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ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF JACKSON,)	
)	
Complainant,)	
vs.)	No. AC 04-39
)	Administrative Citation
EDWARD TOW,)	
)	
Respondent.)	

The Proceedings held on November 22, 2004,
at the offices of the Jackson County Health Department,
Murphysboro, Illinois, before Carol Webb, Hearing
Officer for the Illinois Pollution Control Board.

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A P P E A R A N C E S

MR. DANIEL BRENNER
Assistant State's Attorney
Courthouse
Murphysboro, IL 62966

In behalf of Jackson County;

ALSO PRESENT: Edward Tow, in behalf of himself.

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PROCEEDINGS

(November 22, 2004, 12:45 p.m.)

Good morning. My name is Carol Webb.
I'm a hearing officer for the Illinois Pollution Control Board. This is the hearing for AC-04-39, Jackson County versus Edward Tow. It is November 26 -- 22, 2004. We were scheduled to begin at 11 a.m. We had another administrative citation that we were holding hearing on at that time, so we are beginning now at 12:45 p.m.

I will note for record that there are no members of the public present. Members of the public are allowed to provide public comment, if they so choose.

At issue in this case is the County's allegation that Mr. Tow violated the Environmental Protection Act at a site described as Vergennes Section 13 in Elkhville, Jackson County.

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

1 This hearing was noticed pursuant to
2 the Act and the Board's rules, and will be conducted
3 pursuant to Section 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 MR. BRENNER: Daniel Brenner, Assistant State's
8 Attorney Jackson County.

9 MS. HEARING OFFICER: And Mr. Tow, you are hear
10 representing yourself, correct?

11 MR. TOW: Yes.

12 MS. HEARING OFFICER: Are there any preliminary
13 matters to discuss on the record?

14 MR. BRENNER: No, ma'am.

15 MS. HEARING OFFICER: Would the complainant like
16 to give an opening statement?

17 MR. BRENNER: No, ma'am.

18 MS. HEARING OFFICER: You may present your case.

19 MR. BRENNER: I would like to call Don Terry as
20 my witness.

21 Don Terry, having been first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BRENNER:

1 Q. Mr. Terry, please, what is your name and
2 please spell it.

3 A. Don, D-O-N, Terry, T-E-R-R-Y.

4 Q. What is your occupation?

5 A. Solid waste inspector for the Jackson
6 County Health Department.

7 Q. And how long have you been doing this?

8 A. Approximately, 17 months.

9 Q. Please tell us what you -- briefly, tell
10 us what you routinely do.

11 A. I routinely investigate situations of open
12 dumping, open dumping within Jackson County and take
13 action as necessary.

14 Q. And have you received any special training
15 related to this occupation?

16 A. Yes. I went through the inspector
17 training course devolved by the Illinois Environmental
18 Protection Agency.

19 Q. Do you have any occupation, specific
20 licenses or certifications?

21 A. Yes. I am certified by the IEPA as an
22 inspector of solid waste sites.

23 Q. Does the health department have a
24 delegation agreement with the IEPA, the Illinois

1 Environmental Protection Agency?

2 A. Yes, we do.

3 Q. Does that agreement provide for the

4 enforcement by the Jackson County Health Department of

5 certain types of open-dumping violations?

6 A. Yes, it does.

7 Q. Is this present citation enforcement

8 action within that delegation?

9 A. Yes, it is.

10 Q. Are you familiar with the Respondent,

11 Edward Tow?

12 A. Yes, I am.

13 Q. Did you inspect the site of his on

14 December 17, 2003, identified with the site code of

15 0778155007, generically, what we'll refer to as

16 Vergennes Section 13?

17 A. Yes, I did.

18 Q. Where is the site located?

19 A. It's in an unincorporated portion of the

20 county near Elkhville.

21 Q. Who owns the site?

22 A. Edward Tow.

23 Q. What did you observe the day of your

24 inspection?

1 A. It was a clear day in December. It was
2 cold. I observed, approximately, 18 abandoned vehicles
3 along with a boat, which appeared to be abandoned, a
4 porto-potty and many other automobile parts and sections
5 scattered about the site.

