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ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
vs.) AC 03-13
(Administrative Citation)
DAN CADWALLADER,)
Respondent.)

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Gale G. Everhart, CSR-RPR, a notary public within and for the County of Peoria and State of Illinois, before Carol Sudman, Hearing Officer, at 120 North Fourth Street, Hennepin, Illinois, on the 29th day of October, A.D. 2003, commencing at 10:00 a.m.

1 PRESENT:

2

HEARING TAKEN BEFORE:
ILLINOIS POLLUTION CONTROL BOARD
1021 North Grand Avenue East
Springfield, Illinois 62794-9274
(217) 524-8509
BY: MS. CAROL SUDMAN

6

APPEARANCES:

7

8 STATE OF ILLINOIS, OFFICE OF THE ATTORNEY GENERAL
BY: MICHELLE RYAN, ESQUIRE
9 Attorney at Law
1021 North Grand Avenue East
10 Springfield, Illinois 62794-9274
(217) 782-5554
11 On Behalf of the Complainant.

12

GRIVETTI LAW OFFICE
13 BY: JOHN GRIVETTI, ESQUIRE
Attorney at Law
14 Box 251
Wenona, Illinois 61377
15 (815) 690-3822
On Behalf of the Respondent
16 Briggs Industries, Inc.

17

ALSO PRESENT:

18

Kevin Moore

19

20

21

22

23

24

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6	BY MS. RYAN.	6
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8	KAARE "KORY" JACOBSEN	
9	Direct Examination by Ms. Ryan.	6
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12	WITNESS FOR THE RESPONDENT:	
13	DAN CADWALLADER	
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18	Open Dump Inspection Checklist	
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*Exhibit 1 was retained by Hearing Officer Sudman.

1 HEARING OFFICER SUDMAN: Good morning. My name is
2 Carol Sudman. I am the hearing officer with the
3 Pollution Control Board. This is the hearing for
4 AC 03-13, IEPA versus Dan Cadwallader. It's October
5 29th, and we are beginning at 10:00 a.m.

6 I will note for the record that we have one
7 member of the public observing us here today. And we
8 were moved to a room that was different from the
9 basement room we were noticed for. And I did check down
10 there just a minute ago, and there is no one waiting for
11 us in the basement. Members of the public are allowed
12 to provide public comment if they so choose.

13 At issue in this case is the EPA's allegation
14 that Mr. Cadwallader violated the Environmental
15 Protection Act by owning and operating an open dump
16 without a permit at a facility located at 610 North
17 School Street in Granville, Putnam County.

18 You should know that it is the Pollution
19 Control Board and not me that will make the final
20 decision in this case. My purpose is to conduct this
21 hearing in a neutral and orderly manner so that we have
22 a clear record of the proceedings. I will also assess
23 the credibility of any witnesses on the record at the
24 end of the hearing.

1 This hearing was noticed pursuant to the act
2 and the Board's procedural rules and will be conducted
3 pursuant to sections 101.600 through 101.632 of the
4 Board's procedural rules. At this time I would like to
5 ask the parties to please make their appearances on the
6 record.

7 MS. RYAN: I'm Michelle Ryan, special assistant
8 attorney general from the Illinois EPA. I have a formal
9 appearance here, but I'm having trouble with my copy.
10 These are the Board's copies.

11 HEARING OFFICER SUDMAN: Okay.

12 MS. RYAN: And this is a copy for you.

13 HEARING OFFICER SUDMAN: Okay.

14 MS. RYAN: And for Mr. Grivetti.

15 HEARING OFFICER SUDMAN: Thank you.

16 Mr. Grivetti, would you like to make your
17 appearance?

18 MR. GRIVETTI: Yes. My name is John Grivetti, and
19 I have previously filed an appearance along with a
20 petition for review in this matter.

21 HEARING OFFICER SUDMAN: And you are
22 representing --

23 MR. GRIVETTI: Representing Mr. Cadwallader.

24 HEARING OFFICER SUDMAN: Okay. Thank you. Are

1 there any preliminary matters to discuss on the record?

