

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4       ILLINOIS ENVIRONMENTAL PROTECTION

5       AGENCY,

6           Complainant,

7       vs.

PCB No. AC 01-005

8       BILLY HAMMOND, SR.(WEST CITY/BILLY

9       HAMMOND, SR.)

10           Respondent.

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15           Proceedings held on August 14, 2001 at 9:03 a.m., at the

16       West Frankfort City Hall, Council Room, 201 East Nolen Street,

17       West Frankfort, Illinois, before Hearing Officer Steven C.

18       Langhoff.

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21           Reported by: Darlene M. Niemeyer, CSR, RPR

CSR License No.: 084-003677

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A P P E A R A N C E S

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
BY: Michelle M. Ryan  
John J. Kim  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
On behalf of the Illinois EPA.

No appearance on behalf of Respondent.

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I N D E X

WITNESS	PAGE NUMBER
KENT JOHNSON Direct Examination by Ms. Ryan	7

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Hearing Exhibit 1	8	13

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1 P R O C E E D I N G S

2 (August 8, 2001; 9:03 a.m.)

3 HEARING OFFICER LANGHOFF: Good morning, everyone. My name  
4 is Steven Langhoff. I am the Pollution Control Board Hearing  
5 Officer who is handling this matter, and I will be holding the  
6 hearing today. This is AC 01-005, Illinois Environmental  
7 Protection Agency versus Billy Hammond, Sr.

8 For the record, it is Tuesday, August 14th, 2001, and we  
9 are beginning at 9:03 a.m. I want to note for the record that  
10 there are no members of the public present. Members of the  
11 public are encouraged and allowed to provide public comment if  
12 they so choose.

13 On July 24th of 2000, the Illinois Environmental Protection  
14 Agency, the Agency, or complainant, issued an administrative  
15 citation to Billy Hammond, Sr., the respondent. On August 14th  
16 of 2000, the respondent filed a petition for review. The Board  
17 accepted this matter for hearing on August 24th of 2000.

18 At issue in this case are allegations made in an  
19 administrative citation filed by the Agency. The violations  
20 alleged in the administrative citation are for open dumping, a  
21 violation of 21(p)(1) of the Environmental Protection Act, and  
22 for deposition of general construction or demolition debris or  
23 clean construction or demolition debris, a violation of 21(p)(7)  
24 of the Environmental Protection Act.

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1           I want to take a brief moment to let you know what is going  
2 to happen today and after the hearing today. You should know  
3 that it is the Pollution Control Board, and not me, that will  
4 make the final decision in this case. My job as a Hearing  
5 Officer requires that I conduct the hearing in a neutral and  
6 orderly manner so that we have a clear record of the proceedings  
7 here today. It is also my responsibility to assess the  
8 credibility of any witnesses giving testimony today, and I will  
9 do so on the record at the conclusion of the proceedings.

10           We will begin with an opportunity for opening statements  
11 from the parties and then we will proceed with the Agency's case  
12 followed by Mr. Hammond having an opportunity to put on a case in  
13 his behalf. We will conclude any closing arguments that the  
14 parties wish to make and then we will discuss off the record a  
15 briefing schedule, which will be set on the record at the  
16 conclusion of the proceedings.

17           For the record, the respondent, Billy Hammond, Sr., is not  
18 present today at this hearing.

19           The Board's procedural rules and the Act provide that  
20 members of the public shall be allowed to speak or submit written  
21 statements at hearing. Any person offering such testimony today  
22 shall be subject to cross-examination by both of the parties.  
23 Any such statements offered by members of the public must be  
24 relevant to the case at hand. I will call for any statements

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1 from members of the public at the conclusion of the proceedings.

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

5 At this time I will ask the parties to make their  
6 appearances on the record, beginning with the Agency.

7 MS. RYAN: I am Michelle Ryan. I am Assistant Counsel for  
8 the Illinois EPA. I have with me also John Kim, another  
9 Assistant Counsel for the Illinois EPA. And our witness here is  
10 Kent Johnson.

11 HEARING OFFICER LANGHOFF: Okay. Thank you, Ms. Ryan. Do  
12 we have any preliminary matters that need to be discussed on the  
13 record?

14 MS. RYAN: No.

15 HEARING OFFICER LANGHOFF: Thank you. Are there any  
16 outstanding or prehearing motions that the parties would like to  
17 present before we proceed?

