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ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Complainant,)	
vs.)	AC 06-50
)	(IEPA No. 98-06-AC)
MARK GATES,)	(Administrative Citation)
Respondent.)	

The following is the transcript of a hearing held in the above-captioned 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 Webb, Hearing Officer, at 601 Broadway Street, Room 36, Lincoln, Illinois, on the 23rd day of January, a.D. 2008, commencing at 9:05 a.m.

1 PRESENT:

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD
4 1021 North Grand Avenue East
5 Springfield, Illinois 62794-9274
6 (217) 524-8509
7 BY: CAROL WEBB

6 APPEARANCES:

7 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
8 BY: MICHELLE M. RYAN, ESQUIRE
9 Attorney at Law
10 1021 North Grand Avenue East
11 P.O. Box 19276
12 Springfield, Illinois 62794-9276
13 (217) 782-5544
14 On Behalf of the Complainant.

11 MARK GATES
12 (Appeared PRO SE)

13 NO MEMBERS OF THE PUBLIC WERE PRESENT

15 I N D E X

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1 HEARING OFFICER WEBB: Good morning. My name is
2 Carol Webb. I'm a hearing officer with the Pollution
3 Control Board. This is AC 06-50, IEPA versus Mark
4 Gates. It is January 23rd, 2008. We are beginning at a
5 few minutes after 9 a.m. I will note for the record
6 that Mr. Gates is not here. We have not heard from him
7 for a couple of months. So we are going to go ahead and
8 begin without him. I will also note for the record that
9 there are no members of the public present. Members of
10 the public are allowed to provide public comment if they
11 so choose.

12 At issue in this case is the EPA's allegation
13 that Respondent violated section 21(p)(1) and (p)(7) of
14 the Environmental Protection Act at a site in rural
15 Logan County.

16 You should know that it is the Pollution
17 Control Board and not me that will make the final
18 decision in this case. My purpose is to conduct the
19 hearing in a neutral and orderly manner so that we have
20 a clear record of the proceeding. I will also assess
21 the credibility of any witnesses on the record at the
22 end of the hearing. This hearing was noticed pursuant
23 to the Act and the Board's rules and will be conducted
24 pursuant to sections 101.600 through 101.632 of the

1 Board's procedural rules.

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

4 MS. RYAN: Michelle Ryan, special assistant
5 attorney general for the Illinois EPA. I have my formal
6 appearance here. That's the original on top, and there
7 is a copy for you if you like.

8 HEARING OFFICER WEBB: Thank you. Again, I will
9 note that the respondent is not present.

10 Are there any preliminary matters you would
11 like to discuss?

12 MS. RYAN: No.

13 HEARING OFFICER WEBB: Okay. Would you like to
14 make an opening statement?

15 MS. RYAN: Yes. We believe that the evidence today
16 will show that on April 26th, 2006, open dumping
17 resulting in the deposition of litter and construction
18 or demolition debris occurred at the property known as
19 the Lewis property near -- outside of -- well, in Logan
20 County in Illinois.

21 HEARING OFFICER WEBB: Thank you. You may call
22 your first witness.

23 MS. RYAN: I call Michelle Cozadd.

24

1 (Witness sworn.)

2 MICHELLE E. COZADD,

3 called as a witness, after being first duly sworn, was

4 examined and testified upon her oath as follows:

5 DIRECT EXAMINATION

6 BY MS. RYAN:

7 Q Could you state your name again and spell
8 your last name for the court reporter?

9 A Michelle Cozadd, C-o-z-a-d-d.

10 Q What is your job?

11 A I'm a field inspector with the Illinois
12 Environmental Protection Agency.

13 Q What regional office is that?

14 A Springfield regional office.

15 Q How many years have you been a field
16 inspector for EPA?

17 A I have been at the Springfield regional
18 office since March of 1995. I have also held various
19 other positions with the EPA since June of 1992.

20 Q What are your duties as a field inspector?

21 A I conduct inspections of open dumps,
22 hazardous and nonhazardous waste generators, sanitary
23 landfills, waste transfer stations and compost
24 facilities. I also conduct investigations of citizen

1 complaints.

2 Q Approximately how many inspections have you
3 conducted since you were working as a field inspector?

4 A I have conducted over 800 inspections with
5 about 400 of those inspections being open dump
6 inspections.

7 Q What is your educational background?

8 A I have a bachelor of science degree in
9 secondary education from the University of Illinois at
10 Urbana-Champaign. I also have completed 38 semester
11 hours of graduate coursework in environmental studies
12 from the University of Illinois in Springfield,
13 Illinois. I have also attended various seminars and
14 workshops pertaining to open dumping including, in
15 October of 1996, Criminal Environmental Enforcement for
16 Regulators course.

17 Q Are you familiar with the property known as
18 the Lewis property near Lincoln in Logan County?

19 A Yes.

20 Q Where approximately is that property located?

21 A The property is located about one half mile
22 east of Union, Illinois, off of County Road 2550 North
23 in Logan County.

