 that any action be taken by the Illinois EPA with
21 respect to this NPDES permit?

22 A We received a termination request in 1992.

23 Q And did the Illinois EPA respond to that
24 request?

25 A No, we did not.

1 Q So the permit expired on October 1, 1991?

2 A That's correct.

3 Q Has an NPDES permit been issued to Mr. Cory
4 or Pork Factory, Inc. since the expiration of the
5 November of 1987 permit?

6 A No.

7 Q Did the permit issued on November 6, 1987,
8 ever permit the discharge of livestock waste lagoon
9 contents to a water of the State?

10 A It would have, as I mentioned earlier, in
11 those two situations.

12 Q Would you repeat those two situations?

13 A When we have a series of chronic or
14 catastrophic rain events, or when we have in excess of
15 a 25 year, 24 hour storm.

16 Q Can you inform the Board as to where those
17 allowances are found in the NPDES permit?

18 A In the discharge limitation section of the
19 permit. Section 1(a) is the catastrophic and chronic
20 event clause. And Section 1(b) is the 25 year, 24
21 hour storm event provision. Additionally, in this
22 permit, in Special Condition 2, there is a provision
23 for the 25 five year, 24 hour storm event.

24 Q Outside of the 1(a), 1(b) and Special
25 Condition 2 permit provisions that you have just

1 mentioned, does the NPDES permit issued in 1987 to
2 Pork Factory, Inc. allow for discharges of livestock
3 waste lagoon contents to a water of the State?

4 A No.

5 Q Mr. Ginder, you inspected the Cory farm with
6 Dale Brockamp on November 8, 1995; is that correct?

7 A That's correct.

8 Q Are you familiar with the layout of the farm?

9 A Yes, I am.

10 Q Are you familiar with the term, water of the
11 State, as that term is used under the Illinois
12 Environmental Protection Act?

13 A Yes, I am.

14 Q Can you explain what that term means, as you
15 understand it?

16 A That is all waters, surface, subsurface
17 waters, privately or publicly owned waters or public
18 waters. It does not include treatment works, waste
19 water treatment works, treatment ponds.

20 Q In the course of your duties with the Permit
21 Section of the Bureau of Water, do you make
22 determinations about whether a water of the State is
23 or may be affected by pollutants?

24 A Yes.

25 Q During your inspection of the Cory farm, did

1 you observe a water of the State?

2 A Yes.

3 Q I am going to ask you to refer to what is
4 entered into evidence as People's Exhibit Number 1.

5 Do you recognize a water of the State on this
6 particular exhibit?

7 A Yes, the unnamed tributary of McKee Creek.

8 Q And in your inspection of that site, did you
9 observe where the unnamed tributary leads?

10 A We did not go to the end of the unnamed
11 tributary on that inspection, no.

12 Q Do you know from examining any other
13 information where that tributary leads?

14 A From looking at reports in the file and from
15 pulling the USGS map and observing that tributary to
16 McKee Creek.

17 Q A USGS map means --

18 A United States Geological Service map.

19 Q That sort of map would indicate where that
20 unnamed tributary leads?

21 A Yes, it would.

22 Q Where did the map indicate the tributary
23 leads?

24 A It leads in a south, south-west direction to
25 McKee Creek.

1 Q Are you familiar with the term point source
2 discharge?

3 A Yes, I am.

4 Q Would you please explain what that term
5 means, in your opinion?

6 A A point source discharge would be a discharge
7 that we have a discreet location where a discharge is
8 occurring, such as a discharge pipe, an overflow
9 point, a discharge structure.

10 Q Do you have an opinion, Mr. Ginder, as to
11 whether an overflow of the contents of the north and
12 south lagoons on the Cory farm would constitute a
13 point source discharge?

14 A It would constitute a point source discharge,
15 yes.

16 Q Why?

17 A Because it is a discreet point of a discharge
18 to the unnamed tributary.

19 Q Did you write a report of your observations
20 from your November 8, 1995 inspection of the Cory
21 farm?

22 A Yes, I did.

23 Q Is it customary for you to make such a
24 report?

25 A No, it is not.

1 Q Why did you make such a report in this case?

2 A Because of the request to terminate the
3 permit, we wanted to know the nature of the facility.
4 So I went ahead and wrote a report on what I had
5 observed at that particular day.

6 Q I am going to show you what has been
7 premarked as People's Exhibit Number 17.

8 (Ms. Peri passed document to Mr. Cory.)

9 Q (By Ms. Peri) Do you recognize this document
10 to be a fair and accurate photocopy of your inspection
11 report regarding the November 8, 1995 inspection?

12 A Yes.

13 Q Thank you.

14 MS. PERI: The People will now move to enter into
15 evidence People's Exhibits 16 and 17.

16 HEARING OFFICER JACKSON: Any objection, Mr.
17 Cory?

18 MR. CORY: None.

19 HEARING OFFICER JACKSON: The documents are so
20 admitted.

21 (Whereupon said documents were admitted into
22 evidence as People's Exhibits 16 and 17 as of this
23 date.)

24 MS. PERI: No more questions.

25 HEARING OFFICER JACKSON: Mr. Cory, do you have

1 any questions for this witness?

2 MR. CORY: None.

3 HEARING OFFICER JACKSON: None? May the witness
4 be excused?

5 MR. CORY: May I change my mind?

6 HEARING OFFICER JACKSON: Sure.

7 CROSS EXAMINATION

8 BY MR. CORY:

9 Q Did you say I had applied for an NPDES
10 renewal?

11 A No, you had not.

12 Q Okay. I didn't.

13 MR. CORY: Thank you.

14 HEARING OFFICER JACKSON: The witness may step
15 down. Thank you.

16 (The witness left the stand.)

17 HEARING OFFICER JACKSON: The People may call
18 their next witness.

19 MS. PERI: The People call Brad Beaver.

20 HEARING OFFICER JACKSON: Mr. Beaver, please let
21 the court reporter swear you in.

22 (Whereupon the witness was sworn by the Notary
23 Public.)

24 BRAD BEAVER,

25 having been first duly sworn by the Notary Public,

1 saith as follows:

2 DIRECT EXAMINATION

3 BY MS. PERI:

4 Q Good afternoon, Mr. Beaver.

5 A Good afternoon.

6 Q Would you please tell me a bit about your
7 educational background?

8 A Okay. My name is Brad Beaver. I graduated
9 from Illinois State University in 1993 with a Bachelor
10 of Science in Environmental Health.

11 Q And you are now an Administrative Assistant
12 with the Bureau of Environmental Programs at the
13 Illinois Department of Agriculture; is that correct?

14 A Correct.

15 Q How long have you been with the Department of
16 Agriculture?

17 A I have been with the Department for five
18 years, ever since my graduation from Illinois State
19 University.

20 Q In your employ with the Department of
21 Agriculture, what is the nature of your duties?

22 A My duties entail livestock waste coordinator,
23 which means I handle the day-to-day activities of our
24 livestock waste program. It is also associated with
25 the Livestock Management Facilities Act. With those

1 activities, it entails handling all of our field
2 staff, inspections, field inspections of all lagoons
3 and new facilities.
4 It entails reviewing applications and receiving
5 applications for what is called a notice of intent to
6 construct for new construction of new facilities. It
7 also deals with new lagoon registrations, with any new
8 lagoon applications that would be coming into the
9 office as far as with review and receiving those, and
10 making sure all deadlines are met. It also includes
11 reviews of waste management plans. It includes the
12 review of any lagoon closure plans that would come
13 into our office.

14 Q So what is the role of the Department of
15 Agriculture in the closure of livestock waste lagoons?

16 A In our Livestock Management Facilities Act
17 there is a section that deals with the closure of
18 lagoons basically stating anytime a lagoon is taken
19 from service it is to be emptied and the structure
20 closed. And with the Department of agriculture, it
21 is -- we give a series of steps for the person to
22 follow when they provide a closure plan with us, and
23 the Department has to approve this plan before any
24 type of closure activities can take place.

25 Q Where are the steps that you described found?

1 A They are located in Illinois Compiled
2 Statutes. It is 510-77 -- it is 15(e), the section
3 that deals with lagoon closure.

4 Q And that is under the Livestock Management
5 Facilities Act?

6 A Correct.

7 Q And you testified that the Department has
8 also established guidelines for livestock lagoon
9 closure?

10 A Yes.

11 Q And where are those guidelines found?

12 A It is in 35 Illinois Administrative Code, and
13 it would be in Section 506.209, which is the specific
14 section for lagoon closure.

15 Q Will you please take us through the
16 requirements for the proper lagoon closure?

17 A Okay. Basically it starts with the submittal
18 of a lagoon closure plan to the Department. And in
19 that plan, which the Department reviews, the applicant
20 or producer must state sampling analysis and reporting
21 of the results of sampling for all remaining livestock
22 waste, sludge, and minimum six inch thickness of soil
23 throughout the interior of the lagoon.

24 They must also have in their plan provisions for
25 the removal of the remaining livestock waste, sludge,

1 and six inch -- minimum six inch thickness of soil
2 throughout the interior of the lagoon. Beyond that,
3 they are required to provide for the removal of any
4 impertinences, such as transfer lines, pumping ports,
5 ramps that go into the lagoon. The management of any
6 precipitation that would be collected while during a
7 closure process. The abandonment of any monitoring
8 wells that would be associated with a lagoon, and a
9 time frame for completion for the closure of the
10 lagoon. All these activities, like I say, would have
11 to be -- the plan would have to be approved before any
12 type of closure activity could take place.

13 Q Approved by the Department of Agriculture?

14 A Correct.

15 Q Are you familiar with the Victor Cory farm
16 located in eastern Adams County?

17 A Yes.

18 Q How did you become familiar with this farm?

19 A We received a letter from Mr. Cory on April
20 2nd, 1998, requesting an alternative use permit for a
21 livestock waste lagoon.

22 Q Mr. Beaver, I am going to show you what has
23 been premarked as People's Exhibit Number 18.

24 (Ms. Peri passed document to Mr. Cory.)

25 Q (By Ms. Peri) Do you recognize this to be the

1 letter you received from Mr. Victor Cory?

2 A Yes.

3 Q This is the letter in which he requested an

4 alternative use permit for the livestock waste

5 lagoons?