18 MS. RYAN: No.

19 HEARING OFFICER LANGHOFF: Thank you. Would the Agency  
20 like to give a brief opening statement on behalf of their client?

21 MS. RYAN: No, we will waive opening statements.

22 HEARING OFFICER LANGHOFF: Okay. Thank you. Go ahead with  
23 your case-in-chief.

24           Would you swear in the witness, please.

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1           (Whereupon the witness was sworn by the Notary Public.)

2                           K E N T   J O H N S O N ,

3   having been first duly sworn by the Notary Public, saith as  
4   follows:

5   DIRECT EXAMINATION

6   BY MS. RYAN:

7           Q.   Can you state your name for the record.

8           A.   Kent Johnson.

9           Q.   And where are you employed?

10          A.   With the Illinois Environmental Protection Agency.

11          Q.   How many years have you been there?

12          A.   Since May of 1992.

13          Q.   What are your duties as an employee?

14          A.   I am a field inspector for the Bureau of Land.  I  
15   inspect solid waste, hazardous waste, and tire facilities.

16          Q.   Approximately how many inspections have you conducted  
17   over your years at the Illinois EPA?

18          A.   I don't have an exact number, but in the hundreds.

19          Q.   The hundreds.  Are you familiar with the property known  
20   as West City/Billy Hammond, Sr.?

21          A.   I am.

22          Q.   Have you conducted inspections at that property?

23          A.   I have.

24 MS. RYAN: I have another one here for you if you want to

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1 follow along.

2 HEARING OFFICER LANGHOFF: Okay. Thank you.

3 (Whereupon a document was duly marked for purposes of  
4 identification as Illinois EPA Exhibit 1 as of this date.)

5 Q. (By Ms. Ryan) I am handing you what we marked as  
6 Illinois EPA Exhibit Number 1. Do you recognize that document?

7 A. I do.

8 Q. Can you describe what that is?

9 A. It is an inspection report from an inspection conducted  
10 on June 30th of the year 2000.

11 Q. Who conducted that inspection?

12 A. I did.

13 Q. If you can look through the pages there, does that -- is  
14 that a fair, accurate, and complete copy of your inspection  
15 report?

16 A. It is.

17 Q. Can you describe the property that is the subject of  
18 that inspection report?

19 A. The property is owned by Billy Hammond, Sr., and it is  
20 located in West City. The property is located at the  
21 intersection of Clay and Mason Streets, the southeast corner,  
22 consisting of one or two lots. I don't recall exactly. But it

23 is a remote property. No one lives on the site. At least at the  
24 time of this inspection there was no one living at the site.

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1 There is a house on site. And there is vegetation. There is a  
2 wooded area to the south end and an open area to the north. The  
3 areas of concern are in the open areas and at the edges of the  
4 wooded areas.

5 Q. Can you look for me, please, at the first photograph in  
6 your report and describe what you see there?

7 A. At the -- toward the eastern side of the site there is  
8 an intermittent ditch that comes through the property. This is a  
9 photo of debris and water.

10 Q. Did you take that photograph?

11 A. I did.

12 Q. Does it accurately depict what you saw on the day you  
13 were out there?

14 A. It does.

15 Q. And photograph number two, on the same page?

16 A. Photo number two is close to the same area, again,  
17 towards the east side of the site. It depicts demolition debris  
18 intermingled with vegetation in basically a depression area.

19 Q. Just to make this a little shorter, you took all of the  
20 photographs attached to this report?

21 A. I did.

22 Q. Okay. Then in photograph number three, what do you see

23 there?

24 A. Photo number three is an area slightly to the west of

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1 the ditch area. It is basically showing some debris intermingled  
2 with soil on the ground.

3 Q. Does that accurately depict what you saw that day?

4 A. It does.

5 Q. And photograph number four?

6 A. Again, kind of an overview of the central and eastern  
7 portions of the site. There is some miscellaneous debris  
8 intermingled with the soil, and light vegetation in and around  
9 that area.

10 Q. And I think we are on photograph number five.

11 A. Yes.

12 Q. I am losing track of numbers.

13 A. Photograph number five is, as I recall, on the west side  
14 of the site. (The witness reviewing documents.) Yes, it is on  
15 the west side of the site. Basically this is an area that has  
16 demolition debris, concrete, wood, and some vegetation in it. At  
17 that point the back end of this falls off towards the depression  
18 area going to the wooded area. It is a height of approximately,  
19 I would estimate, four feet.

