

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Petitioner,

vs.

No. AC-04-18

LUTHER COLEMAN,

Respondent,

Proceedings held on March 3rd, 2004, at 11:00 a.m. at the  
Saline County Detention Center, 1 North Main Street, Harrisburg,  
Illinois, before Carol Sudman, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR  
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P R O C E E D I N G S

(March 3rd, 2004; 11 a.m.)

HEARING OFFICER SUDMAN: Good morning. My name is Carol Sudman, and I'm a hearing officer with the Pollution Control Board. This is the hearing for AC 04-18, IEPA v. Luther Coleman. It is March 3rd, 2004, and we are beginning at 11:00 a.m.

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

At issue in this case is the EPA's allegation that Mr. Coleman violated the Environmental Protection Act by causing or allowing the open dumping of construction or demolition debris at 624 West Logan in Harrisburg, Saline County.

This hearing was noticed pursuant to the Act and the Board's rule and will be conducted pursuant to Sections 101.600 through 101.632 of the Board's procedural rules.

At this time I would like to ask the complainant to please make her appearance on the record.

MS. RYAN: My name is Michelle Ryan, Special Assistant Attorney General representing the Illinois EPA. I have a formal appearance here. I think this one is for you. And this is my Original 9 for the Board here.

HEARING OFFICER SUDMAN: Thank you. Again, I'll note that Mr. Coleman is not present to make an appearance. Are there any

1 preliminary matters that you would like to discuss?

2 MS. RYAN: No.

3 HEARING OFFICER SUDMAN: Would you like to give an opening  
4 statement or just proceed with the case?

5 MS. RYAN: I think we'll proceed with the case. The Agency  
6 calls Kent Johnson.

7 HEARING OFFICER SUDMAN: Mr. Johnson, you may have a seat  
8 and the court reporter will swear you in.

9 (The witness was sworn by the reporter.)

10 DIRECT EXAMINATION

11 QUESTIONS BY MS. RYAN:

12 Q. Can you state your full name for the record, please?

13 A. Kent Allen Johnson.

14 Q. And what's your occupation?

15 A. I'm field inspector with the Illinois EPA.

16 Q. How long have you been a field inspector with the  
17 Illinois EPA?

18 A. Since May 1992.

19 Q. What are your duties as a field inspector?

20 A. I conduct solid -- solid waste, hazardous waste and  
21 special investigation for the purposes of compliance in all state  
22 environmental regulations.

23 Q. Can you explain to us your educational background?

24 A. I have bachelor's degree in aquatic biology, an

1 associate's degree in biology and then continuing education  
2 within IEPA on CEU credits, things of that nature, related to my  
3 duties as an inspector.

4 Q. Are you familiar with Mr. Coleman's property on West  
5 Logan Street in Harrisburg?

6 A. I am.

7 Q. Can you tell me where exactly that property is located?

8 A. It's located at 624 West Logan and adjoining lot, I  
9 believe, the northwest side of Harrisburg, at the cross street  
10 coming north is Cheney, C-h-e-n-e-y.

11 Q. And who owns that property there?

12 A. Luther Coleman.

13 Q. How many inspections have you conducted at the Coleman  
14 property?

15 A. I've conducted one on-site inspection and one  
16 recognizance inspection from off site.

17 Q. I'm going to show you what I marked as Exhibit 1 for  
18 identification. If you could page through that and tell me if  
19 you recognize what that is?

20 A. It appears to be a copy of an Inspection Report I filed  
21 with -- following my September 10th, 2003, inspection.

22 Q. Can you review that document? Does that appear to be a  
23 fair, accurate and complete copy of the report?

24 A. It does.

1 Q. Please describe Mr. Coleman's property, generally  
2 speaking, what it appears like?

3 A. The property consists of the house. There is a mobile  
4 home toward the front of the property. There is a driveway  
5 leading to the house, west of the house between the house, and  
6 there's a ditch to the west. There were -- were noticed some  
7 piles of waste; some tarped, some not. Vehicles with waste in  
8 them. One vehicle was east of the driveway.

9 Q. The house that you described, what was the number on  
10 that house?

11 A. 624.

12 Q. Who took the photographs that are attached to this  
13 report?

14 A. I did.

15 Q. And what do they show?

16 A. Depict waste on the ground and in vehicles, and again  
17 west of the house. Waste consists of demolition debris and some  
18 of the tarped waste that's on the ground. I did not pull the  
19 tarp back, but it does appear to be more related to garbage and  
20 household materials.