6 A Correct.

7 Q What is an alternative use permit?

8 A Technically the Department does not issue an

9 alternative use permit, but under the lagoon closure

10 requirements there is a provision for the Department

11 to grant a waiver to some of the requirements of the

12 lagoon closure section.

13 Q Under what circumstances?

14 A This would allow basically with the lagoon

15 closure process, as stated in the Act, you know,

16 anytime a lagoon is taken from service it must be

17 emptied. Then it also states that the remaining hole

18 must be filled and the landscape returned to normal.

19 But with the waiver requirements, the Department would

20 be able to allow someone to use that structure for a

21 different purpose. Basically, if they would go in and

22 remove any livestock waste, the sludge, and that

23 minimum six inch thickness of soil, we would be able

24 to grant that person a waiver to actually filling in

25 that containment structure, and they would be able to

1 use it for another water source. If they want to have
2 a pond or let's say if they wanted an alternative
3 water source if they have livestock on the facility.

4 Q So it is only after the removal of the
5 livestock waste contents, the liquid and the sludge
6 and the six inches of soil that a waiver would be
7 appropriate?

8 A Correct.

9 Q Did Mr. Cory propose a specific alternative
10 use for the livestock waste lagoons on his property?

11 A The letter stated he wished to stock fish in
12 the two ponds.

13 Q Did the Department of Agriculture respond to
14 Mr. Cory's request?

15 A Yes, we responded in a May 7th letter to Mr.
16 Cory.

17 Q Was that a letter written by yourself?

18 A Correct.

19 Q What was your response on behalf of the
20 Department of Agriculture?

21 A Basically we acknowledged the fact that he
22 was wishing to use his lagoons for an alternative
23 purpose. With that we stated that he would have to
24 file an official closure plan with the Department of
25 Agriculture. And in that plan there would be

1 requirements, as I stated earlier, but basically the
2 removal of any remaining livestock waste, removing any
3 sludge, and minimum six inch thickness of soil from
4 that lagoon prior to being able to use it for an
5 alternative purpose. We would also require the
6 removal of any impertinences, and basically a time
7 frame as to how long that would take.

8 Q Okay. I am going to show you what has been
9 premarked as People's Exhibit Number 19.

10 (Ms. Peri passed document to Mr. Cory.)

11 Q (By Ms. Peri) Do you recognize this as the
12 letter issued by you to Mr. Cory in response to his
13 request for an alternative use permit?

14 A Yes.

15 Q Is that your signature at the bottom, Mr.
16 Beaver?

17 A That's correct.

18 Q In looking at this letter, paragraph -- or
19 what is set out as subdivision 2, follows from your
20 statement that a transfer -- pardon me. I will back
21 up. The third paragraph reads, the Department
22 concludes that an alternative use waiver may be
23 granted provided the following conditions are met.
24 Subdivision 2 below that statement reads, the closure
25 plan shall include provisions for the removal of all

1 remaining livestock waste, sludge and minimum six inch
2 thickness of soil throughout the interior of each
3 lagoon and the application of these materials to crop
4 land at agronomic rates. What is the purpose, Mr.
5 Beaver, of that particular requirement?

6 A Basically to bring the lagoon to closure, by
7 removing the contaminants that were in that lagoon so
8 as to prevent any future contamination that might
9 result from a release from that structure.

10 Q Has Mr. Cory been issued a waiver of the
11 lagoon closure requirements by the Department of
12 Agriculture?

13 A No.

14 MS. PERI: The People will now move to enter into
15 evidence People's Exhibit Numbers 18 and 19.

16 HEARING OFFICER JACKSON: Any objection, Mr.
17 Cory?

18 MR. CORY: None.

19 (Whereupon said documents were admitted into
20 evidence as People's Exhibits 18 and 19 as of this
21 date.)

22 MS. PERI: No more questions.

23 HEARING OFFICER JACKSON: What about People's 16
24 and 17? Those have not been introduced either. They
25 were. I am sorry. My oversight.

1 Any cross-examination for this witness?

2 MR. CORY: Please.

3 CROSS EXAMINATION

4 BY MR. CORY:

5 Q Mr. Ginder (sic) has the Department ever
6 issued an alternative permit?

7 A No, not to this date.

8 Q The lagoon closure section that you quote has
9 a paragraph quoting how you could grant an alternative
10 permit. Do you have that with you so that you could
11 read it back to us?

12 A I do have a copy of the Act with me, yes.

13 MS. PERI: Is that the exhibit just entered into
14 evidence.

15 MR. CORY: I can quote it close enough for his
16 approval, if that's all right.

17 HEARING OFFICER JACKSON: Well, I don't want to
18 paraphrase a regulation. So if we have it here, if
19 anyone has it, I would rather --

20 MS. PERI: Which regulation are we looking for?

21 HEARING OFFICER JACKSON: Which one are we looking
22 for?

23 MR. CORY: The lagoon closure part of the section
24 and one of the tail end where it says how the
25 Department of Agriculture can grant an alternative

1 use.

2 HEARING OFFICER JACKSON: Okay.

3 MS. PERI: I have a copy of the Livestock

4 Management Facilities Act and the rules adopted by the

5 Department, if you will take official notice of this.

6 MR. CORY: It is in that.

7 HEARING OFFICER JACKSON: The Board will take

8 official notice of these, and I will ask the witness

9 to please find the section we are talking about and

10 read it into the record if you would.

11 THE WITNESS: Okay.

12 HEARING OFFICER JACKSON: Is that sufficient, Mr.

13 Cory?

14 MR. CORY: (Nodded head up and down.)

15 HEARING OFFICER JACKSON: Is that a yes? You need

16 to answer out loud.

17 MR. CORY: I am sorry. Yes.

18 HEARING OFFICER JACKSON: Okay. Thanks.

19 THE WITNESS: You are referring to the section in

20 506.209, lagoon closure and ownership transfer,

21 correct?

22 MR. CORY: Yes, towards the tail end of that it

23 mentions that the Agriculture Department may --

24 THE WITNESS: Sure. The Department shall review

25 and approve or request additional information relative

1 to the lagoon closure plan. The Department may also
2 grant a waiver to any of the before stated closure
3 requirements that will permit the lagoon to be used
4 for an alternative active purpose, and there is a --

5 Q (By Mr. Cory) Would you repeat that last
6 paragraph?

7 A It is actually all one section. I will
8 just -- the Department shall review and approve or
9 request additional information relative to the lagoon
10 closure plan. The Department may also grant a waiver
11 to any of the before stated closure requirements that
12 will permit the lagoon to be used for an alternative
13 purpose. And then there is a citation back to the Act
14 itself. They are citing Section 15(e).

15 Q I don't believe our letter to you mentioned
16 that we had proven to ourselves that fish would thrive
17 in the ponds that we had. But anyway, why would you
18 decide that since you can grant waivers and give
19 approval for alternative use permits, why do you
20 specify the expense of going through the formal lagoon
21 closure first?

22 A Basically that's the requirement of a lagoon
23 closure.

24 Q I don't interpret that paragraph that way.
25 Read it again.

1 HEARING OFFICER JACKSON: Well, it has been read
2 into the record once. I am not going to keep going
3 through it again. The Board has it in front of them.

4 MR. CORY: Okay. But the Agriculture Department
5 may waive any and all sections of this lagoon
6 closure. Well, anyway, we didn't get the permit. We
7 are not raising fish, but the collusion between the
8 EPA and the Ag Department --

9 MS. PERI: I will object.

10 HEARING OFFICER JACKSON: Mr. Cory, please hold on
11 one second. I think what you are getting into right
12 now is argument. Okay?

13 MR. CORY: Okay.

14 HEARING OFFICER JACKSON: I am going to ask that
15 you reserve those argument types of comments for your
16 closing argument and for your post hearing brief. You
17 can get into all of that right then, but for right now
18 we need to ask any questions of this witness that you
19 have. So the objection is sustained.

20 MR. CORY: No more questions.

21 HEARING OFFICER JACKSON: Okay. Any redirect?

22 MS. PERI: No.

23 HEARING OFFICER JACKSON: The witness is excused.

24 Thank you.

25 (The witness left the stand.)

1 HEARING OFFICER JACKSON: Does the State have
2 anymore evidence or testimony at this time?

3 MS. PERI: No. And given that that completes the
4 State's witnesses, I believe this would be an
5 appropriate time, Madam Hearing Officer, to present
6 complainant's motion to conform pleadings to proof,
7 and we request that an additional allegation
8 supplement the original complaint.

9 HEARING OFFICER JACKSON: You can certainly submit
10 that at this time. Mr. Cory will have a chance to
11 review this document now and either comment on it now
12 on the record or address it in your post hearing
13 brief. Ruling on whether the State will be allowed to
14 conform their pleadings to the evidence submitted will
15 be made by the Board. I won't make that decision.
16 They will address that in their final disposition of
17 this case.

18 Mr. Cory, do you have any questions as to what the
19 State is proposing to do at this point?

20 MR. CORY: Obviously, I am not quite sure what is
21 happening next.

22 HEARING OFFICER JACKSON: Okay. Basically what
23 Ms. Peri is saying is she is going to submit a motion
24 to conform the pleadings to the evidence that has been
25 submitted today. She believes the evidence supports

1 an allegation that was not in the original complaint.

2 Is that accurate?

3 MS. PERI: Yes.

4 HEARING OFFICER JACKSON: Those types of motions

5 are allowed by Board rules. You can take a look at

6 the motion and respond to it right now on the record,

7 or you can wait and respond in writing in your post

8 hearing brief, and then the Board will consider both

9 sides before making a decision as to whether that

10 amendment to the pleadings will be allowed.

11 MR. CORY: Let's take a quick look at it and go

12 from there.

13 HEARING OFFICER JACKSON: All right. Go right

14 ahead.

15 (Mr. Cory reviewed the document.)

16 MR. CORY: We will comment later.

17 HEARING OFFICER JACKSON: Very good. What I will

18 do, before we go on with Mr. Cory's case, we need the

19 answer that Mr. Cory had intended to file in response

20 to the complaint and complainant's motion to conform

21 pleadings to proof, neither of which have been file

22 stamped as being received by the Board. I am

23 receiving those today, and will forward them to the

24 Clerk of the Board in Chicago and ask that she file

25 stamp these and return copies to the parties, once

1 they have been stamped in as being received by the
2 Board.