2 MS. RYAN: No.

3 HEARING OFFICER SUDMAN: Would Ms. Ryan like to
4 give an opening statement?

5 MS. RYAN: Yes. Madam Hearing Officer, Counsel,
6 members of the public, the Illinois EPA believes that
7 the evidence will show that on September 24th, 2002, at
8 610 North School Street Mr. Cadwallader was operating an
9 open dump in violation of the Environmental Protection
10 Act, specifically, section 21P1, open dumping resulting
11 in litter.

12 HEARING OFFICER SUDMAN: Mr. Grivetti, would you
13 like to make an opening statement?

14 MR. GRIVETTI: No.

15 HEARING OFFICER SUDMAN: Ms. Ryan, you may present
16 your case.

17 MS. RYAN: My first witness is Kaare Jacobsen.

18 (Witness sworn.)

19 KAARE "KORY" JACOBSEN,
20 called as a witness, after being first duly sworn, was
21 examined and testified upon his oath as follows:

22 DIRECT EXAMINATION

23 BY MS. RYAN:

24 Q Can you state your name and spell it for the

1 record?

2 A It is Kaare, spelled K-a-a-r-e, Jacobsen,
3 J-a-c-o-b-s-e-n.

4 Q What is your occupation?

5 A I am an Environmental Specialist 3 with the
6 Illinois EPA.

7 Q How long have you been an Environmental
8 Protection Specialist 3?

9 A Over a year.

10 Q What was your job prior to that?

11 A I was -- before Environmental Specialist 3, I
12 was Environmental Specialist 2.

13 Q How long have you worked at the Illinois EPA
14 in a capacity similar --

15 A For three and a half years.

16 Q What are your duties as an Environmental
17 Protection Specialist?

18 A I mostly will do used waste tire inspections
19 and do solid waste inspections, usually going to salvage
20 yards or tire retailers to check out for compliance with
21 our rules and regulations that we go by.

22 Q Approximately how many inspections do you
23 think you have done in the three and a half years that
24 you have been inspecting?

1 A Between 400 -- probably about 450.

2 Q What is your educational background?

3 A I have a degree in plant soil science from
4 Southern Illinois University.

5 Q Is that a bachelor's degree?

6 A That's a bachelor's degree, yeah.

7 Q Do you have any other training besides your
8 bachelor's degree?

9 A The only training I got is through the AFC,
10 inspection training, environmental criminal enforcement
11 training and then hazardous waste training.

12 Q Are you familiar with the facility located at
13 610 North School Street in Granville?

14 A Yes, I am.

15 Q By what name do you know that facility?

16 A DC Enterprises.

17 Q At this time who owns that property, DC
18 Enterprises property?

19 A Daniel Cadwallader.

20 Q Do you know since when he has owned that
21 property?

22 A I believe the latter part of spring of 2002.

23 Q How many inspections have you conducted at
24 this property?

1 A Since the latter part of 2002 I would say
2 about -- an estimate of four to five inspections.

3 Q I'm going to show you what I have marked for
4 identification as Exhibit 1. Can you tell me do you
5 recognize that document?

6 A Yes, I do.

7 Q Can you tell us what it is?

8 A It's an open dump inspection checklist. It
9 is dated September 24th, 2002.

10 Q Can you just page through it for me for a
11 minute?

12 (Witness complies.)

13 Q Can you tell me who prepared that document?

14 A Myself.

15 Q Does that appear to be a fair, accurate and
16 complete copy of the report you prepared?

17 A To a T.

18 Q Can you describe in general terms the type of
19 property that's involved here? By which I mean rural,
20 urban, topography, that sort of thing?

21 A The location of the open dump area -- alleged
22 open dump area is more of an urban area on the outskirts
23 on the south end of Granville. This area was -- has no
24 fence. It seems like there is easy access for people to

1 come in to dump off their unwanted stuff onto the
2 property.