21 Q. Did you see any material peeking out from underneath the  
22 tarp?

23 A. Yes, I did.

24 Q. And what type of material was that?

1           A.    As I noted, it appeared to be household garbage, things  
2 of that nature?

3           Q.    Which of your photographs show the demolition debris?

4           A.    The background of photo 1.  Also photos 3, 4 and to some  
5 extent in photo 5.

6           Q.    And Photograph No. 6, there's a truck there with  
7 material in the back?

8           A.    Yes.

9           Q.    Do you know who owns that truck?

10          A.    It's my understanding it's owned by Mr. Coleman, Luther  
11 Coleman.

12          Q.    Do these photographs, attached to your report,  
13 accurately depict what you saw on the property that day?

14          A.    They do.

15          Q.    When was your report generated?

16          A.    It would have been filed shortly after September 10th.  
17 We typically file everything within 30 days.

18          Q.    Does the Illinois EPA keep these reports in the regular  
19 course of its business?

20          A.    We do.

21               MS. RYAN:  I move Exhibit 1 into evidence.

22               HEARING OFFICER SUDMAN:  Okay.  Exhibit No. 1 is admitted  
23 into evidence.

24               MS. RYAN:  And that's all I have.

1 (Mr. Luther Coleman enters the room.)

2 HEARING OFFICER SUDMAN: Okay. Thank you very much, Mr.  
3 Johnson. You're not Mr. Coleman, are you?

4 MR. COLEMAN: Yes.

5 HEARING OFFICER SUDMAN: Oh, you are. Mr. Coleman, do you  
6 have any questions that you would like to ask Mr. Johnson, your  
7 field inspector?

8 MR. COLEMAN: Well, only his statements. The property that  
9 he's over there that he's speaking that he's taken picture of, I  
10 believe he --

11 MS. RYAN: Would you like a copy here?

12 A. The photos are in the back.

13 MR. COLEMAN: Yeah, but now on 624, I guess, these pictures  
14 is accurate across the street from me.

15 HEARING OFFICER SUDMAN: Mr. Coleman, I will let you take  
16 the stand and make a statement in your own defense. I'm just  
17 asking you right now if you have any questions for Mr. Johnson.

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. COLEMAN:

20 Q. Are you the one that came out and take the pictures?

21 A. Yes, sir.

22 Q. I don't know how you got -- got across the street,  
23 across the alley from me that I owned it.

24 A. Okay. With regard to the property ownership?

1 Q. Yeah.

2 A. When conducting inspection of September 10th, when you  
3 and I spoke I asked how far you owned, and you indicated the  
4 ditch which is the farthest west side on the site sketch that's  
5 just before the photos.

6 Q. Yeah.

7 A. When you said the ditch, I took that to be the western  
8 boundary.

9 Q. And what's on 624?

10 A. The boundary, as far as the measurements between what  
11 624 West Logan is and -- and as far as each lot number, I didn't  
12 measure specific survey lot numbers. I took it to mean when you  
13 said that you owned it to the ditch, that that was all your  
14 property.

15 MR. COLEMAN: Okay. That's about all I have.

16 HEARING OFFICER SUDMAN: Okay. Thank you, Mr. Johnson.

17 MS. RYAN: Actually I do have one quick question.

18 HEARING OFFICER SUDMAN: Sorry. I should have asked.

19 REDIRECT EXAMINATION

20 QUESTIONS BY MS. RYAN:

21 Q. Mr. Johnson, did you go to the tax assessor's office to  
22 evaluate the ownership of the property earlier this morning?

23 A. I did.

24 Q. And what did you find out?

1           A.    According to the tax assessor's office, the 624 West  
2 Logan is in the name Luther Coleman, and I believe Mary Coleman  
3 is also on that one.  There is a -- 700 West Logan is in Mr.  
4 Coleman's name.  And according to the assessor's office there is  
5 a 622 West Logan, which is east of the house.  That is in the  
6 name of Veronica Coleman.

7           Q.    Did you take any pictures of 622 Logan Street?

8           A.    I don't know the boundary markers for sure.  There is  
9 one truck which is shown in photo 6, which was east of the  
10 driveway, which based on what I seen from the lot description, it  
11 may have been on 622.  But it was basically half in the driveway  
12 of Mr. Coleman's residence.

13          Q.    Where was 700 West Logan located in relation to --

14          A.    On the east side of the ditch west of his residence.

15          Q.    Would it be included on the area shown on your site  
16 sketch and the attached report?

17          A.    Yes.

18               MS. RYAN:  Thank you.

19               HEARING OFFICER SUDMAN:  Mr. Coleman, you don't have any  
20 more questions for Mr. Johnson?

21               MR. COLEMAN:  No.

22               HEARING OFFICER SUDMAN:  Thank you, Mr. Johnson.  Ms. Ryan,  
23 do you have anything further?

24               MS. RYAN:  I have no other witness.

1 HEARING OFFICER SUDMAN: Okay. You may take the stand and  
2 make your own defense if you like.

3 (At this time the witness was sworn in.)