3 So before we get out of here today remind me to
4 get a copy of your answer so we can send that up to
5 her. Not right now.

6 MR. CORY: Okay.

7 HEARING OFFICER JACKSON: The State rests?

8 MS. PERI: Yes.

9 HEARING OFFICER JACKSON: Mr. Cory, would you like
10 to give testimony on your own behalf?

11 MR. CORY: Yes.

12 HEARING OFFICER JACKSON: Please come forward and
13 I will ask the court reporter to swear you in. If you
14 have notes or something that you would like to refer
15 to, you may want to bring them up here with you.

16 Would you have any objection to him sitting at --

17 MS. PERI: No, I have no objection.

18 HEARING OFFICER JACKSON: Okay. Let's go off the
19 record for a second.

20 (Discussion off the record.)

21 HEARING OFFICER JACKSON: Okay. Back on the
22 record.

23 (Whereupon the witness was sworn by the Notary

24 Public.)

25 HEARING OFFICER JACKSON: All right. Please

1 proceed.

2 MR. CORY: Thank you. I would like to open with a
3 question to the Pollution Control Board if I may. Is
4 that proper?

5 HEARING OFFICER JACKSON: This is your time to
6 give testimony on your own behalf. I am going to
7 allow you some latitude. So begin any way you see fit
8 and we will deal with it later on.

9 MR. CORY: Okay. This hearing today is based on
10 an EPA complaint that was referred to the Attorney
11 General and on to the PCB, which is essentially the
12 same as a 1986 complaint, using most of the same
13 complainants and everything. And in 1986 I settled
14 for 3,500 bucks, and I am wondering why we go through
15 the same thing again, what to me is the same thing
16 anyway. But maybe that can be reviewed later.

17 In addition, another question to the Illinois
18 Pollution Control Board is I would like the Board to
19 re-examine their jurisdiction over this case, because
20 in 1986, and I quote, the Illinois Pollution Control
21 Board may have jurisdiction of this disputed subject
22 matter herein, since the Illinois EPA solicited a
23 complaint and a complaint was filed pursuant to
24 Section 31(a) and so on. There has been no additional
25 complaint after the solicited complaint, that I am

1 aware of.

2 That means, then, that if the Pollution Control
3 Board must have a complaint to have jurisdiction over
4 this case, unless a solicited complaint satisfies the
5 requirements, jurisdiction needs to be reestablished.
6 Now, the original solicited complaint was solicited on
7 January the 15th, 1985. It was a complaint on odor
8 that an EPA representative in person solicited with
9 considerable pressure on my neighbor to get him to
10 sign. I have never seen that complaint. I have never
11 been revealed even verbally what the contents of it
12 was. I have just been told that my neighbor
13 complained of an odor, and the one complaint was the
14 only time he ever complained.

15 So if the complaint does not give the PCB
16 jurisdiction, on what would be -- what would base
17 jurisdiction? It cannot be animal population. I
18 started this hog farm in 1980 with 100 sows. After
19 only six or eight months, because of disease, finished
20 out, and I left it vacant for almost two years, and
21 went back in and raised hogs in these facilities until
22 May of 1985. In that time, from 1982 to 1985, three
23 years, is when the manure went into these lagoons that
24 is causing such a severe threat to the waters of the
25 State, so-called.

1 Now, I have already had my berm chart up, and I
2 will not take your time by mentioning any other part
3 of it, but do remember that the plastic connector pipe
4 between the two lagoons is there and it was installed
5 in, I believe, 1983, but it may have been early 1984.
6 What was the purpose of putting it in?

7 I don't remember the exact date, but prior to May
8 of 1985, by at least about a year, so sometime in late
9 1982 or early 1983 I purchased an irrigation system,
10 which was a Chrysler engine with a 600 gallon per
11 minute pump on it and 2,000 plus foot of pipe. I
12 parked that engine and the 600 gallon per minute pump
13 on the north bank of the north lagoon, and a suction
14 pipe went down into the water, came up to the pump on
15 the motor, and we would pump water through the 2,000
16 foot of pipe I had and spray irrigate it on the
17 essentially four acres which was north and east of the
18 north lagoon. That was how we controlled the water
19 level and distributed effluent from the initiation of
20 the lagoons in 1979 until after I was out of hog
21 business.

22 As has already been alluded to by one of the
23 previous fellows, in that area, in our area of the
24 state, and I have been very fortunate in the area
25 where these lagoons are, that rainfall and evaporation

1 essentially equals each other. After my irrigation
2 engine self-destructed, because somebody forgot to put
3 oil in it, I was soon after that out of the hog
4 business, and the lagoons evaporated as fast as
5 rainfall filled them. Because, as I will show in a
6 couple of minutes, of the way the original
7 construction took place.

8 At this point, if I may, I would like to
9 distribute these sheets.

10 HEARING OFFICER JACKSON: What is that?

11 MR. CORY: It is a plat map of the area.

12 HEARING OFFICER JACKSON: Okay. We need to mark
13 that as an exhibit.

14 (Whereupon said document was duly marked for
15 purposes of identification as Respondent's Exhibit
16 A as of this date.)

17 HEARING OFFICER JACKSON: When you refer to the
18 document refer to it by the exhibit.

19 MR. CORY: In your hands you have Exhibit A, dated
20 01-26-99. What I have drawn is a scale drawing of the
21 28 acres that comprise the Cory hog farm and the
22 adjacent area, particularly to the south.

23 Let me start by giving you the elevations that are
24 on this map. Go to the extreme bottom, and you will
25 notice where McKee Creek and the valley come

1 together. I call that zero foot elevation. Go north
2 on the map to the south border of my 28 acres, and you
3 see that the elevation, in my opinion, is two foot.
4 From that elevation down to the confluence of the
5 valley with McKee Creek, the way I measure it
6 approaches one half mile, 2,500 feet, instead of
7 1,500.

8 HEARING OFFICER JACKSON: How did you measure that
9 distance, Mr. Cory?

10 MR. CORY: With walking. And the first time I
11 walked it an EPA man was with me and his name slips my
12 mind.

13 But, anyway, from the south property line of my
14 property go on north to the road where I list the
15 elevation as three foot, but that's in the bottom of
16 the ditch or whatever you want to call it. There is
17 no water flows onto my 28 acres except that little
18 mark across the road up there at the top. That
19 comprises probably one-third of one acre, and when it
20 rains, the water that goes into that flows through a
21 tube under the road and can flow down the valley if it
22 rains enough.

23 Now, this drainage valley is timber, leaves,
24 grass, weeds, and stuff until it gets down to the last
25 quarter of my property. There the area widens out,

1 grows more grass than anything else. Go across my
2 property line onto my neighbor, and you will see an
3 area that I have got labeled approximately eight acres
4 of pasture land.

5 I will quote from the copy more about that, but
6 pasture land is agricultural land and, therefore,
7 eligible for receiving the lagoon effluent as
8 fertilizer if the lagoon effluent is applied at an
9 agronomic rate. The reason this hearing is being held
10 today is because the EPA has chosen not to recognize
11 cattle grassland as farmland that on which you could
12 put lagoon effluent. It would be very, very legal for
13 me to put the effluent from those lagoons onto that
14 grassland if the EPA would quit calling it by several
15 different names.

16 Such as, if you want to go through the complaints
17 that have been typed up, this area from my property
18 down to McKee Creek has been called an unnamed draw, a
19 tributary to the Illinois river, a valley, a tributary
20 to McKee Creek, flat cattle pasture land, a vegetative
21 filter, and a ditch. It has been referred to in
22 all -- under all of those names.

23 If you take the flat cattle pasture land and look
24 at the Title 35 regulations, you will find that there
25 is regulations in there that calls cattle pasture land

1 agricultural land, meaning the Title 35 regulations
2 would allow me to empty my lagoons onto this grass if
3 I did it at a controlled rate from the standpoint of
4 volume and nitrogen fertilizer content in the water.

5 Now, there has been considerable talk today about
6 the flow of rain water into the lagoons, and I want
7 you to notice the two lines that are dashed from the
8 very top of the paper past my south property line, all
9 the way down to McKee Creek.

10 HEARING OFFICER JACKSON: This is on Exhibit A
11 again?

12 MR. CORY: I am sorry. I didn't mention it. It
13 is Exhibit A. Those two variegated lines, or whatever
14 you want to call them, are the lines that separate
15 where drainage goes towards the draw or drainage goes
16 away from the draw.

17 HEARING OFFICER JACKSON: Can you explain what you
18 mean by that?

19 MR. CORY: If it were to rain -- and go up to the
20 top of the drawing first, where it says three foot
21 elevation. Just to the left of that is a line that is
22 dashed. Follow that line down, and if it was raining,
23 everything to the left or west of that line drains to
24 the west.

25 If you go back up to the top where it says three

1 foot elevation and follow that other variegated line
2 down, if you will notice, it keeps the drainage
3 from -- well, all of the rain that might fall, goes to
4 the east or south. The reason it does that is because
5 from the top of the picture, which is up there where
6 it says 920 feet, follow that line down to my south
7 property line. As we built the buildings and set
8 their elevations, and one thing and another, we had a
9 bulldozer make a berm, which still exists. And if it
10 rains that berm moves the water east and south and
11 does not allow any to go west.

12 If you will notice, that line goes between my
13 buildings and lagoons. It does leave on the north
14 lagoon a small area east of the lagoon that if it
15 rains water goes into the lagoon. But after that
16 small area, and John mentioned awhile ago that the --
17 that he saw some erosion on the north side of the
18 north lagoon, but mentioned that it was only 15 or 17
19 foot, or something like that, from the lagoon itself,
20 which indicates that drainage in that area goes north
21 before it goes west.

22 Between the two lagoons the water from the upper
23 part of that hillside that is there is bermed by this
24 bulldozer berm so that it goes on south. All of the
25 water off of the building roofs go to the south. The

1 south lagoon has a small hillside on this north side
2 and a small hillside on its east side that does drain
3 into the lagoon. Except since this lagoon was built I
4 had a bulldozer come back, and a bulldozer went
5 totally around the south lagoon and made a berm so
6 that surface water would go towards the berm but would
7 bypass the berm widely and go on into the grass
8 pasture area.

