

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

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COUNTY OF JACKSON,)
)
Complainant,)
)
vs.)
DAN KIMMEL,)
)
Respondent.)
)

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STATE OF ILLINOIS
Pollution Control Board

AC 09-8
(Administrative
Citation)

Hearing held
December 4, 2008

REPORTER: Bobbi L. Hamlin, CCR, RMR
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Keefe Reporting Company
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Belleville, Illinois 62226

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ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

COUNTY OF JACKSON,)
)
Petitioner,)
)
vs.)
)
DAN KIMMEL,)
)
Respondent.)
)

AC 09-8

APPEARANCES:

For Complainant: Assistant State's Attorney
by Daniel W. Brenner, Esq.

Respondent Appeared Pro Se

1 JUDGE WEBB: Good morning. My name is
2 Carol Webb.

3 This is the hearing for AC 09-8, Jackson
4 County versus Dan Kimmel.

5 It is December 4th and we are beginning at
6 10:30 a.m.

7 At the County's request this hearing was
8 moved from the Health Department to the County
9 Courthouse. Notice was posted at the Health Department
10 and I'm advised that an individual is present at the
11 Health Department this morning to notify any members of
12 the public of the change of location.

13 There are no members of the public present.

14 At issue in this case is the County's
15 allegation that Respondent violated Sections (p) (1) and
16 (p) (7) of the Environmental Protection Act at a site in
17 DeSoto, Jackson County.

18 The Pollution Control Board will make the
19 final decision in this case.

20 My purpose is to conduct the hearing in a
21 neutral and orderly manner so that we have a clear
22 record of the proceedings.

23 I will also assess credibility of any
24 witnesses on the record at the end of the hearing.

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

5 At this time I am ask the parties to,
6 please, make their appearance on the record.

7 MR. BRENNER: Daniel Brenner, Assistant
8 State's Attorney, for Jackson County.

9 JUDGE WEBB: And Mr. Kimmel, you are here
10 on your own behalf; is that correct?

11 MR. KIMMEL: Yes.

12 JUDGE WEBB: Okay. Are there any
13 preliminary matters to discuss on the record?

14 MR. BRENNER: No, your Honor.

15 JUDGE WEBB: Okay. Mr. Brenner, would you
16 like to make an opening statement?

17 MR. BRENNER: No, your Honor.

18 JUDGE WEBB: Mr. Kimmel, would you like to
19 make an opening statement?

20 MR. KIMMEL: I guess not.

21 JUDGE WEBB: Okay. Mr. Brenner, you may
22 call your first witness.

23 MR. BRENNER: I would like to call Don
24 Terry, please.

1 JUDGE WEBB: Okay. Can the court reporter,
2 please, swear in the witness.

3

4 DON TERRY, produced, sworn, and examined
5 as a witness on behalf of the Complainant, testified and
6 deposed as follows:

7

DIRECT EXAMINATION

8 BY MR. BRENNER:

9 Q. Mr. Terry, what is your name and your
10 occupation?

11 A. My name is Donald Terry.

12 And I'm an environmental compliance
13 inspector with the Jackson County Health Department.

14 Q. And how long have you been engaged in that
15 occupation?

16 A. Five and a half years.

17 Q. Could you briefly tell us what you do in
18 that occupation?

19 A. I inspect and conduct investigations of
20 potential opening dump sites throughout the county, as
21 well as inspect the landfill, which is also located in
22 the county.

23 Q. And have you received special training
24 related to your occupation?

1 A. Yes, I have.

2 Q. What is that training?

3 A. It's the inspector training course, which
4 was developed by the Illinois EPA.

5 Q. And any occupation specific licenses or
6 certifications?

7 A. Yes, I'm certified by the Illinois EPA as a
8 certified inspector for nonhazardous solid waste
9 management sites.

10 Q. And does the Jackson County Health
11 Department have a delegation agreement with the Illinois
12 Environmental Protection Agency?

13 A. Yes.

14 Q. And does that agreement provide for the
15 enforcement by the Jackson County Health Department of
16 certain types of opening dumping violations?