3 Q Is this a flat area or a hilly area?

4 A It's more of a flat area.

5 Q There are access roads back to this property?

6 A The only access road is from the main road on
7 North School Road.

8 Q I notice that there are photos attached to
9 your report. Can you tell who took those photographs?

10 A Myself.

11 Q Starting with photograph number 1, can you
12 describe what you see in that photograph?

13 A It seems to me there was some aluminum,
14 wires, mowers off to the left there, just -- and some
15 recyclable metal.

16 Q Are there any other photographs in your
17 inspection report that would show similar types of
18 materials?

19 A Yes. If you look at photos -- you will see a
20 lot of recyclable metals, looking at 008.

21 Q For Counsel and the hearing officer the photo
22 numbers are -- the file number at the bottom of the
23 photo file number, the last three digits there.

24 A Also reference to 009 through I would say

1 0-- the remainder of 009 to 016, those are all
2 recyclable metals.

3 Q I would like to direct your attention to
4 photograph number 2. What is depicted in that
5 photograph?

6 A Photograph number 2, those would be used
7 waste tires that were on rim.

8 Q Do you have any other photographs that show
9 used and waste tires?

10 A 003 has used waste tires, 004 and 005. And
11 007 has some rear ag tires.

12 COURT REPORTER: Some what?

13 A Rear ag. I'm sorry, agricultural.

14 Q Now besides the aluminum, wire, metals and
15 tires, are there any other types of materials depicted
16 in any of your photographs?

17 A No. Just there was one -- couple photos,
18 like one photo or two, there was evidence there was a
19 fire there I think about a month prior before the
20 inspection on the 24th of September of 2002. I guess
21 something caught on fire and a trailer was amongst the
22 flames. And I think it was really contained from what
23 Mr. Cadwallader told me.

24 Q Is that photograph 6 that you are referring

1 to?

2 A Yes, photograph 6 and then photograph 8.

3 Q Do these photographs attached to your report
4 accurately depict what you saw at the property that day?

5 A Yes.

6 Q Did you cite violations in your report
7 relating to what you saw at the property and which is
8 shown in the photos?

9 A Yes.

10 Q When was this report generated?

11 A Most likely a week after the date that it was
12 inspected.

13 Q Does Illinois EPA keep these reports in its
14 regular course of business?

15 A Yes.

16 Q You are required to prepare a report for
17 every inspection that you conduct?

18 A Yes.

19 MS. RYAN: I would move at this time to admit
20 Exhibit 1 into evidence.

21 MR. GRIVETTI: No objection.

22 HEARING OFFICER SUDMAN: Exhibit 1 is admitted into
23 evidence.

24 MS. RYAN: That's all I have at this time.

1 HEARING OFFICER SUDMAN: Okay. Mr. Grivetti.

2 CROSS-EXAMINATION

3 BY MR. GRIVETTI:

4 Q Mr. Jacobsen, was this the first time you
5 have been to this property?

6 A No. I have been there several times prior,
7 before the 29th -- 24th, I'm sorry.

8 Q Do you know when this business began?

9 A Initially?

10 Q Yes.

11 A I probably would guess probably around the
12 '70s.

13 Q So it had been there for 20 to 30 years,
14 right?

15 A Yes.

16 Q Do you know if it was operated in the same
17 way by the previous owners?

18 A The facility was new to me since the three
19 and a half years I have been at the agency. So I know
20 of the previous owner. The previous owner died, and
21 then the other person, I guess her son died. And she
22 was the lone caretaker of the facility.

23 Q Right. Okay. Were the conditions
24 substantially the same under those owners as when

1 Mr. Cadwallader took over?

2 A Yeah, they were.

3 Q Do you know if Mr. Cadwallader caused any of
4 this scrap to be placed on the property?

5 A I couldn't tell you right now. He
6 probably -- there was some evidence of moving of
7 recyclables from the premises and stuff being placed on
8 the premises during my duration of inspections from 2001
9 to the present day.