6 Q. What is the present use of the site?

7 A. It's currently undeveloped, as far as I
8 can tell, except for the storage of these abandoned
9 vehicles.

10 Q. Is there a dwelling unit on the site.

11 A. I did not see any, no.

12 Q. I'm going to hand you what I have
13 identified as P3 through P9, and ask you to identify
14 what those documents are.

15 A. These are photos of the site that I took
16 on the December 17, 2003, inspection.

17 Q. And you stated you took the photos?

18 A. Yes, I did.

19 Q. Do the photos accurately and fairly depict
20 the site's condition as you observed them that day?

21 A. Yes.

22 Q. I am now going the hand you what I have
23 identified as P1 and P2 and ask if you could identify
24 what that is.

1 A. This is the inspection narrative that I
2 wrote concerning the December 17 inspection of this
3 site.

4 Q. Do you recall what is in that report?

5 A. In it describes the materials I found, the
6 quantity, which I estimated at, approximately, 500 cubic
7 yards.

8 Q. Do the reports accurately reflect the
9 circumstances and observations at the time of your
10 inspection?

11 A. Yes, it does.

12 Q. I'm going to show those -- for the record,
13 show both of these exhibits, P1 through P9, to the
14 Respondent, and after he looks at them, I'm going to
15 move to admit them for the record.

16 MS. TOW: You have been out there this year,
17 haven't you?

18 MS. HEARING OFFICER: Excuse me, ma'am. You're
19 not allowed to speak right now, but you will have an
20 opportunity.

21 MS. TOW: Can you let say my thing, then?

22 MS. HEARING OFFICER: No, I can't.

23 MS. TOW: It ain't all there now.

24 MS. HEARING OFFICER: Ma'am, you're not an

1 attorney. You're not allowed to represent your son in
2 this matter. You will be allowed to give a statement on
3 his behalf.

4 MR. TOW: All this stuff was out there.

5 MR. BRENNER: I move to admit my documents I
6 have identified as P1 through P9 for the record.

7 MS. HEARING OFFICER: Do you have any objection,
8 Mr. Tow?

9 MR. TOW: I don't guess.

10 MS. HEARING OFFICER: Well, I'm going to admit
11 Exhibits P1 through P9 did you say?

12 MR. BRENNER: Yes.

13 MS. HEARING OFFICER: Do you have a copy --

14 MR. TOW: He took pictures of it then, but that
15 stuff is not there now.

16 MS. HEARING OFFICER: You will have an
17 opportunity to say everything you want to say in your
18 defense, Mr. Tow, but right now it's the complainant's
19 turn to present their case.

20 MR. BRENNER CONTINUES:

21 Q. Are any of the vehicles shown in the
22 photos, which I have identified and have been admitted,
23 P3 through P9, capable of being driven in the condition
24 you found at the time of your inspection?

1 A. In my opinion, no.

2 Q. Do any --

3 MR. TOW: This one right here I drove it out
4 there, and it's got a flat tire, and that's all that's
5 wrong with it.

6 MR. BRENNER CONTINUES:

7 Q. Do any of the vehicles appear to have been
8 unused for, at least, seven days prior to the date of
9 your inspection?

10 A. Yes, all of them.

11 Q. Have you had any conversations with the
12 Respondent about what you have found?

13 A. Yes.

14 Q. And what was said?

15 A. Mr. Tow and his wife came to the health
16 department -- I believe it was in December, late
17 December -- and spoke to Mr. Hagston and myself, and we
18 discussed the material that was there, and the need to
19 get it off the site and dispose of it properly.

20 Q. Would you consider any of the vehicles to
21 be abandoned?

22 A. I would consider all of them to be
23 abandoned.

24 Q. Do you know how the vehicles got there,

1 got onto the site?

2 A. Mr. Tow explained that he had brought them
3 out there.

4 Q. Do you know how long they had been there?

5 A. I believe, in a letter to the health
6 department to my predecessor, Mr. Tow had said that they
7 had been there since 1995.