4 MR. COLEMAN: I want to say that I was helping him, when I  
5 told him this metal stuff over here on this lot on 700, I told  
6 the girl that I would clean up, and I have been. I have been  
7 hauling some of the stuff over on 700.

8 HEARING OFFICER SUDMAN: Could you speak up just a little  
9 bit?

10 MR. COLEMAN: Why he's got 624, there's nothing on 624 at  
11 all. And why he's got 700 and 624 in the complaint, I don't -- I  
12 can't understand it because there's nothing on 624, and he knows  
13 that. And why the complaint is on both piece of property, I  
14 cannot understand. It's just a deal cooked up between the  
15 sheriff's department and evidently the guy here, that he's got  
16 624, because that's where I live. And I'll bet that's really all  
17 that it is. The sheriff's department and this guy right here, if  
18 he's one that came out and taken the pictures, it's a conspiracy  
19 is all that is. Why, I don't know.

20 HEARING OFFICER SUDMAN: Is that it?

21 MR. COLEMAN: Yeah.

22 HEARING OFFICER SUDMAN: Hang on, Mr. Coleman. Ms. Ryan,  
23 do you have any questions?

24 DIRECT EXAMINATION

1 QUESTIONS BY MS. RYAN:

2 Q. The house that's on 624, that's in the middle of the  
3 these other two properties right here?

4 A. Yes.

5 Q. You're saying there's no waste on this property?

6 A. No. But it shows on these right there in front I got a  
7 barrel and odds and ends, but no garbage or anything.

8 Q. Can you look through these pictures here starting  
9 with -- and I know they're numbered strangely there. If you can  
10 look at the first one. It's sort of a gray tarped area there.  
11 There's three pictures altogether.

12 A. Uh-huh.

13 Q. Now remember this is back in September of last year so  
14 it may not look like this today. Can you tell by looking at this  
15 picture which property this picture was taken on?

16 A. The first picture was a canvass was at 700. And the  
17 second picture, I'm not -- that looks like maybe 700 too, like  
18 it's a ditch, a drainage ditch, out the back there. So both of  
19 those are 700.

20 Q. I think you may have skipped a page there. There's a  
21 page in between.

22 A. The next there's a 700 too. Now the first one on the  
23 last page I'm not sure. Where was that?

24 Q. That's Picture No. 5 that you're referring to?

1           A.    Yeah.  That looks like my truck there.  I believe it is.  
2  I believe that truck is parked at 624.

3           Q.    Okay.  Mr. Coleman, is there any marking showing which  
4  property is 700?

5           A.    No, there's an alley between 700 and 624.

6           MS. RYAN:  Okay.  That's all I have.

7           HEARING OFFICER SUDMAN:  Okay.  Thank you very much, Mr.  
8  Coleman.  You may step down.  Let's go off the transcript --  
9  sorry, off the record to discuss the transcript and briefing  
10 schedule.

11           (A discussion was held off the record.)

12           HEARING OFFICER SUDMAN:  We just had an off-the-record  
13 discussion regarding post-hearing briefs.  The parties have  
14 agreed to a briefing schedule as follows:  The transcript of  
15 these proceedings will be available from the court reporter by  
16 March 15th, 2004, and will be posted on the Board's website.  The  
17 public comment deadline is April 1st, 2004.  Public comment must  
18 be filed in accordance with Section 101.628 of the Board's  
19 procedural rules.  Complainant's brief is due April 5th, 2004.  
20 Respondent's brief is due April 26th.  The mailbox rule will  
21 apply.  Complainant's reply, if any, is due May 10th.  Ms. Ryan,  
22 would you like to make a closing statement?

23           MS. RYAN:  No, I'll reserve that for my brief.  Thank you.

24           HEARING OFFICER SUDMAN:  Mr. Coleman, you can make a

1 closing statement. You don't have to if you don't want to.

2 MR. COLEMAN: Not really.

3 HEARING OFFICER SUDMAN: Okay. I'll again note there are  
4 no members of the public present for this Administrative Citation  
5 Proceeding. So I will proceed to make a statement as to the  
6 credibility of witnesses testifying during this hearing. Based  
7 on my legal judgment and experience, I find all of the witnesses  
8 testifying to be credible. At this time I will conclude the  
9 proceedings. And I thank you for all your participation, and we  
10 stand adjourned. Thank you.

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 14 pages comprise a true, complete and correct transcript of the proceedings held on the 3rd of March A.D., 2004, at the Saline County Detention Center, 1 North Main Street, Harrisburg, Illinois, in the case of Illinois Environmental Protection Agency versus Luther Coleman, in proceedings held before Hearing Officer Carol Sudman, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 6th day of March A.D., 2004.

---

Beverly S. Hopkins  
Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

CSR License No. 084-004316