10 Q But as you said, there is no fence at all
11 around the property?

12 A There is no fence.

13 Q So anybody could basically dump right there?

14 A Anybody, yeah, could go in there off the
15 cornfield or off the side of road and just dump --

16 Q The road going in front?

17 A Yeah. It's a main --

18 Q It's a well-traveled highway, isn't it?

19 A Yes.

20 Q Just for the record, this is on the north
21 side of town?

22 A The north side, I'm sorry.

23 Q So you have been there and there is quite a
24 bit of traffic that goes by?

1 A Yeah. There is pretty much quite a bit.

2 Q How did you determine that Mr. Cadwallader
3 was the owner of the property?

4 A By verbal commitment. He told me that he
5 bought the premises from Jennifer Young as of the latter
6 part of 2002.

7 Q Did you check the records here to see --

8 A Yeah, I had no records. He didn't give me
9 any indications.

10 MR. GRIVETTI: I have no other questions.

11 MS. RYAN: I have just a couple of follow-up
12 questions.

13 REDIRECT-EXAMINATION

14 BY MS. RYAN:

15 Q I think you testified earlier during
16 cross-examination that some material had been removed
17 from the site and some new material had been brought to
18 the site?

19 A Uh-huh.

20 Q You said you had done four or five
21 inspections?

22 A Yeah.

23 Q Can you tell me, did the general condition of
24 the property change at all during those four or five

1 inspections when Mr. Cadwallader was operating the
2 property?

3 A Not the general conditions, but I would say
4 there is like -- there was some movement of I would say
5 white goods and some tin from the property on a regular
6 rate from the property. And people were bringing in
7 stuff on a regular rate, too. But there was -- I would
8 guess there was over 250 -- a constant over 250 yards of
9 waste every time I was out there.

10 Q So would you say the general amount of waste
11 at the property remained about the same even though the
12 types of exact waste may have changed?

13 A Correct.

14 Q Do you have any information that would
15 indicate that Mr. Cadwallader was not operating this
16 property during the period that you described?

17 A I have no information whatsoever.

18 Q You have met Mr. Cadwallader out at the
19 property?

20 A Yes, I have.

21 Q And he indicated that it was his property he
22 was running?

23 A Yes.

24 MS. RYAN: Thank you.

1 MR. GRIVETTI: I have no further questions.

2 HEARING OFFICER SUDMAN: If there are no further
3 questions for this witness, you are done.

4 Ms. Ryan, do you have any further --

5 MS. RYAN: I have no further witnesses.

6 HEARING OFFICER SUDMAN: Mr. Grivetti, you may
7 present your case.

8 MR. GRIVETTI: I would like to call
9 Mr. Cadwallader, briefly.

10 (Witness sworn.)

11 DAN CADWALLADER,
12 called as a witness, after being first duly sworn, was
13 examined and testified upon his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. GRIVETTI:

16 Q State your name, please.

17 A Danny Cadwallader, C-a-d-w-a-l-l-a-d-e-r.

18 Q Mr. Cadwallader, when did you first begin to
19 negotiate with the Young family?

20 A I'm going to say it was five years ago now.

21 Q At that time were Robert Young and his son
22 both alive?

23 A No. They was passed away.

24 Q They were both passed away?

1 A Both.

2 Q Had they operated the facility before that
3 as --

4 A They sure did.

5 Q For how many years?

6 A Since 1961.

7 Q You are very -- I mean you are on a friendly
8 basis with Mrs. Young, is that correct, the widow of
9 Robert?

10 A Yes, that is correct.

11 Q Were you -- while you were negotiating -- and
12 as you said, it took five years to consummate the
13 deal -- helping her dispose of some of the --

14 A Yes, I was.

15 Q Okay. In regard to tires or scrap metal and
16 the things that were shown -- and you have seen these
17 pictures?

18 A Yeah. I have seen them, yes.

19 Q Did you at any time either while you were
20 helping Mrs. Young or since then, since the property was
21 bought, go out and get any garbage or scrap shown in
22 these pictures?