17 A. Yes.

18 Q. Is this present administrative citation
19 enforcement action within that delegation?

20 A. Yes.

21 Q. Are you familiar with the Defendant in this
22 matter?

23 A. Yes.

24 Q. And is he here today?

1 A. Yes, he is.

2 Q. Okay. Did you inspect a site on July 8th,
3 2008?

4 A. Yes.

5 Q. And it is identified with the site code of
6 0778035009?

7 A. Yes.

8 Q. Could you tell us where that site is
9 located?

10 A. It is in, excuse me, it's in rural Jackson
11 County, northwest of DeSoto.

12 Q. And do you know who owns the site?

13 A. Mr. Kimmel does.

14 Q. Could you tell us what you observed the day
15 of your inspection?

16 A. Yes. It was -- it was a hot day. There
17 was good visibility. We walked around the site and I
18 observed abandoned vehicles, scrap metal, mobile home --
19 a mobile home, which had been turned on it's side and
20 had been, I think, in a storm, missing one end of it and
21 a variety of other construction demolition type
22 materials scattered around the site.

23 Q. And how did you initially come about
24 knowing about these violations?

1 A. From previous inspections.

2 Q. Mr. Terry, I'm going to hand you what I've
3 identified as Exhibit 1.

4 MR. BRENNER: And I'd like to let the
5 record reflect I'm handing a copy of that same exhibit
6 to Mr. Kimmel and the hearing officer.

7 BY MR. BRENNER:

8 Q. Mr. Terry, can you identify that document?

9 A. These are the photos I took during the
10 July 8th, 2008 inspection, as well as my site map
11 indicating approximately where each of the photos had
12 been taken.

13 Q. And if you will look at photos one and two,
14 and can you tell us what those two photos depict?

15 A. Those photos depict dimensional lumber,
16 scrap metal, some metal barrels and some other types of
17 construction demolition material that were on the
18 ground.

19 Q. And if you will direct your attention to
20 photos three and seven and 10 of this same exhibit and
21 tell us what those photos depict?

22 A. Three is an abandon vehicle with vegetation
23 growing up around it.

24 Seven is a -- a camper and a vehicle next

1 to it.

2 And photo eight shows a variety of
3 materials lying on the ground, as well as a semitrailer
4 trailer that is missing part of its walls.

5 Q. And who took these pictures?

6 A. I took all those pictures.

7 Q. And do the photos accurately and fairly
8 depict the sites condition as you observed them that
9 day?

10 A. I believe they do.

11 Q. Okay. I'm now going to hand you another
12 exhibit that I've identified as Exhibit 2.

13 MR. BRENNER: And I'd like the record to
14 reflect I'm also handing a copy of this same exhibit to
15 Mr. Kimmel, as well as the hearing officer.

16 BY MR. BRENNER:

17 Q. And Mr. Terry, I'm going to ask you, again,
18 to identify what that document is?

19 A. Exhibit 2 is an affidavit, which I signed,
20 indicating that I had done the inspection.

21 There's also a check list showing the
22 different violations which I observed.

23 It also includes my open dump site
24 narrative, which explains what I saw during the

1 inspection of this site.

2 Q. And did you prepare these documents?

3 A. Yes.

4 Q. Do the reports accurately reflect the
5 circumstances and observations at the time of your
6 inspection?

7 A. Yes, I believe they do.

8 MR. BRENNER: Judge, I'd like to move both
9 exhibits at this time.

10 JUDGE WEBB: Exhibits 1 and 2 are admitted
11 into the record.

12 MR. BRENNER: Thank you.

13 BY MR. BRENNER:

14 Q. Do you know where any of the debris came
15 from at this site?

16 A. From talking with Mr. Kimmel it's my
17 understanding that the materials were things and items
18 that were brought to the site by him.

19 Q. Okay. At the time of your inspection were
20 any of the vehicles seen in the photos capable of being
21 driven?

22 A. I do not believe so, no.

23 Q. Do any of the vehicles that appear in these
24 photos appear to be unused for at least seven days prior

1 to the date of your inspection?

2 A. Yes.

3 Q. Would you consider the vehicles abandoned?

4 A. Yes.

5 Q. Do you know how the vehicles got onto the
6 site?

7 A. To my understanding that Mr. Kimmel brought
8 them there.

9 Q. And other than what you've already
10 testified to have you had any other conversations with
11 the Respondent regarding any of these allegations?

12 A. During previous inspections.

13 Q. And can you tell us what he has said about
14 those?

15 A. He just said that, you know, he was using
16 the material, was recycling it, was you know, in the
17 process of trying to get the place cleaned up.