8 Q. At the time of your inspection, was the
9 site accessible by vehicle from a public road?

10 A. Yes.

11 Q. How about now?

12 A. Yes.

13 Q. How about at any time since your
14 inspection?

15 A. On all of my field visits, a vehicle was
16 accessible to the site, yes.

17 Q. Has the site been issued a permit by the
18 EPA to store the waste items noted in your inspection?

19 A. No, it has not.

20 Q. Is the site adjacent to or contiguous with
21 any other real estate parcels owned or controlled by the
22 Respondent?

23 A. I do not believe so.

24 MR. BRENNER: That's all the questions I have.

1 MS. HEARING OFFICER: Mr. Tow, do you have any
2 questions for this witness?

3 MR. TOW: Yeah. He says there is a road out
4 there. If you have a four-wheel drive pickup, there's a
5 road you can drive in if you want, but as far as a road,
6 there's no road.

7 MS. HEARING OFFICER: Is that a question?

8 MR. TOW: I don't know.

9 MS. HEARING OFFICER: It didn't sound like one.
10 You will be allowed to --

11 MR. TOW: There is a road out there and you can
12 drive through there at any time without having to worry
13 about sinking to the hubs in the mud.

14 MR. TERRY: I have never been out there at a
15 time when it was unaccessible.

16 MS. HEARING OFFICER: Okay. Well, that's not a
17 question. You don't have to -- you will be allowed to
18 make a statement in your own defense. I'm just asking
19 you right now if you have any questions for this
20 witness. You don't have to ask him any questions.

21 MR. TOW: Do you have to ask somebody permission
22 to get there? Because I have to ask for permission to
23 go across Ramsey's, and the Mazo (phonetic) character,
24 he came out there and was ready to kill me because I

1 went across --

2 MS. HEARING OFFICER: Mr. Tow, can I interrupt
3 you. Again, we'll get your full story on the record,
4 but not, yet. I just want to know right now -- you
5 don't have any questions for this witness? That seems
6 to be the case.

7 CROSS EXAMINATION

8 BY MR. TOW:

9 Q. When is the last time you've been out
10 there?

11 A. Let's see. I believe I did a field visit
12 in October.

13 Q. Did you take any pictures or note
14 anything?

15 A. I did take pictures.

16 Q. The last time?

17 A. In the October visit, yes.

18 Q. Do you have them?

19 A. No. It was a field visit.

20 Q. Was all the vehicles in that picture
21 present when you went this last time?

22 A. No. There were several vehicles which
23 appeared to have been removed.

24 Q. Appeared?

1 A. I did not go over the whole site. I'm not
2 sure where they were.

3 Q. Did you count how many vehicles was out
4 there in your last visit?

5 A. I believe I counted five vehicles.

6 Q. That's what I counted. So it does appear
7 that I have been trying to get rid of them. There's
8 about 35 vehicles out there, and it's down to five. I
9 appear to have done something, right?

10 A. Yes.

11 MR. TOW: I guess that's it for that.

12 MS. HEARING OFFICER: Any re-direct?

13 MR. BRENNER: No. We'll rest.

14 MS. HEARING OFFICER: Okay. Mr. Tow, now it is
15 your opportunity to make a statement in your own
16 defense, and first, I will ask the court reporter to
17 please swear you in.

18 Edward Tow, having been duly sworn,
19 testified as follows:

20 MR. TOW: I bought that property out there for
21 recreation and to store vehicles. It was not for a
22 dumping site, which these guys seem to think it was.