9 HEARING OFFICER JACKSON: To the west of the
10 lagoon?

11 MR. CORY: To the west. So the actual surface
12 area that drains into either lagoon at the time it
13 rains is very limited, and I have been very fortunate
14 that evaporation has been almost equal to rainfall.
15 To give an idea of how lucky I am, this last summer it
16 rained seven and a half inches out there in less than
17 18 hours. The south lagoon did not change level, but
18 the north lagoon did fill up, but it did not
19 overflow.

20 The overflow of the north lagoon has never
21 occurred. Either lagoon, there has never been an
22 overflow. I have, as the fellas here can allude to,
23 siphoned twice. They saw it once. But I have
24 siphoned twice, because I knew that the grass pasture
25 land down here in this bottom pasture area here is

1 legal to apply lagoon effluent to. And I would rather
2 fight with you on that than to not siphon and have my
3 berm destruct.

4 HEARING OFFICER JACKSON: Just to clarify, the
5 grass pasture land that you are talking about is the
6 area before you get to the unnamed tributary, in
7 between the unnamed tributary and the lagoon?

8 MR. CORY: Yes. To me -- and you are bringing up
9 a very good question that is confusing. This area to
10 the west of my lagoons has been called an unnamed
11 draw, a tributary to Illinois River, a valley, a
12 tributary to McKee Creek, flat cattle pasture land, a
13 vegetative filter and a ditch.

14 HEARING OFFICER JACKSON: Are we talking about the
15 same area that has been referred to by the State as
16 the unnamed tributary on People's Exhibit Number 1?

17 MR. CORY: Yes.

18 HEARING OFFICER JACKSON: Okay.

19 MR. CORY: And I can't remember now who it was,
20 but they referred to waters of the state in this draw,
21 and it does not contain water enough of the time to be
22 called waters of the State. It is a prime pasture
23 land for cattle, and the only time water goes through
24 that is when it rains, and that's the drainage down to
25 McKee Creek.

1 I can add that even the drainage area from my
2 property on south shows that both sides of this there
3 is hills. Now, for this drainage area or cattle
4 grassland, unless it rains about an inch and a half to
5 two inches within an hour, there will be no water flow
6 through that. The hydraulic absorptive capacity of
7 that approximate eight acres is such that it is very
8 absorbent. It takes a terrific amount of water before
9 water goes to McKee Creek through this valley or
10 grassland pasture.

11 So if the EPA would just reclassify what they say,
12 combine all of these names of this valley into flat
13 cattle pasture land, there would be no hearing
14 needed. We could absolve this thing now.

15 Now, when we are talking about emptying the
16 lagoons, we mentioned earlier that for it to be
17 applied agronomically you need to know the nitrogen
18 content, and then to be sensible you would apply it
19 agronomically and at a limited amount so as to
20 eliminate any runoff into McKee Creek. This could
21 easily be accomplished.

22 The N analyses of both lagoons, as per the EPA
23 analyses, not mine, is .03. I called the State
24 Department of Health, and they said that's
25 miraculously low and fine, that's good water. To give

1 you some idea of how good it is, if it is .03
2 milligrams of nitrogen per liter, there is only
3 three-fourths pound of nitrogen total in both
4 lagoons. The agronomic rate for pasture land is 50
5 pounds per ton of grass produced, and this grass
6 pasture land would produce anywhere from three to six
7 tons of grass per acre for the cattle to eat.

8 HEARING OFFICER JACKSON: Mr. Cory, may I ask you
9 a question? The grass pasture land that you are
10 referring to, do you mow that periodically?

11 MR. CORY: No, it is permanent grass pasture land
12 for cattle and it is always harvested by cattle.

13 HEARING OFFICER JACKSON: So cattle are feeding on
14 that land currently?

15 MR. CORY: May not be right now, but it was used
16 as pasture until fall came and it didn't grow anymore.

17 HEARING OFFICER JACKSON: Okay. But, I mean, as
18 the cattle are there? This last year there were
19 cattle on that land?

20 MR. CORY: Sure were, yes. Ever since I have been
21 there it has been used as prime cattle pasture area.

22 I mentioned that we have previously used copy from
23 the previous complaint. I am going to quote from the
24 1986 complaint, paragraph six, on page three, which
25 says, water pools in and flows through the flat

1 pasture area when there is heavy rain. Now, this is
2 copy that the EPA originated, not me. That flat
3 pasture area then acts as a vegetation filter. No
4 samples of water entering McKee Creek or samples from
5 the creek itself were ever taken that evidenced
6 pollution entering McKee Creek, nor was any visual
7 evidence of pollution in McKee Creek ever reported.

8 HEARING OFFICER JACKSON: I want to clarify for
9 the record, this is a complaint that is not a part of
10 the record today, and it is not the complaint upon
11 which the allegations of this case are based,
12 correct?

13 MR. CORY: It is not the current complaint as it
14 was filed, but I have not checked how much of -- there
15 is a lot of similar copy in all three copies of the
16 complaints that I have. It is very confusing.

17 MS. PERI: Madam Hearing Officer, is it possible
18 to review the original or a copy of the original
19 complaint that is being read from?

20 MR. CORY: Excuse me?

21 HEARING OFFICER JACKSON: Do you have a copy of
22 the complaint for the Attorney General's Office to
23 review? It is the 1986 complaint, I believe you said.

24 MR. CORY: Do you want to hang onto that?

25 (Ms. Peri reviewing document.)

1 HEARING OFFICER JACKSON: Is that a complaint or a
2 stipulation?

3 MS. PERI: This is a stipulation proposal for
4 settlement. However, it is in a draft form and it is
5 not signed. It is marked, and it is not file stamped
6 by the Board.

7 MR. CORY: Can I what?

8 HEARING OFFICER JACKSON: Is there an objection?

9 MS. PERI: There is an objection. Lack of
10 foundation for the introduction into evidence
11 regarding language from a complaint. That is a
12 stipulation. It does not appear to be a document that
13 can be authenticated today. It is not file stamped.
14 It appears to be a retyped version of perhaps an
15 original document.

16 MR. CORY: I think you are probably correct. I
17 cannot decipher what it is, where I got it, or
18 anything.

19 MS. PERI: Then I would object to the relevance
20 here today.

21 HEARING OFFICER JACKSON: Sustained. Refrain from
22 referring back to this complaint from here on out.

23 MR. CORY: Okay.

24 HEARING OFFICER JACKSON: Okay. I held that it is
25 not relevant to the allegations that are currently

1 before the Board in this matter. If you disagree with
2 my ruling today, when you file your post hearing brief
3 you can make an argument that the Board reconsider my
4 ruling.

5 MR. CORY: Okay.

6 HEARING OFFICER JACKSON: Okay.

7 MR. CORY: I was mentioning the nitrogen analyses,
8 and the one that John and I took on September the 1st
9 was .03 milligrams per liter, which coincides exactly
10 with the EPA samples that were taken in 1998, 1997,
11 and even 1996, I think. That .03 milligrams per
12 liter, the two lagoons on the property contained a
13 total exactly of .71 pounds of ounces, if you figure
14 the volume is 2,858,000 plus gallons. So based on N
15 content, I could apply the total contents of both
16 lagoons to this eight acres of grassland, and that
17 would be one two-thousandth of the amount that it
18 could sustain.

19 In Title 35 the EPA Subtitle E, ag related
20 pollution, Section 501.300, and I quote that article
21 as follows: Individually or collectively those
22 constructions or devices except sewers used for
23 collecting, pumping, treating, or disposing of
24 livestock waste, or for the recovery of by-products
25 from such livestock waste, such a facility includes

1 acceptable disposal areas such as pasture, or other
2 suitable agricultural land which can serve as an
3 adequate filtering device to settle out and assimilate
4 pollutants from livestock waste before the clarified
5 water reaches a stream or body of surface water or
6 groundwater. I feel that Title 35 --

7 HEARING OFFICER JACKSON: Excuse me. What section
8 of the Act is that?

9 MR. CORY: Subtitle E, Section 501.300.

10 HEARING OFFICER JACKSON: Okay. Thank you.

11 MR. CORY: Gives me the right to dewater my
12 lagoons onto this grass pasture land. Is it all right
13 if I bring John into my conversation from here?

14 HEARING OFFICER JACKSON: What do you mean, bring
15 him in to your conversation?

16 MR. CORY: I was going to propose that he and I go
17 into business and start raising hogs on this place.
18 But I will do it alone.

19 If I wanted to buy some hogs, put the buildings
20 back in shape so I could have hogs there and go back
21 in the hogs business and use these two lagoons as
22 lagoons, the EPA would have no objection if I kept
23 them dewatered and applied the effluent to pasture
24 land at an agronomic rate. And if I did that there
25 would be no EPA regulations on how long I could stay

1 in business.
2 I could start raising hogs at this place and as
3 long as I handle the lagoons properly, I could stay in
4 business there for a long time. Forever,
5 technically. Which means that the bottom residue in
6 both lagoons would stay where they are if the hog farm
7 was reactivated. That means, then, that if the EPA
8 would approve my dewatering these lagoons by siphoning
9 onto grass pasture land at an agronomic limited rate,
10 I could get rid of the water and leave all of the
11 bottom residue in the ponds, which I would have a
12 bulldozer come in and bury in place instead of hauling
13 it all over the country and scattering whatever is
14 there all over.

15 It seems to me that is the solution that should be
16 used to this. As I was preparing for this hearing, I
17 made one request to the Office of the Attorney
18 General, and I said please give me a summarization of
19 the actual instances of pollution that have occurred
20 on my farm. I got three letters. The first one says,
21 in part, therefore, the State maintains -- let me
22 start at a different point. One of the sections of
23 the Act says no person shall cause or threaten to
24 cause the discharge of any contaminants into the
25 environment. Therefore, the State maintains that my

1 interpretation of the State laws and regulations is
2 incorrect.
3 In the present case the State has alleged that the
4 condition of the lagoon contents and berms threaten
5 the discharge of swine waste contaminants into McKee
6 Creek. Consequently, we, meaning the State, contend
7 that whether actual pollution has occurred is
8 irrelevant to the allegation of water pollution.