24 Q How many inspections have you conducted at

1 this property?

2 A I have conducted six inspections starting in
3 the summer of 1998.

4 Q With whom did you communicate regarding your
5 inspections of this property?

6 A Mr. Mark Gates.

7 Q Did you speak to anyone else regarding this
8 particular site?

9 A No.

10 Q On April 26th, 2006, who appeared to be in
11 operational control of this site?

12 A Mr. Gates.

13 Q I'm going to hand you what I have marked as
14 Exhibit 1. Can you tell me if you recognize that
15 document?

16 A Yes.

17 Q What is it?

18 A It's my inspection report from April 26th,
19 2006.

20 Q Please look through all the pages there.

21 A (Witness complies.)

22 Q And other than the extraneous printing on the
23 photo pages, which I mentioned prior to the hearing
24 beginning today, does this appear to be a fair, accurate

1 and complete copy of the report that you have put
2 together?

3 A Yes.

4 Q Can you describe this piece of property in
5 general?

6 A The site is mostly a wooded area. It has a
7 common driveway running through it. There is an open
8 area that contains a large storage shed on it.

9 Q Who took the photographs attached to this
10 report?

11 A I did.

12 Q If we can start with photograph number 1, can
13 you describe what is shown in the photograph?

14 A The first six photographs are taken near the
15 entrance of the site. The photographs include one
16 abandoned mobile home, a large yellow storage box, vinyl
17 siding, corrugated metal siding, a metal table, a pile
18 of bricks and telephone poles. These materials have
19 been at the site in this same general vicinity since my
20 first inspection back in 1998. There appears to have
21 been no change to the condition of these materials since
22 1998.

23 Photo number 7 shows a second abandoned
24 mobile home that has been brought to the property and

1 has been at the location since about 2002. The other
2 materials are taken near the area of the large storage
3 shed.

4 Photos 8 through 16 show various waste
5 materials including vinyl siding, drywall, shingles,
6 damaged dimensional lumbar, scrap metal, a metal
7 bathtub, used tires and wood pallets.

8 Q The drywall that you referred to, is that
9 shown there in the center of photograph 11?

10 A It is. That material has been there exposed
11 to the weather since 2002 along with the other
12 materials.

13 Q And which of the photographs in here, if any
14 of them -- which of the photographs attached to the
15 report show demolition debris on the property?

16 A General construction or demolition debris can
17 be shown in photo 1, photo 2, photo 3, photo 4, photo 5,
18 photo 6 -- strike number 5 -- number 8, number 10,
19 number 11, number 12, number 13, number 14, number 15,
20 and number 16. Number 9 shows an area where there has
21 been a mobile home and scrap metal that has been removed
22 from the area since the last inspection conducted on May
23 24th, 2005.

24 Q In photograph number 15 on the bottom left

1 area of the photograph can you identify what that
2 material is there?

3 A That appears to be scrap metal rebar.

4 Q Do these photographs accurately depict what
5 you saw on the site on April 26th, 2006?

6 A Yes.

7 Q When was this report generated?

8 A This report was generated on May 3rd, 2006.

9 Q Does Illinois EPA keep these reports in the
10 regular course of its business?

11 A Yes.

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

13 HEARING OFFICER WEBB: Exhibit 1 is admitted into
14 evidence.

15 MS. RYAN: And that's all we have.

16 HEARING OFFICER WEBB: Okay. Respondent is not
17 here to present his case. Should I go out and check?
18 Is somebody coming?

19 (Pause in proceedings.)

20 (Mr. Gates entered the Hearing.)

21 HEARING OFFICER WEBB: Mr. Gates just arrived just
22 in time to present his case. Mr. Gates, come in,
23 please. You're just in time to present your case. You
24 did miss the EPA witness testifying, but you may present

1 your case.

2 MS. RYAN: This is my appearance and the exhibit
3 that we entered today.

4 (Off the record.)

5 HEARING OFFICER WEBB: We are going back on the
6 record. We have filled in Mr. Gates on what has
7 happened so far. He would like an opportunity to
8 question the EPA's witness, Ms. Cozadd, about some of
9 the photographs that she took. And we are now going to
10 give him an opportunity to do so.

11 Mr. Gates.

12 MR. GATES: Thank you, ma'am.

13 CROSS-EXAMINATION

14 BY MR. GATES:

15 Q These pictures that are -- that have been
16 presented today, you took all these pictures?

17 A Yes.

18 Q And you took these with my presence or
19 without my presence?

20 A Without your presence.

21 Q Did you take these pictures with anyone's
22 permission to be on the property?

23 A Did I have written permission or verbal
24 permission? No. I was in the area conducting other

1 inspections. And it had been a year since I had been
2 out there last, and so I went and I took a look at the
3 site and wrote up my report.