23 For some reason, this other guy come
24 and bought this property, a Ramsey, and things started

1 happening out there and windows started to get broken
2 out and bullet holes started appearing and stuff, and a
3 lot of stuff kept disappearing practically just -- in
4 and out there with a hoe, and it just became a shambles,
5 if you understand what I mean, and then they denied me
6 access to my property. They were saying that I had junk
7 cars out there and wanted me to get rid of them, and I
8 said, "Fine, I'll get rid of them," but they wouldn't
9 allow me to get to the property. Dennis Williams -- he
10 owns the property back out behind me. Well, he got
11 permit to go through there, and he got permission to go
12 a certain way, so I started going that way, and they put
13 a gate up. This is on -- well, I can't exactly say. It
14 would be on the north end of this property that I had to
15 go across, and that went on for a while. The other guy
16 kept sending me letters saying I was going to have to do
17 this and do that. Well, Ramsey gave this guy permission
18 to go around a south corner of this property. Well,
19 that was fine, so I started going out there, and I
20 started hauling off several cars, and then all of a
21 sudden a gate appears there, so I can't go across there.

22 I mean, this has been going on for the
23 last three years. And I was doing good hauling stuff
24 out of there and all of a sudden -- Williams sold --

1 Mr. Williams sold the property to some other people, and
2 two of them I know, and I was friendly with, and this
3 other guy he's some kind of a yay-hoo (sic). The lawyer
4 told me that he was not somebody he could deal with or
5 something like that. What did the lawyer say about
6 that? Do you remember?

7 MS. TOW: I'm not supposed to say anything.

8 MR. TOW: Well, you can tell me. Well,
9 anyway, I've had several different ways to get into this
10 property, and start hauling this stuff out, and as you
11 all know, it's not all gone, yet, because I keep running
12 into these blockades. If nobody would bother me, it
13 would have done been gone a long time ago, but I've had
14 so many problems. It's about ready to make my hair a
15 lot grayer than what it is.

16 This Mazo (phonetic) guy, he's pretty
17 shady, so I don't know about him. He threatened me. I
18 went across a little corner. I was going across
19 Ramsey's property after -- one of you two guys worked
20 out a deal with Ramsey where I could go across, and I
21 had them bring that piece of paper.

22 Here's a picture of the property I'm
23 referring to. This was, in real life, it would be
24 coming from the north around the corner and across

1 Mr. Ramsey's property. There's some more of it. Kind
2 of like a little cow path. That's about it.

3 MS. HEARING OFFICER: What are these pictures
4 of?

5 MR. TOW: Well, the little short picture there
6 that shows the little hill going up there. When you go
7 up that hill a certain ways you run into my property. I
8 own five acres, and I have got Ramsey on one side a
9 Ramsey on the other side, and two other guys on the
10 other side. There's a little drawing across
11 Mr. Ramsey's property and you can go up on mine. Go,
12 like, across a little corner is this guy's property
13 raising so much -- anyway, on the back farther -- I
14 mean, I've missed something here. Several times I've
15 went out to my property, loaded up cars and come back,
16 and people had a gate there. The gate was open and I
17 went out, and when I come back, the gate was closed, and
18 had to call the cops, and the cops told me, if I came
19 out again, they were going to have me arrested. It's
20 just went on, and it's been one irritating thing after
21 another out there. Do you understand what I mean?

22 So it ain't because I'm not trying to
23 get rid of some of that stuff. There's been some of
24 that stuff that was taken out there and I took a piece

1 of truck out there or something like that. But not
2 everything out there was mine, and I've been getting rid
3 of everything no matter what it is. Where is that one
4 thing? This here is Mr. Ramsey's mother's trailer and
5 Mr. Ramsey's house is over here and right down through
6 here is the way to get back to my property, and it used
7 to be a gate right across there. They took that down
8 because they got Mr. Daniels, they took the gate down
9 and moved the fence over and made it so I could put a
10 right-of-way there. In the meantime, before I could get
11 the right-of-way put in, Mr. Williams sold his property,
12 and these guys came through there, and bulldozed it out,
13 and put a road in. They came back to use the road and
14 they had put a gate up, too.

15 MS. HEARING OFFICER: Okay. Let me just ask you
16 a question, so the gate -- the part of the property that
17 needs to be cleaned is behind the gate where you don't
18 have access?