9 I want to respond to that if I can find what I
10 respond with. Here it is. Now, it mentions lagoon
11 contents. The analysis that we have taken as of
12 September the 1st shows from the N content that the
13 water is excellent, in fact, better than most
14 municipal water systems as far as N analysis is
15 concerned. And the N analysis is what determines how
16 much I could put on grass pasture land. And from that
17 standpoint there is no limit.

18 The water in these lagoons has supported fish life
19 in 1998, 1997 and 1996. And I have referred to caged
20 fish. So I think that the lagoon contents have
21 improved over the years to where that is not a
22 limiting factor on my getting rid of them.

23 Now, the berms, that was mentioned in this letter
24 that I just read, represent no current or past
25 threat. If you leave them there long enough,

1 certainly something has to happen. But this is how
2 far it has gone in 20 years, and I would hope that
3 this will be resolved long before another 20 years.

4 So in my opinion, because of the connector pipe
5 between the two lagoons maintaining a proper level in
6 that one, and that we are watching the other one quite
7 closely --

8 HEARING OFFICER JACKSON: Which ones are you
9 referring to specifically?

10 MR. CORY: I am talking now about the north
11 lagoon. Could conceivably fail and represent a
12 threat. I will not allow that to happen. Unless you
13 tell me it is legal to put the lagoon contents on
14 pasture grassland, I will probably, to save the berm,
15 siphon again. I would hope that we don't have to do
16 that. But, in my opinion, because of the way we
17 watch, the berms represent no current or past threat.
18 They haven't for 18 years.

19 HEARING OFFICER JACKSON: What do you do to watch
20 the berms to make sure they don't constitute a
21 threat?

22 MR. CORY: Watch the water level in the lagoons --
23 I am sorry -- so that the water cannot get so high
24 that it would damage the lagoon by going over it. But
25 if water did escape from either pond, regardless of

1 how it escapes, it would go to the grass pasture land,
2 in my opinion, at a slow enough rate that none of it
3 would ever get to McKee Creek. It would be, in
4 essence, applying the effluent as fertilizer to the
5 grass pasture land.

6 So I don't think that the escape water is even a
7 threat, because I know when Ross Manning was
8 originally making his visits there that he got it
9 started that the water just to the west of those
10 lagoons in that draw was waters of the State. I don't
11 think the State can support that with a regulation.
12 For their letter to state whether or not actual
13 pollution has occurred is irrelevant to me is an
14 unacceptable conclusion. In my opinion, if the author
15 of this letter had a mammogram that revealed a lump,
16 that lump could cause or threaten to cause a
17 malignancy, whether or not a malignancy exists or will
18 exist certainly would not be irrelevant.

19 Letter number two says that in May of 1985,
20 pursuant to a citizen complaint, and there has been no
21 citizen complaint since May of 1985, which is that one
22 then, but it was an odor complaint, and it was
23 requested, in fact, forcefully requested. But the
24 Illinois EPA investigated the pumping or siphoning of
25 liquid waste.

1 In May of 1985 the pumping is absolutely
2 impossible, because the engine had already
3 self-destructed. The siphoning of liquid swine waste
4 in May of 1985 had never occurred from either lagoon.
5 So this paragraph, whoever gave the information to the
6 person that authorized -- that wrote this letter, the
7 person that wrote this letter accepted erroneous
8 information.

9 September the 11th, 1985, the Illinois EPA
10 observed the steady flow of swine waste from both
11 lagoons located on the Cory property to the drainage
12 ditch. Now a new name popped up -- drainage ditch
13 that leads to McKee Creek. You have heard two or
14 three people say today that they do not know of any
15 flow that ever occurred from either lagoon over the
16 berm. That is correct. It just has not. There has
17 never been a flow of swine waste from either lagoon
18 over the berm.

19 The south lagoon empties into the north. As we
20 already know, the north one filled up and was siphoned
21 down twice, one that you knew about and once that I am
22 telling you about. That's all. So that cannot be a
23 truthful statement. The Illinois EPA observed the
24 steady discharge of swine waste from both lagoons, the
25 same as September 11th. It just couldn't be. April

1 3rd, 1986, the Illinois EPA observed the discharge of
2 swine waste from both lagoons on the Cory property
3 into McKee Creek. Now, for swine waste to go from
4 both lagoons into McKee Creek would require a
5 significant quantity of angels carrying buckets of
6 water over that tall hillside, which did not occur.

7 The Illinois EPA, on October the 16th, observed
8 the discharge of swine waste from both lagoons on the
9 Cory property to the drainage ditch leading to McKee
10 Creek. Now here is a drainage ditch, a ditch. But it
11 did not occur. For your information, in May of 1985
12 it rained 2.5 inches. This is from records in the
13 public library. In September the entire rainfall was
14 3.01. In January of 1986 the rain for the month was
15 .03 inches. In April of 1986 for the entire month it
16 rained 1.16 inches. As I have previously said, I have
17 been extremely fortunate in that the rainfall has been
18 essentially the same as the evaporation, which is the
19 number one factor that controlled the water level in
20 the lagoons.

21 The current complaint, the one that is being
22 considered today, references the complaints
23 registered -- well, let me put it this way. Since May
24 of 1985, there has been two letters sent to me that
25 listed a violation notice. They have mentioned

1 threatened discharge, and this and that, but there has
2 been two instances where a letter was written that
3 specified a violation number since May of 1985. I
4 want to also refer to the letter three that I got, and
5 one of the fellas here will be interested in this.

6 HEARING OFFICER JACKSON: This is a letter from
7 the Attorney General's Office?

8 MR. CORY: This is a letter from the Office of the
9 Attorney General, dated January 14th, to me.

10 HEARING OFFICER JACKSON: January 14th of what
11 year?

12 MR. CORY: Beg your pardon?

13 HEARING OFFICER JACKSON: Of what year?

14 MR. CORY: Dated January 14th, 1999. Let me just
15 read it. It is a short paragraph. In response to
16 your inquiry regarding actual discharges noted by the
17 Illinois EPA since 1985, the State is also aware of
18 the discharge observed by Dale Brockamp, a former
19 Illinois EPA inspector, on April the 17th, 1997,
20 involving two PVC pipes extending from the north
21 lagoon to the grassy waterway.

22 Thank you, Dale. You finally accepted that a
23 grassy waterway is a primary description of that
24 area.

25 From the north lagoon to the grassy waterway west

1 of that lagoon. You were notified of the impropriety
2 of this discharge by the EPA through a violation
3 notice, with no number, on October -- I don't think.
4 I may have to correct that -- on October the 17th,
5 1997, to which you reply a compliance commitment
6 rejection issued on December 22nd, 1997, to which you
7 replied on January 5, 1998, takes a notice of intent
8 to pursue. We are going to pursue legal action. I
9 was somewhat amazed in that this April 17th, 1987
10 inspection by Dale --

11 HEARING OFFICER JACKSON: 1997?

12 MR. CORY: Yes, 1997 is when Dale made the
13 inspection that is referred to here, on April 17th,
14 and I learned about it on October 17th, and through an
15 indirect route then. The actual report made by Dale,
16 it was directed to A.G. Taylor, R. Calloway,
17 Retinower, Magnison, Yurden, Correll (names spelled
18 phonetically) and none to me. I am at a total loss to
19 understand why, after my repeated requests, I have
20 been invited to meet inspectors at the farm, to my
21 recollection, only three times since 1985. And it is
22 probable, in my opinion, that there could be as many
23 as 75 visits to the farm.

24 Anyway, let me repeat this, because I want to
25 thank Dale for it. After his inspection, and when he

1 finally writes this report, whenever it was, each of
2 Mr. Cory's two livestock waste lagoons have a surface
3 area of between a half acre and one acre. In
4 addition, each lagoon has a watershed of one to two
5 acres. As you have heard me, there if no watershed
6 quite that big. Consequently, the lagoons should fill
7 up and overflow during any year with normal
8 precipitation.

9 As I said, I have been lucky. The unusual aspect
10 of this operation is I have never observed a discharge
11 from either lagoon even though the wastes are never
12 land applied, and I have never observed a leak at the
13 base of the berms. In addition, the lagoons have
14 always had at least two feet of freeboard.
15 Consequently, it is my opinion that Mr. Cory has
16 periodically siphoned off the lagoons into the
17 adjacent waterway over the last couple years. This is
18 despite the fact that an Agency advised him no
19 discharge should be made unless it was a 25 year, 24
20 hour rain storm.

21 HEARING OFFICER JACKSON: I just want to note for
22 the record you are reading from the inspection report
23 that was already introduced into evidence by the
24 People, as People's Exhibit Number 11.

25 MR. CORY: Okay. As I was saying, why was I not

1 invited to be there to see what was going on? You
2 wait six months later and then tell me I have done
3 something wrong, and this is the way to correct it.
4 Well, the previous copy and the comments, in my
5 opinion, has established the grass crop land as a
6 vegetative filter, either of which makes the siphoning
7 that I have suggested a nonpolluting, legal act. It
8 is established that several within the EPA have known
9 since 1985, 1986 that the flat grassland below my
10 ponds is agricultural land, and that as such, it is
11 okay to use for agronomically applying lagoon effluent
12 and certainly okay for water of the quality that we
13 now know is there.

14 When Dale saw the siphons he should have
15 telephoned me that day. We would have taken shared
16 samples at the siphon and then we would have walked
17 together toward McKee Creek and sampled in the
18 grassland along the way and especially at the
19 confluence of the grassland and McKee Creek to
20 establish that no water that could pollute has ever
21 entered McKee Creek.

22 Under those circumstances this hearing would not
23 have occurred today, but I was never directly informed
24 of Dale having seen the siphons until October, and
25 then it was indirectly. Since there has never been

1 any pollution on my farm, I keep asking why is the EPA
2 harassing me. In preparation for this hearing, I made
3 an in-depth review of my files, and I think the answer
4 became apparent. I am quoting now from a memorandum
5 that has been entered as Exhibit 5, dated 01-26-99.