23 A No, I did not.

24 Q Did you purchase any -- is what I'm trying to

1 say -- to place there?

2 A No, I did not.

3 Q Did you place any of it there on your own?

4 A No, I did not.

5 Q But as you heard the witness testify, this
6 property is totally wide open; is that correct?

7 A Yes, that is correct.

8 Q Is garbage dumped there -- not garbage, but
9 this type of metal dumped there on a fairly regular
10 basis?

11 A Every day.

12 Q How often do you load scrap to get it out of
13 the property?

14 A Twice a month.

15 Q Okay. Now when you bought this property, was
16 it your intention to operate it as a salvage yard?

17 A Yes, it was.

18 Q Have you been unable to do that?

19 A Yes. I have been unable.

20 Q When I say "bought the property," do you
21 personally own this property?

22 A No, I do not.

23 Q Was there a lawsuit between yourself and the
24 Village of Granville concerning this property?

1 A Yes, there has been.

2 Q Was that just settled so that you will be
3 able to get licensed in the near future to operate the
4 property?

5 A Yes, it has been. A week --

6 Q Two weeks ago?

7 A Two weeks ago.

8 MR. GRIVETTI: I have no other questions.

9 CROSS-EXAMINATION

10 BY MS. RYAN:

11 Q Mr. Cadwallader, you have been operating this
12 property since 2002, September 24th; is that right?

13 A Yes. Well, I don't know the exact date.

14 MS. RYAN: That's all I have.

15 MR. GRIVETTI: No other questions.

16 HEARING OFFICER SUDMAN: Okay. Then we are
17 finished with you, Mr. Cadwallader.

18 Is there anything further you would like to
19 present?

20 MR. GRIVETTI: No.

21 HEARING OFFICER SUDMAN: Well, before we hear
22 closing arguments I would like to go off the record to
23 discuss the briefing schedule.

24 (Discussion off the record.)

1 HEARING OFFICER SUDMAN: We have just had an
2 off-the-record discussion regarding post hearing briefs.
3 The parties have agreed to a briefing schedule as
4 follows: The transcript of these proceedings will be
5 available from the court reporter by November 10th and
6 should be posted on the Board's web site by November
7 12th. The public comment deadline is November 19th.
8 Public comment must be filed in accordance with section
9 1.628 of the Board's procedural rules.

10 Complainant's brief is due December 9th,
11 2003, and Respondent's brief is due January 6th, 2004.
12 The mailbox rule will apply. And Complainant's reply
13 brief, if any, is due January 13th, 2004.

14 At this time I will ask Ms. Ryan if she would
15 like to make a closing argument?

16 MS. RYAN: I would like to reserve my closing for
17 briefs.

18 HEARING OFFICER SUDMAN: Okay. Mr. Grivetti?

19 MR. GRIVETTI: Likewise.

20 HEARING OFFICER SUDMAN: At this time I will ask if
21 there are any members of the public present that would
22 like to make statements on the record?

23 (No audible response.)

24 Seeing none, I will proceed to make a

1 statement as to the credibility of witnesses testifying
2 during this hearing. Based on my legal judgment and
3 experience, I find both of the witnesses testifying to
4 be credible.

5 At this time I will conclude the proceedings.
6 And I thank all of you for your participation, and we
7 are adjourned.

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11 (Whereupon, the proceedings concluded
12 at 10:25 a.m.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF PEORIA)

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CERTIFICATE OF REPORTER

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6

I, GALE G. EVERHART, CSR-RPR, Notary Public

7

in and for the County of Peoria, State of Illinois, do

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hereby certify that the foregoing transcript, consisting

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of pages 1 through 22, both inclusive, constitutes a

10

true and accurate transcript of the original

11

stenographic notes recorded by me of the foregoing

12

proceedings had before Hearing Officer Carol Sudman, in

13

Hennepin, Illinois, on the 29th of October, A.D. 2003.

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Dated this 3rd day of November, A.D. 2003.

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GALE G. EVERHART, CSR-RPR
Illinois License No. 084-004217

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