19 MR. TOW: More or less, yes.

20 MS. HEARING OFFICER: So that's the point
21 that -- that's your point?

22 MR. TOW: I keep getting locked out and can't do
23 my job. On top of that, I just had a hernia operation.
24 It's going to be six weeks before I'm supposed to do

1 anything. It just seems like it just keeps further and
2 further.

3 MS. HEARING OFFICER: Do you have anything
4 further?

5 MR. TOW: I can't think of anything. I always
6 do, anyway.

7 MS. HEARING OFFICER: Mr. Brenner, do you have
8 any questions for Mr. Tow?

9 MR. BRENNER: No, I do not.

10 MS. HEARING OFFICER: Now, Mr. Tow, this is your
11 mother, correct?

12 MR. TOW: Yes.

13 MS. HEARING OFFICER: And you're Mrs. --

14 MS. TOW: Rose Tow.

15 MS. HEARING OFFICER: Rose Tow. Ms. Tow, would
16 you like to make a statement, a sworn statement in this
17 proceeding?

18 MS. TOW: Well, they got locked in.

19 MS. HEARING OFFICER: Hang on. I will have the
20 court reporter swear you in.

21 Rose Tow, having been first duly sworn,
22 testified as follows:

23 MS. TOW: They got locked in that one Sunday
24 they went to get a truck out. There were three cars.

1 Windell, my husband, was with him. He was in his truck
2 with Diane, his wife, and they got the truck out. There
3 were three vehicles. They got it out on, but when they
4 went to get out, she had them locked in, and they had to
5 call Jackson County to get the gate open. Jackson
6 County says, "Don't come back." I had a paper from a
7 lawyer and they said, "That's all you need to get in
8 there." There's a big easement there. It's either a
9 30- or 60-foot easement to get in there, and they had a
10 gate across it. They had to move it, and then Williams
11 gave him permission to go onto his property to get back
12 there, until these other guy's bought it. Cobin --
13 what's his name? Cobin and Porter and Mazo, and Mazo is
14 the one that threw the fit and said, "You can't cross my
15 property anymore. I will have you arrested," and he
16 went on his property to tell him that. "You get on my
17 property anymore I'm going to have you arrested," so he
18 come on out, and he ain't been back since. You can't
19 get in. And if it's real bad weather you can't get in,
20 anyway, and it might look like a road here, but it's
21 not. It's strip hills, and the very last hill is very
22 scary when you go down, let me tell you.

23 MS. HEARING OFFICER: Mr. Brenner, do you have
24 any questions for Ms. Tow?

1 MR. BRENNER: No, I do not.

2 MS. HEARING OFFICER: Well, I have looked at
3 your photos and this chart here. I'm not going to take
4 them as evidence just because I don't think they are
5 helpful. I think your oral testimony pretty much says
6 what you wanted to say. I don't think these pictures
7 really add anything. Yes. It's a grassy area with sort
8 of a road, but I -- I don't think that that's necessary.

9 MR. TOW: On top of this, I brought my large
10 truck to haul these things off to make it real easy, but
11 I still have to use another truck to drag it to the
12 other truck because I can only get it back so far
13 because it's a long, big truck.

14 MS. HEARING OFFICER: I'm going to give this
15 back to you because I don't think it's going to help the
16 Board.

17 MS. TOW: And another thing, he would haul them
18 out. He would go out after work and the only way he
19 could get rid of them is take them up to Cobin's Salvage
20 Yard, and they had a place right beside the road he
21 could drop them, and then that would be at night when he
22 did that, and then I would go up the next day and tell
23 them what it was and what few cents we got off of the --
24 he would sell them there to Cobin's. I know several

1 times I went up there --

2 MR. TOW: No. Those guys are not friendly. I
3 had to take mine to Tigg's, which is about 15 miles to
4 Tigg's. So he's not letting me get on my property, so I
5 guess he's part of the problem.

6 MS. HEARING OFFICER: Is that everything? Is
7 there anything else you would like to add?

8 MR. TOW: All I can say is I've cooperated as
9 well as I can for as many times as I've been able to get
10 across the property. It's not because I'm not trying.
11 It's just the way things are working out. The police
12 have been out there different times and thrown me out.
13 They said, "The next I'm going to arrest you." So I
14 guess that's where one side doesn't know what the other
15 side was doing. He didn't know what they were doing.