6 It was a memorandum dated January the 18th, 1996, to
7 the Field Operations Section and records of the DWPC.

8 HEARING OFFICER JACKSON: Hang on one second.

9 Okay. The actual memorandum is dated January 18th,
10 1996. Is that what you said?

11 MR. CORY: I think so.

12 HEARING OFFICER JACKSON: Okay. I am sorry. I
13 must have misunderstood. That's People's Exhibit

14 Number --

15 MR. CORY: Number 5, 01-26-99.

16 HEARING OFFICER JACKSON: All right. Bear with me
17 for just one second, please.

18 MR. CORY: Okay.

19 HEARING OFFICER JACKSON: Okay. I am sorry. Go
20 right ahead.

21 MR. CORY: I will quote from that memorandum. A
22 current IEPA ag programs topic of discussion has been
23 the compliance status of older livestock operations
24 which previously held NPDES permits. There are
25 numerous facilities throughout the State which once

1 had a permit, but have since gone out of business and
2 abandoned. Several questions have been asked about
3 the need for a reissuance of an expired permit at an
4 abandoned operation. Potential permit violations due
5 to the lack of proper record keeping, improper
6 documentation, when a facility changes ownership,
7 required overflow notifications, the need for annual
8 inspections, and so forth.

9 One such facility is known as Pork Factory, Inc.
10 owned by Victor Cory of Quincy, Illinois. The
11 buildings and the lagoons still exist, but no hogs
12 have been raised at the facility since June of 1989,
13 which is in error. It is May of 1985. Several site
14 investigations have been conducted at the facility
15 since it has been abandoned. These inspections have
16 shown that the lagoons had adequate freeboard, but no
17 overflows were observed.

18 HEARING OFFICER JACKSON: Mr. Cory, I don't want
19 to unreasonably restrict your testimony today, but
20 these documents are before the Board. And if you have
21 a specific comment that you want to make regarding the
22 information contained in those documents, that would
23 be beneficial rather than just reading directly from
24 that.

25 MR. CORY: Can do. Thank you. As a result of
200

1 that information and also because I have been highly
2 concerned, and one thing and another, about what the
3 devil to do, I have made a lot of phone calls. Two of
4 the calls that I made to Springfield, and don't ask me
5 the names, because I no longer remember. I just
6 remember that two calls that I made to people here in
7 Springfield, and talked to them about what I thought
8 the EPA was doing to me, and one thing and another,
9 and asked their opinion, two people mentioned that
10 they thought the EPA was trying to use my case to
11 establish a precedent to gain control over the
12 abandoned lagoons. As of now, that makes sense to
13 me.

14 I don't have the date of this newspaper page, but
15 quite recently in our Quincy paper, I quote, according
16 to the report the number of hog farms has fallen from
17 600,000 to 157,000 during the last 15 years, while the
18 number of hogs produced has stayed about the same.
19 Now, what that information means is that there is
20 443,000 abandoned hog lagoons out there that would
21 provide an awful lot of work for the EPA.

22 So I feel that the desire for money, the desire
23 for control, or whatever, over the abandoned lagoons
24 is the prime reason that this case has been going on
25 and on and on. Because my suggestion all along has

1 been let me siphon the water to the grassland at an
2 agronomic rate for N at a controlled rate per minute
3 watching so that none ever goes to McKee Creek. And
4 when the water is gone, then I will bulldoze dirt over
5 the bottom deposits, which would be much better than
6 scraping them up and scattering them around. And
7 doing that would close this case.

8 But at this point it has not yet been done, but
9 the intimidation and the harassment has continued.
10 Let me refer to a meeting, and I don't have the date,
11 but it was here in Springfield, where a lady by the
12 name of Bobella Glatz (spelled phonetically) was the
13 chairman. We went in and sat down. Some of the
14 fellas here were there at this meeting. And Bobella
15 passed around a sheet to all of the people there and
16 said to me, Mr. Cory, you have two options.

17 Let me read you option one, and option two is
18 about the same. I can hire a commercial livestock
19 waste applicator to dewater both lagoons and land
20 apply all sludge within both lagoons. This
21 application must be done at the appropriate agronomic
22 rate to neighboring crop land for agricultural
23 purposes, and comply with the IDOA lagoon closure
24 requirements. That sounds awful simple. To give you
25 some idea of how intimidating and stressful that is, I

1 got a cost quote on what it would cost to do to the
2 two lagoons what Bobella suggested. I will let you
3 verify what it says.

4 HEARING OFFICER JACKSON: Would you like to mark
5 this as an exhibit?

6 MR. CORY: I was not going to leave it, but you
7 can. Do you want it?

8 MS. PERI: May I approach and review the letter?

9 HEARING OFFICER JACKSON: Sure.

10 MR. CORY: I didn't hear you.

11 MS. PERI: I would like to review Mrs. Glatz's
12 letter.

13 MR. CORY: Bobella's?

14 MS. PERI: Yes.

15 MR. CORY: I have some notes on there. Just the
16 typed copy was what was on it when the meeting
17 opened.

18 HEARING OFFICER JACKSON: Let's go off the record
19 for one second.

20 (Discussion off the record.)

21 HEARING OFFICER JACKSON: We are back on the
22 record.

23 Ms. Peri was just examining the document that Mr.

24 Cory has been referring to as being prepared by

25 Bobella Glatz and passed out at a meeting between Mr.

1 Cory and Illinois EPA representatives.

2 Is there any response to the document, Ms. Peri?

3 MS. PERI: The State would argue that that

4 document has no foundation to support --

5 MR. CORY: Except what is coming.

6 MS. PERI: It doesn't appear that the Respondent

7 is asking for its admission into evidence. We have no

8 objection to his comments.

9 HEARING OFFICER JACKSON: Okay.

10 MR. CORY: This is the same thing that the EPA has

11 been requesting all along, dewater the lagoons per the

12 regulations and then take out the bottom residue and

13 the clay.

14 The reason I bring it up is because of the expense

15 involved, which I have constantly mentioned to

16 everybody. I got an estimate of the cost to do what

17 Bobella's suggestion was. The total is \$260,000.00.

18 Now, if that doesn't scare the devil out of you, you

19 are built a lot different than I am.

20 HEARING OFFICER JACKSON: Is that for both of the

21 lagoons?

22 MR. CORY: Both lagoons could be dewatered and the

23 sludge and dirt cleaned out of them, and the bottom

24 covered over, so that no water would repond for a

25 total of \$260,000.00.

1 HEARING OFFICER JACKSON: When did you obtain that
2 estimate?

3 MR. CORY: The estimate is dated December the
4 18th, 1998. I had known all along that it was very
5 expensive, but I had never gone to the trouble to get
6 an estimate, and that's what it turned out to be. And
7 so the cost, of course, is very intimidating to me,
8 because I have proposed to the EPA many times, without
9 success, that I dewater those two ponds to the grass
10 and then cover the residue, which I could do without
11 cost, cash cost.

12 How would I do it? Because I have got a bulldozer
13 operator that wants one of the buildings that is still
14 on my farm. He would trade bulldozing for value of a
15 building and, obviously, it is not going to cost me
16 anything to siphon. So I want to siphon the liquid,
17 get rid of it on to the grassland. As soon as the two
18 lagoons are empty, bulldoze them over with dirt.

19 So I maintain that there has been a considerable
20 amount of what, in my opinion, is highly unnecessary,
21 intimidating, and stressful harassment. I would like
22 very much to find some way for it to be discontinued.

23 I am skipping over, to save your time, several
24 instances of information that came to me that I think
25 was meant to be intimidating. Certainly, it was

1 harassing, and it causes stress beyond imagination.

2 But all of the foregoing is only a partial list of how

3 it affects me.

4 I want to point out that by far the most damage

5 done by the intimidation and harassment has been the

6 effects on our financial and marital situation. My

7 1985 net worth was 1,600,000. My bank approved a

8 financing package for my planned 1985 expansion, but

9 an EPA representative in January of 1985 contacted my

10 neighbor and solicited a complaint, and while there

11 revealed confidential information about my expansion.

12 My neighbor used that information at the bank and

13 caused them to cancel my financing. He didn't want me

14 to expand. He had grandeur ideas of developing the

15 land across the road, but so be it.

16 But my cancellation of my financing plan led from

17 one thing to another, and it ended up in my filing for

18 bankruptcy. I have enough of a financial statement

19 now that I couldn't borrow 5,000 bucks without

20 pledging my \$5,000.00 burial life insurance policy. I

21 am just mentioning a partial list of the intimidating

22 and harassing experiences that, in my opinion, has

23 been purposefully used by the EPA to produce stress,

24 and that that stress has had a very pronounced effect

25 emotionally, mentally and physically.

1 Certainly, the stress has affected my wife even
2 more severely than it has me. The stress has
3 essentially disintegrated our marriage. In addition,
4 there has been severe emotional and mental reactions,
5 and it has caused her physical deterioration since May
6 of 1985, to the point where she has had three knee
7 replacements and one hip replacement surgeries which
8 her doctor says stress has been the principle reason
9 she had to have those surgeries. She has also
10 developed lung, heart, and bronchial conditions
11 attributed to stress.

12 There is no way we will ever recoup what we would
13 have had if the EPA had stayed out of our lives, and
14 what makes it so sad to me is that I have not ever
15 polluted. I do not intend to ever pollute. The
16 grassland below our lagoons is a proper place to
17 dispose of liquid from those lagoons. I am
18 volunteering to do it in such a way that no pollution
19 to McKee Creek will occur, and the solids will be
20 buried where they are to never cause any trouble to
21 anybody. Thank you.

22 HEARING OFFICER JACKSON: Do you have any
23 additional testimony in regards to the violations
24 alleged in the People's complaint?

25 MR. CORY: No.

1 HEARING OFFICER JACKSON: Do you have any other
2 witnesses to call today?

3 MR. CORY: Any what?

4 HEARING OFFICER JACKSON: Any other witnesses that
5 you wanted to call in your behalf?

6 MR. CORY: No.

7 HEARING OFFICER JACKSON: The State has an
8 opportunity to cross-examine you on your testimony.

9 MR. CORY: Okay. Good.

10 MS. PERI: Thank you.

11 CROSS EXAMINATION

12 BY MS. PERI:

13 Q Have you received any specialized training in
14 collecting water quality samples or sediment samples?

15 A No, ma'am.

16 Q Have you received any specialized training in
17 analyzing chemical compound concentrations in water
18 quality samples or sediment samples?