4 Q As of this date, do these pictures still
5 represent the status of the property; do you know?

6 A I haven't been out there since April 26th,
7 2006.

8 Q What exactly -- according to the complaint it
9 says approximately 100 yards of waste. What exactly are
10 you considering the waste? Can you inform me of that or
11 explain that to me?

12 A The waste materials at the site are shown in
13 the pictures. 100 is a very conservative estimate on my
14 part. And there appears to be more if you want to take
15 into account the yardage of the mobile home and all the
16 other materials that are present in the pictures.

17 MR. GATES: I have nothing further at this time.

18 HEARING OFFICER WEBB: Okay. So you don't have any
19 more questions for Ms. Cozadd?

20 MR. GATES: No, ma'am.

21 HEARING OFFICER WEBB: All right. Thank you.

22 Mr. Gates, you may now have a seat in the witness chair
23 to make a statement on your own behalf.

24 Oh, I'm sorry. Did you have any questions?

1 MS. RYAN: No. I'm good.

2 HEARING OFFICER WEBB: I'm sorry. I assumed you
3 would have piped up.

4 MS. RYAN: I would have.

5 (Witness sworn.)

6 HEARING OFFICER WEBB: You may go ahead and make
7 your statement.

8 MARK GATES,

9 called as a witness, after being first duly sworn, was
10 examined and testified upon his oath as follows:

11 MR. GATES: Pursuant to this cause that we are here
12 for today, I disagree with the course that got us here.
13 I have -- from day one I always tried to cooperate with
14 the EPA. And I have always asked that anyone that wants
15 to investigate the site or take pictures of the site are
16 allowed to as long as I'm present. Presently, I have a
17 court order in my divorce proceeding barring me from
18 getting on the property or being allowed even near the
19 property which has been in effect since my divorce
20 proceeding that was started January the 4th of 2007.

21 A portion of this property belongs to my
22 ex-wife. And the remaining items that are there, if I
23 am found guilty, I have no way to remove the property
24 without going in contempt of another court order in the

1 first place. So I feel my hands are tied and don't know
2 which way to proceed either way in this cause of action.

3 I feel that these proceedings have been
4 initiated by a lot of the parties that aren't here
5 today. And, consequently, half of the parties have
6 either moved on to other jobs or moved from the
7 property. And I hate having the EPA be the enforcement
8 arm for local officials who either failed or don't want
9 to do their job. And that's all I can state at this
10 point.

11 HEARING OFFICER WEBB: Ms. Ryan?

12 MS. RYAN: I don't have any questions. Thanks.

13 HEARING OFFICER WEBB: Okay. Thank you, Mr. Gates.

14 MR. GATES: Thank you.

15 HEARING OFFICER WEBB: Before we hear closing
16 arguments, let's go off the record to discuss a briefing
17 schedule.

18 (Discussion off the record.)

19 HEARING OFFICER WEBB: We have just had an
20 off-the-record discussion regarding post hearing briefs.
21 The parties have agreed to a briefing schedule as
22 follows: First, the transcript of these proceedings
23 will be available from the court reporter by February
24 4th and will be posted on the Board's website. The

1 public comment deadline is February 13th. Any public
2 comment must be filed in accordance with section 101.628
3 of the Board's procedural rules. The complainant's
4 brief is due by February 19th. Respondent's brief is
5 due by March 4. And Complainant's reply, if needed, is
6 due by March 11th, and the mailbox rule will apply.

7 Ms. Ryan, would you like to make any closing
8 arguments?

9 MS. RYAN: No. I would like to reserve that for my
10 brief. Thank you.

11 HEARING OFFICER WEBB: Mr. Gates, would you like to
12 make any closing arguments?

13 MR. GATES: Not at this time.

14 HEARING OFFICER WEBB: Again, there are no members
15 of the public present to make any comments so I will
16 proceed to make a statement as to the credibility of the
17 witnesses testifying during this hearing. Based on my
18 legal judgment and experience, I find both of the
19 witnesses testifying to be credible. At this time I
20 will conclude the proceedings. We stand adjourned. I
21 thank you all for your participation.

22

23 (Whereupon, the proceedings concluded
24 at 9:20 a.m.)

1 STATE OF ILLINOIS)
)
2 COUNTY OF PEORIA)

3

4 CERTIFICATE OF REPORTER

5

6 I, GALE G. EVERHART, CSR-RPR, Notary Public in and
7 for the County of Peoria, State of Illinois, do hereby
8 certify that the foregoing transcript, consisting of
9 pages 1 through 16, both inclusive, constitutes a true
10 and accurate transcript of the original stenographic
11 notes recorded by me of the foregoing proceedings had
12 before Hearing Officer Carol Webb, in Lincoln, Illinois,
13 on the 23rd of January, 2008.

14

15 Dated this 29th day of January, 2008.

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

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