18 Q. And at the time of your inspection could
19 the debris be seen with a naked eye from a public road?

20 A. Yes.

21 Q. In your opinion were any of the violations
22 you noted in your inspection report due to
23 uncontrollable circumstances?

24 A. No.

1 Q. Has the site been issued a permit by the
2 Illinois EPA to store the waste items noted in your
3 inspection?

4 A. No.

5 Q. Prior to July 8th, 2008 had you ever
6 inspected this site?

7 A. Yes.

8 Q. Do you know how many times?

9 A. (No response.)

10 Q. Once? Twice?

11 A. I would say three or four.

12 Q. And do you know of any prior violations on
13 this particular site?

14 A. Yes. There was a previous administrative
15 citation issued against this site.

16 Q. And do you know approximately the date of
17 that violation?

18 A. I believe it was issued in 2006.

19 Q. And was that done by Pollution Control
20 Board order?

21 A. Yes.

22 Q. Okay. I'll get to that later.

23 MR. BRENNER: Judge, that's all I have for
24 this witness at this point.

1 JUDGE WEBB: Okay. Mr. Kimmel, do you have
2 any specific questions for this witness that is separate
3 from the statement you plan to make on your own behalf?

4 MR. KIMMEL: Yeah.

5 CROSS-EXAMINATION BY MR. KIMMEL:

6 Q. There -- none of the stuff can be seen from
7 the road. This white car can't be, right?

8 JUDGE WEBB: That's not a question.

9 MR. KIMMEL: Well, all right.

10 BY MR. KIMMEL:

11 Q. Did you take this picture from the road of
12 that white car?

13 A. No. No.

14 I was asked could I see --

15 Q. How can you sit there or stand there and
16 say you see the stuff from the road when you can't see
17 it from the road?

18 A. You can see some of the material --

19 Q. Very dad gum little of it, because semis
20 across there. There's a house sitting over there.

21 JUDGE WEBB: Mr. Kimmel, you'll be allowed
22 to make your own statement.

23 BY MR. KIMMEL:

24 Q. Did you bother come over and checking

1 before we went to all this crap here to even check to
2 see if I had clean up anything to see if I got it all
3 cleaned up?

4 A. (No response.)

5 Q. Wouldn't that have been the customary thing
6 to do, at least check -- check with the person and see
7 if they even made a good attempt, if nothing else?

8 I mean, you're the man in charge, evidently
9 you and this guy, couldn't you at least have checked to
10 see what we were doing?

11 A. The purpose of the inspection was to verify
12 compliance.

13 Q. Yeah.

14 Did you do a follow up on it to come back
15 and see if we had done anything?

16 A. No.

17 Q. You just went ahead, took us straight on to
18 court?

19 A. Yes.

20 Q. Okay.

21 MR. KIMMEL: That's all, I guess.

22 JUDGE WEBB: Okay. Any redirect?

23 MR. BRENNER: No, but I -- no, but I would
24 like before I rest make -- have -- request some judicial

1 notice of some items, if I may?

2 JUDGE WEBB: Yes.

3 MR. BRENNER: At this point I would like to
4 direct the Board's attention and take judicial notice of
5 it's prior decision in AC 06-21. That is a decision
6 that was made November 2nd, 2006. It is the County of
7 Jackson against Dan Kimmel, the same Respondent here
8 today, the same site code identified here today. And in
9 that order the Pollution Control Board had found him to
10 have violated Section (p) (1), which is a -- the same
11 violation that we are here today for.

12 Therefore, we believe that, of course, is a
13 double violation and will ask the Pollution Control
14 Board to take notice of that and I have stated that in
15 our -- in our administrative citation.

16 I also would like to make note that
17 Mr. Kimmel filed on August 22nd, 2008 a response to the
18 administrative citation. And in that response he
19 admits, essentially, what we're here today for, admits
20 to our allegations.