19 A Only that I have the address of the Peoria
20 lab used by the State where I send the samples.

21 Q Do have you any specialized training or are
22 you licensed in land surveying?

23 A Repeat, please.

24 Q Do you have any specialized training or are
25 you licensed in land surveying?

1 A Land survey?

2 Q Surveying, yes.

3 A I have been a helper, but no.

4 Q Do you have any specialized training in

5 evaluating land drainage?

6 A In this particular case, yes.

7 Q What is your training based on?

8 A Working elbow to elbow with the ASCS

9 representative.

10 Q I am sorry. Who is that?

11 A The Agricultural Stabilization Conservation

12 Board representative worked closely with me on this

13 plan, which was never materialized because of

14 disagreements.

15 Q That was the plan relating to when the hog

16 operation was or was to be in operation?

17 A Was in operation and was to be expanded.

18 Q Sir, you have just testified that in 20 years

19 there has not been a catastrophic overflow over the

20 top of the berms at the north and south lagoons?

21 A Correct.

22 Q And you said you were lucky?

23 A I think so.

24 Q You also stated that the overtopping of the

25 berms has not happened because you have siphoned the

1 contents of the north lagoon on a couple of occasions?

2 A Twice.

3 Q And you have acknowledged that that occurred

4 at the time that Mr. Brockamp observed the siphoning

5 which was April 17th, 1997, correct?

6 A That was one instance.

7 Q And what was the other instance?

8 A Approximately six or eight months ahead of

9 that.

10 Q Mr. Cory, you recognize, then, that if you do

11 not dewater the lagoons there will be an overflow?

12 A Possibly. That depends entirely on rainfall.

13 Q You have stated that you are lucky that there

14 has not been an overflow because you have dewatered,

15 correct?

16 A That was not my intent. I have been lucky

17 that the rainfall and evaporation rate have

18 coincided. That's what I thought I said.

19 Q Did you intend to say that an overflow would

20 have occurred but for your dewatering on those two

21 occasions?

22 A I suspected that it might, or I would not

23 have siphoned.

24 Q You met with Mr. Brockamp on your property on

25 April 17th, 1996, didn't you?

1 A If that's what the record shows, yes.

2 Q And he told you at that time that you should

3 not siphon the lagoon contents to what we have called

4 the unnamed tributary, to the west of the north

5 lagoon; isn't that right?

6 A True.

7 Q And yet on April 17th, 1997, one year later,

8 the siphoned pipes were used to drain lagoon contents

9 to the unnamed tributary?

10 A Out of the north lagoon, not south.

11 Q Out of the north lagoon.

12 A May I add a comment? At that point, Dale

13 Brockamp and all people of the EPA, and as far as I

14 know, still do, figure that the water in that unnamed

15 tributary is waters of the State. And it can't be.

16 There isn't even any water in that draw 60 to 70

17 percent of the time. There is water there when it

18 rains.

19 Q When there is water in that waterway, Mr.

20 Cory, which direction does it drain?

21 A The drainage is to McKee Creek. But it has

22 to go through a half mile of grass to get there, which

23 I have State copies showing they call it a vegetative

24 filter.

25 Q You received a violation notice letter dated

1 October 1997 that related to the siphon pipe incident,
2 didn't you?

3 A I would say probably so, yes.

4 Q And you did meet with the Illinois EPA about
5 that incident in Springfield, didn't you?

6 A I don't know that it was about that incident,
7 but I have met with Springfield people several times,
8 and that probably came up.

9 Q Okay. I believe you testified that you met
10 with the Illinois EPA in November of 1997, and that's
11 when you discussed Ms. Glatz's outline for proposed
12 resolution of this matter?

13 A I have proposed resolution of this matter by
14 siphoning and burying every time I have written or
15 talked with the EPA over the last four years.

16 MS. PERI: No more questions.

17 HEARING OFFICER JACKSON: Mr. Cory, any further
18 comments?

19 MR. CORY: No.

20 HEARING OFFICER JACKSON: Okay. You may step
21 down. Thank you.

22 (The witness left the stand.)

23 HEARING OFFICER JACKSON: Mr. Cory, you did refer
24 to two exhibits in your testimony, Respondent's
25 Exhibit A, which was the map, the plat map, and then

1 Respondent's Exhibit B, which was the diagram that we
2 referred to when Mr. Brockamp was testifying. Do you
3 wish to move that those be admitted into evidence?

4 MR. CORY: Sure.

5 HEARING OFFICER JACKSON: Does the State have any
6 objection?

7 MS. PERI: I am sorry? Two exhibits?

8 HEARING OFFICER JACKSON: A and B.

9 MS. PERI: B being the diagram?

10 HEARING OFFICER JACKSON: Yes.

11 MS. PERI: No objection.

12 HEARING OFFICER JACKSON: Okay. Those are so
13 admitted.

14 MR. CORY: Thank you.

15 HEARING OFFICER JACKSON: Thank you.

16 (Whereupon said documents were admitted into
17 evidence as Respondent's Exhibits A and B as of
18 this date.)

19 HEARING OFFICER JACKSON: Mr. Cory, does that
20 conclude Respondent's case?

21 MR. CORY: I think so.

22 HEARING OFFICER JACKSON: All right. Does the
23 State have a case in rebuttal?

24 MS. PERI: The State would like to recall David
25 Ginder.

1 HEARING OFFICER JACKSON: Mr. Ginder, I would just
2 remind you that you were earlier sworn in by the court
3 reporter, and you are still under oath. Please have a
4 seat.

5 Go ahead, Ms. Peri.

6 MS. PERI: Thank you.

7 DAVID P. GINDER,

8 having been previously duly sworn by the Notary
9 Public, saith as follows:

10 REBUTTAL EXAMINATION

11 BY MS. PERI:

12 Q Mr. Ginder, you have already examined
13 People's Exhibit Number 1?

14 A Yes.

15 Q And in your opinion this fairly represents
16 the site --

17 A Yes.

18 Q -- at issue today? I am going to approach
19 the exhibit and point out what is marked the unnamed
20 tributary of McKee Creek. Do you recognize this line
21 right here to be the unnamed tributary of McKee Creek?

22 A Yes.

23 Q I am pointing to what is marked so on the
24 exhibit.

25 HEARING OFFICER JACKSON: Mr. Cory, if you need to
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1 move to see, please feel free.

2 MR. CORY: I would like to see what -- I couldn't

3 see what --

4 MS. PERI: Can you both see now?

5 MR. CORY: Yes.

6 Q (By Ms. Peri) Mr. Ginder, is this unnamed

7 tributary to McKee Creek a water of the State?

8 A Yes, it is.

9 Q Why?

10 A It had water flowing through it at the time

11 of our visit in November of 1995.

12 Q Is the fact that there was water in that

13 tributary on that date enough to qualify it as a water

14 of the State?

15 A Yes.

16 Q Why?

17 A It is waters of the State. I mean, it drains

18 through his property.

19 Q Is there aquatic life that would grow or

20 prosper in that unnamed tributary?

21 A Yes.

22 Q The Respondent has testified that what we

23 have marked as the unnamed tributary of McKee Creek

24 will serve as a vegetative filter strip on application

25 of the lagoon contents to that tributary. In your

1 opinion, would the tributary serve as a vegetative
2 filter strip?

3 A It would uptake some nutrients, yes, but it
4 would not act as what we would consider a designed
5 vegetative filter strip.

6 Q What do you consider a vegetative filter
7 strip?

8 A We have specific design criteria in Subtitle
9 E for such vegetative filter strips.

10 HEARING OFFICER JACKSON: Please keep your voice
11 up.

12 THE WITNESS: Okay.

13 Q (By Ms. Peri) Why, in this instance, would
14 the unnamed tributary not adequately serve a
15 vegetative filter strip under those requirements?

16 A One situation we have is we have flowing
17 water through this structure or this waterway. A
18 vegetative filter strip would not have outside water.
19 It would be required to be bermed off from entering.

20 Unnecessary, uncontaminated water would not be allowed
21 to be discharged to the vegetative filter strip.

22 Q Why is that?

23 A It is uncontaminated. There is no sense in
24 adding more water than what the vegetative filter
25 could handle.

1 Q In your opinion, are there other factors that
2 would either allow or disallow the use of the unnamed
3 tributary for use as a vegetative filter strip?

4 A Our land application design criteria for
5 applying livestock waste do not allow livestock waste
6 to be applied within 200 feet of a surface water. I
7 have observed water flowing through the drainage way,
8 therefore, that is within 200 feet of the surface
9 water. So a portion of this area was not suitable for
10 that purpose.

11 Q In your opinion, do the slopes in the area of
12 the unnamed tributary make that tributary consistent
13 with its use as vegetative filter strip?

14 A Could you repeat that, rephrase your
15 question?

16 Q Sure. In your opinion, do the slopes in the
17 area of the unnamed tributary bear on your conclusion
18 as to whether this area may serve as a vegetative
19 filter strip?

20 A The areas outlying that drain to this are
21 very steep, and would be steeper than what would be
22 encountered in a vegetative filter strip.

23 Q Then why are steeper slopes a problem in
24 setting up a vegetative filter strip?

25 A A vegetative filter strip requires a minimum

1 of two hour contact time in our design criteria for
2 the water to be absorbed by the soil and the
3 vegetative material.

4 Q And in your opinion could the contents of the
5 lagoons if overflowing or discharged to the unnamed
6 tributary exceed that amount?

7 A Yes.

8 Q Under what circumstances?

9 A As was testified earlier by Mr. Brockamp, he
10 observed 40 gallon a minute discharge, those two
11 pipes. That kind of flow would exceed the area that
12 he has available to absorb that kind of material.

13 Q So on the date that he observed a discharge
14 to the unnamed tributary by the siphon pipes, the
15 unnamed tributary did not serve as a vegetative filter
16 strip in your opinion?

17 A No.

18 Q Why not?

19 A It was not designed to uptake the material.
20 It was the existing flood plain or valley area that is
21 around the unnamed tributary, and it was grass that
22 was there. It is not intended, or setup, or designed
23 through engineering procedures to be designed as a
24 vegetative filter.

25 Q The Respondent has also raised the issue of

1 cattle occupying the area around, near, or above the
2 unnamed tributary. In your opinion, does the use of
3 that area by cattle in any way -- strike that.