16 MS. HEARING OFFICER: Well, I think we have most
17 of your argument in the record here, so I think if there
18 is --

19 MR. TOW: Then, on top of this, Mr. Ramsey guy,
20 I can't find no phone number for the guy to call and ask
21 him, beg for a way to get across his property. If I
22 could just get him to scoot the part where I would go
23 across just down about 100 or 200 yards, I could go
24 right to mine because there's a huge hill in this area.

1 MS. TOW: There are easements here, too.

2 MR. TOW: When I bought the property from Kenny
3 Jones, there's easements, and they just took the
4 easements and blocked them off. Here I thought after
5 all the lawyer stuff, paying money, writing letters and
6 doing this, the next thing I know the property is sold
7 by the other guy, and they took it over like they are
8 the ones that got the easement, right-of-a-way
9 recognized.

10 MS. HEARING OFFICER: Mr. Brenner, do you have
11 any questions based on anything that's --

12 MR. BRENNER: No, Judge, I do not.

13 MS. HEARING OFFICER: Before we hear any closing
14 arguments, we'll go off the record to discuss a briefing
15 schedule.

16 (Discussion was held off the record.)

17 MS. HEARING OFFICER: We've just had an
18 off-the-record discussion regarding post-hearing briefs.
19 The parties have agreed to a briefing schedule as
20 follows: The transcript of these proceedings will be
21 available from the court reporter by December 6, 2004,
22 and that will be posted on the Board's website soon
23 after. The public comment deadline is December 20,
24 2004. Any public comment must be filed in accordance

1 with Section 101.628 of the Board's procedural rules.
2 The complainant's brief is due January 10, 2005; the
3 Respondent's brief is due February 10, 2005; and the
4 mailbox rule will apply to both of those briefs.

5 Additionally, the complainant's reply,
6 if any, is due February 28, 2005. Mr. Brenner, would
7 you like to make any closing argument?

8 MR. BRENNER: No, I would not.

9 MS. HEARING OFFICER: Mr. Tow, would you like to
10 make any closing argument?

11 MR. TOW: No.

12 MS. HEARING OFFICER: Seeing no members --

13 MS. TOW: Well, I mean where does he stand?

14 MS. HEARING OFFICER: Pardon me?

15 MS. TOW: I mean, he had a certain time to get
16 these things out of there. Does he get an extension, or
17 how is this going to go?

18 MS. HEARING OFFICER: As I said at the beginning
19 of the hearing --

20 MS. TOW: We're from the old school.

21 MS. HEARING OFFICER: As I said in the beginning
22 of the hearing, I'm not making any ruling today. The
23 Pollution Control Board members will actually be
24 deciding this case. What's happening here today is that

1 you're presenting the evidence; a court reporter is
2 writing down everything. There will be a hearing
3 transcript. The board members will review the hearing
4 transcript, along with your post-hearing briefs, and
5 then they will make a decision. So it's usually about
6 90 days after the end of the briefing schedule.

7 MR. TOW: I have a comment. The property out
8 there I was going to build a house, but my wife told me
9 that she would not live by them people out there because
10 she thought they were barbarians or something.

11 MS. HEARING OFFICER: Well, Mr. Tow, you can
12 put that in your post-hearing brief. I don't want to
13 introduce any more facts right now. No, Mr. Tow. You
14 can include anything, at this point, in your
15 post-hearing brief, but I think we have pretty much
16 covered your major issues.

17 Seeing that there are no members of
18 the public here to make any public comment, I will
19 proceed to make a statement as to the credibility of
20 witnesses testifying during this hearing.

21 Based on my legal judgment and
22 experience, I find all of the witnesses testifying to be
23 credible. At this time, I will conclude the
24 proceedings. I thank all of you for your cooperation

1 and we stand adjourned.

2 (The hearing was adjourned at 1:10.)

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