21 And I'll rest at this point, Judge.

22 JUDGE WEBB: Thank you.

23 Mr. Kimmel, I'll let you make a statement
24 in your own defense.

1 I'll have the court reporter swear you in
2 first so you will be under oath.

3 WHEREUPON, MR. KIMMEL WAS FIRST DULY SWORN; AND THEN
4 TESTIFIED AS FOLLOWS:

5 JUDGE WEBB: Go ahead.

6 MR. KIMMEL: Okay. Make another attempt to
7 clean it up.

8 I been out there since '88. Lot of the
9 stuff ain't been there since then, a lot it has. There
10 is some stuff still on the ground, but he had come back
11 few days ago he could have seen that we were making good
12 effort to clean this mess up. You ain't going to clean
13 up 20 years of stuff -- and it is no landfill. I don't
14 care what you people call it. It is scrap iron, scrap
15 iron. It's just good scrap iron for the most other than
16 that old house that blew up. That's the -- takes a mess
17 to clean up. It's a while. We will be working our
18 butts off on it. Can only do so much in a day when you
19 get off at four o'clock.

20 And he really wants to see a dump site go
21 out to the same guy that turn me in, his across from the
22 dad gum landfill. You can see his junk from the road.
23 They ain't out on his ass like they are on me.

24 I feel I been highly harassed by a man, he

1 is bucking for stripes. That's all I got to say.

2 JUDGE WEBB: Mr. Brenner?

3 MR. BRENNER: I have nothing -- I have no
4 questions for Mr. Kimmel.

5 MR. KIMMEL: I would like say one thing: I
6 am doing the best I could do by myself to clean the mess
7 up. I just want some time to clean it up.

8 Fining me is not going to do nobody no good
9 except get the county a bunch of money, I guess the
10 Pollution Board. I don't know who gets the money.

11 JUDGE WEBB: Is that it?

12 MR. KIMMEL: Yeap.

13 JUDGE WEBB: Okay. January 30th. The same
14 briefing schedule as before?

15 MR. BRENNER: Yes.

16 JUDGE WEBB: Okay. The transcript of these
17 proceedings will be available from the court reporter by
18 December 16th and will be posted on the Board's web
19 site.

20 The public comment deadline is
21 December 30th. Any public commenting must filed in
22 accordance with Section 101.628 of the Board's
23 procedural rules.

24 The complainant's brief is due by

1 January 30th and the Respondent's brief, if any, is due
2 by February 27th.

3 Mr. Brenner, would you like to make any
4 closing argument?

5 MR. BRENNER: No, Judge, I would not.

6 JUDGE WEBB: Mr. Kimmel, would you like to
7 make any closing argument?

8 MR. KIMMEL: No. I guess I done said what
9 I wanted to say.

10 JUDGE WEBB: Okay. I will note that there
11 are no members of the public that want to make any
12 statements on this record, so I will proceed to make a
13 statement as to the credibility of witnesses testifying
14 during this hearing: Based on my legal judgment and
15 experience I find both of the witnesses testifying to be
16 credible.

17 At this time I will conclude the
18 proceedings.

19 And I thank all of you for your
20 participation in this phase.

21 MR. KIMMEL: I would like to ask one
22 question though after --

23 JUDGE WEBB: We're off the record.

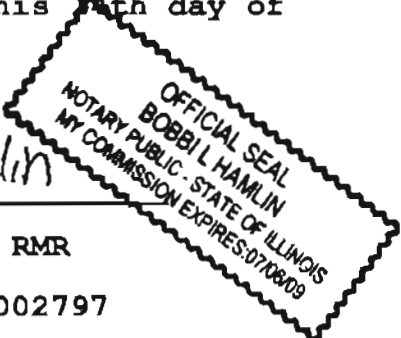
24

1 STATE OF MISSOURI.)
2) SS
3 COUNTY OF JEFFERSON)
4

5 I, Bobbi L. Hamlin, a Notary Public in and for
6 the County of Jefferson, State of Missouri, DO HEREBY
7 CERTIFY that pursuant to agreement between the parties
8 the following hearing was held before me on December 4,
9 2008, at The Jackson County Courthouse, Murphysboro,
10 Illinois, parties were first duly sworn by me to tell
11 the whole truth of all knowledge touching upon the
12 matter in controversy aforesaid so far as the witnesses
13 should be interrogated concerning the same; that the
14 witnesses were examined and said examination was taken
15 down in shorthand by me and afterwards transcribed upon
16 the typewriter and said hearing is herewith returned.

17
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my Notarial Seal this 7th day of
20 December, 2008.

21 *Bobbi Hamlin*



22 Notary Public, CCR, RMR
23 Illinois License #084-002797
24 My Commission Expires June 26, 2009

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|---|--|---|---|---|
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