4 Does the use of the unnamed tributary for grazing
5 purposes by cattle, in your opinion, impact whether
6 that unnamed tributary is a water of the State?

7 A No.

8 Q Why not?

9 A I am not sure of your previous question.

10 Could you --

11 Q Sure. Let me ask it more simply. Can cattle
12 and a water of the State occupy the same space?

13 A Cattle can pass-through a water of the State.

14 Q So the fact that cattle may use or occupy the
15 space known as the unnamed tributary in any way change
16 the fact that that is a water of the State?

17 A No.

18 MS. PERI: Thank you. No more questions.

19 HEARING OFFICER JACKSON: Mr. Cory, any
20 cross-examination?

21 MR. CORY: Please.

22 HEARING OFFICER JACKSON: All right. Go ahead.

23 CROSS EXAMINATION

24 BY MR. CORY:

25 Q David, if I understood you right, are you

1 aware of the elevation drop from the north end of the
2 property to where water enters McKee Creek?

3 A I know that water flows north to south. I am
4 not sure of the total drop.

5 Q Water flows south, but do you know how much
6 it drops?

7 A No, I am not sure.

8 Q From the north property line to McKee Creek?

9 A I am not sure of that.

10 Q I thought I understood you to say that the
11 water flows too fast through this?

12 A It has a --

13 Q Huh?

14 A Yes, it would when you were siphoning it.

15 Q I mentioned, as I had the little plat map up
16 there before, that the total elevation drop from the
17 roadway on the north to McKee Creek, in my opinion, is
18 less than four feet?

19 A That's what you stated.

20 Q When it rains, and water is going to traverse
21 three quarters of a mile and drop four foot, running
22 through grass, is it going to run fast?

23 A Relative to what? Relative to running
24 through the woods?

25 Q It is going to rain one inch and fall in that

1 unnamed tributary as well as the grassland down below,
2 but all of it is eventually going to drain south. Is
3 it going to drain fast?

4 A No, it is going to take awhile for it to be
5 absorbed in the woods, and it is going to take a while
6 to be absorbed and picked up by the grass. There will
7 be a lag time when the water comes together and drains
8 through the drainage way.

9 Q As a result of that lag time and the water
10 moving slowly, the grass there is going to work very
11 much like a vegetative filter, yes?

12 A It is going to provide some of that same
13 effect, yes.

14 Q Now, you mentioned Dale's report where he
15 specified that the siphons, the two pipes were
16 siphoning 40 gallons a minute?

17 A I did.

18 Q I disagree with that volume, because of
19 personal experience. The volume out of an inch and a
20 quarter pipe should approximate how many gallons a
21 minute?

22 A I am not sure.

23 MR. CORY: May I tell him?

24 HEARING OFFICER JACKSON: No.

25 Q (By Mr. Cory) But even though those two

1 siphoning pipes were flowing 40 gallons a minute,
2 there has been no mention of water even leaving my own
3 property, let alone going on through the half mile of
4 grass to get to McKee Creek; is that correct?

5 A I observed it flowing in my visit that day.
6 I assumed it flowed off your property.

7 Q You feel quite sure that it left my property
8 and got into the grassland in the lower part of that
9 unnamed tributary?

10 A Yes.

11 Q Did you go all the way down to the confluence
12 with McKee Creek?

13 A No, I did not.

14 Q For two siphon pipes to siphon at less than
15 one-third the rate that Dale specified, would
16 certainly increase the value of it going through the
17 grass and the grass being a vegetative filter, would
18 it not, because the flow would be less than one-third?

19 A Increase the value how?

20 Q By it going more slowly through the grass,
21 the vegetative filter would have a chance to act
22 better?

23 A That's true.

24 MR. CORY: No more questions.

25 HEARING OFFICER JACKSON: All right, Mr. Cory.

1 Ms. Peri?

2 FURTHER REBUTTAL EXAMINATION

3 BY MS. PERI:

4 Q Mr. Ginder, you previously testified that
5 there are problems with the use of the unnamed
6 tributary as a vegetative filter strip. In your
7 opinion -- I believe you testified that it was your
8 opinion, rather, that the unnamed tributary is not
9 constructed in a way consistent with the guidelines
10 for vegetative filter strips; is that correct?

11 A That's correct.

12 Q It is not consistent with slope guidelines
13 for such vegetative filter strips; is that correct?

14 A That's correct.

15 Q Is using a water of the State as a vegetative
16 filter strip ever a possibility under the Illinois
17 Environmental Protection Act, as you understand it?

18 A No.

19 MS. PERI: No more questions.

20 HEARING OFFICER JACKSON: Any additional questions
21 for this witness?

22 MR. CORY: Yes.

23 RECROSS EXAMINATION

24 BY MR. CORY:

25 Q In answer to the last question you said no.

1 This gets to be a very involved, a very involved case,
2 if you bring in the whole thing, because as a part of
3 my expansion plans I actually invited the EPA to my
4 farm to participate in a design for a manure disposal
5 system.

6 MS. PERI: I will object. Is there a question?

7 HEARING OFFICER JACKSON: You had an opportunity
8 to give your testimony in this case, okay. If you
9 have a question for the witness based on Ms. Peri's
10 follow-up questions then --

11 MR. CORY: All right.

12 Q (By Mr. Cory) Are you aware that at the time
13 that I invited the EPA to my farm I was asking their
14 help, January of 1985, and I would assume that you are
15 not aware that I invited them?

16 A I am not aware of that, no.

17 Q Okay. As a result of that meeting --

18 MS. PERI: I will object. It has been asked and
19 answered and is irrelevant as Mr. Ginder did not have
20 any knowledge of that particular visit or
21 communication.

22 HEARING OFFICER JACKSON: I will sustain the
23 objection, and I will just remind you again, Mr. Cory,
24 that you need to limit your questions to the redirect
25 that was conducted by Ms. Peri.

1 MR. CORY: No, the information has not been
2 brought out. I would be initiating new information,
3 so I give up.

4 HEARING OFFICER JACKSON: Okay. Are we finished
5 with this witness?

6 MS. PERI: Yes.

7 HEARING OFFICER JACKSON: The witness may be
8 excused.

9 (The witness left the stand.)

10 HEARING OFFICER JACKSON: Does the State have any
11 other witnesses in rebuttal?

12 MS. PERI: No.

13 HEARING OFFICER JACKSON: Okay. Let's go off the
14 record for a second.

15 (Discussion off the record.)

16 HEARING OFFICER JACKSON: We will go back on the
17 record.

18 We have just had an off-the-record discussion
19 regarding the filing of post hearing briefs. The
20 parties have agreed to a schedule. Before we get to
21 any closing arguments, I will go ahead and read that
22 schedule into the record.

23 The transcript of these proceedings will be
24 available from the court reporter by Friday, February
25 5th. The parties know to talk to the court reporter

1 following the hearing regarding the availability of
2 that transcript. The Complainant's brief will be due
3 Friday, February 26th, and that should be in Mr.
4 Cory's hands by Friday, February 26th. So the mailbox
5 rule will not apply.

6 The Respondent's brief will be due Friday, March
7 19th. And Mr. Cory, as I indicated to the
8 Complainant, that means the brief should be in the
9 hands of Ms. Peri by 5:00 p.m., Friday, March 19th.
10 So it will need to be mailed in enough time to allow
11 it to get there by that date. Understood?

12 MR. CORY: (Nodded head up and down.)

13 HEARING OFFICER JACKSON: Okay. Complainant's
14 brief, reply brief, will then be due one week later on
15 Friday, March 26th. In that case since it is the last
16 filing in the case, you can submit it by mail on that
17 date, if necessary. It does not need to be into the
18 Board by that specific date, just mailed by that
19 date.

20 Okay. The State indicated that they would reserve
21 their closing argument for their post hearing brief.

22 Mr. Cory would like to make a statement as far as
23 his closing argument is concerned.

24 You may proceed with that at this time.

25 MR. CORY: Thank you. Had I presented all of the
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1 data that I had -- I shortcut for obvious reasons --
2 but I believe that the data I have, and what the EPA
3 has, shows that at least for closing these two
4 existing lagoons they can identify the grass pasture
5 land in the area below the lagoons as farm
6 agricultural land, which the code allows, and under
7 those circumstances if I were to siphon five gallons a
8 minute for whatever time it takes so that it does not
9 run out into McKee Creek, I could dewater those
10 lagoons in a matter of weeks, and then cover the
11 bottom residue, and all this would be closed. I would
12 like to see that done. Thank you.

13 HEARING OFFICER JACKSON: Thank you. Anything
14 further from either of the parties before we
15 conclude?

16 MS. PERI: No.

17 MR. CORY: No.

18 HEARING OFFICER JACKSON: Okay. At this time I do
19 want to ask again, are there any members of the public
20 present that want to make statements on the record?

21 Okay. Seeing none, I am required to make a
22 statement as to the credibility of witnesses
23 testifying today. The statement is to be based on my
24 legal judgment and experience, and accordingly I state
25 that I have found all of the witnesses testifying

1 today to be credible. So credibility should not be
2 an issue for the Board to consider in rendering a
3 decision in this case.

4 At this time I will conclude the proceedings. It
5 is Tuesday, January 26th, at approximately 4:40 in the
6 afternoon, and we stand adjourned. Thank you all.

7 (Hearing exhibits were retained by
8 Hearing Officer Jackson.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

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4 C E R T I F I C A T E

5

6 I, DARLENE M. NIEMEYER, a Notary Public in and for
7 the County of Montgomery, State of Illinois, DO HEREBY
8 CERTIFY that the foregoing 228 pages comprise a true,
9 complete and correct transcript of the proceedings
10 held on the 26th of January A.D., 1999, at 600 South
11 Second Street, Suite 402, Springfield, Illinois, in
12 the case of People of the State of Illinois v. Victor
13 Cory, in proceedings held before the Honorable Amy L.
14 Jackson, Hearing Officer, and recorded in machine
15 shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my hand and
17 affixed my Notarial Seal this 4th day of February
18 A.D., 1999.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
23 Registered Professional Reporter

24

25 CSR License No. 084-003677
My Commission Expires: 03-02-99

26

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