20 Q. Okay. Photograph number six?

21 A. Again, kind of the same area, demolition debris and

22 concrete and there is a little bit of metal in that particular  
23 photo in and around the vegetation. Some wood is visible.  
24 Again, this is kind of a close up of the same general area.

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1 Q. Okay. And if we could skip down --

2 A. Okay.

3 Q. -- to photo number ten. What do you see there?

4 A. Photo number ten is towards the north end of the site.  
5 There is some miscellaneous metal and what appears to be a small  
6 tank of some sort that was at the -- basically at the corner of  
7 the site around the driveway.

8 Q. Okay. Do all these photos that we have discussed fairly  
9 and accurately depict what you saw at the property on June 30th  
10 of 2000?

11 A. They do.

12 Q. And you mentioned that Billy Hammond, Sr., owned the  
13 property. How did you make that determination?

14 A. The original complaint alleged that Mr. Hammond owned  
15 the property. After doing the inspection I went to the court  
16 house and did a deed search and determined that by contract for  
17 deed Mr. Hammond was buying the property.

18 Q. This inspection report that you have in your hand, this  
19 is kept by you in the regular course of your business?

20 A. It is.

21 Q. Do you complete an inspection report every time you

22 conduct an inspection?

23 A. I do.

24 Q. If you look through all of the photos there can you

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1 describe for me which photos, if any, where you see general  
2 construction or demolition debris or clean construction or  
3 demolition debris deposited on the property?

4 A. Ones where it is readily visible, there is a little of  
5 it shown in photo one. It is visible in photo two. In photos  
6 five and six and photo seven. There is a distant shot in photo  
7 nine. Photo eleven, and photo twelve, there is demolition debris  
8 barely visible, and photo thirteen.

9 Q. Are there photographs there that show waste materials  
10 other than construction demolition debris?

11 A. To a lesser extent, photo three and photo four show  
12 something that may or may not be demolition debris. It is  
13 difficult to tell since it is intermingled with the soil. Photo  
14 ten, with the metal and the -- I called it a tank, I believe it  
15 is.

16 Q. Based on this inspection and your observations and the  
17 photographs that you took, did you make the determination that  
18 there were violations of Section 21(p)(1) and 21(p)(7) of the Act  
19 at this property on the date?

20 A. I did.

21 MS. RYAN: Thank you. I don't have anything further.  
22 HEARING OFFICER LANGHOFF: Thank you, Mr. Johnson.  
23 (The witness left the stand.)  
24 HEARING OFFICER LANGHOFF: Would you like to offer Illinois

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1 EPA Exhibit Number 1?  
2 MS. RYAN: I am sorry. Yes, I would.  
3 HEARING OFFICER LANGHOFF: Okay. That will be admitted.  
4 (Whereupon said document was duly admitted into evidence as  
5 Illinois EPA Exhibit 1 as of this date.)  
6 HEARING OFFICER LANGHOFF: Anything further?  
7 MS. RYAN: No, I don't have anything further.  
8 HEARING OFFICER LANGHOFF: Okay. Thank you. Let's go off  
9 the record for a minute.  
10 (Discussion off the record.)  
11 HEARING OFFICER LANGHOFF: Okay. We will go back on the  
12 record.  
13 We have just had an off-the-record discussion regarding the  
14 filing of post hearing briefs. The Agency has agreed to a  
15 briefing schedule. Before we get to any closing arguments, if  
16 there are any, I will go ahead and read that schedule into the  
17 record.  
18 The transcript of these proceedings will be available from  
19 the court reporter by August 24th. I will establish a short  
20 public comment period of 14 days, or September 10th. The parties

21 know to talk to the court reporter following the hearing  
22 regarding the availability of the transcript. The Agency's brief  
23 will be due by September 10th. The mailbox rule will not apply.  
24 The respondent's brief, if any, will be due by September 24th.

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1 The mailbox rule will not apply.

2 The transcript is usually put on the Board's web site  
3 within a few days of its availability. I would just like to note  
4 that our web site address is [www.ipcb.state.il.us](http://www.ipcb.state.il.us). All post  
5 hearing comments must be filed in accordance with Section 101.628  
6 of the Board's procedural rules. The mailbox rule set forth at  
7 35 Ill. Admin. Code 101.102(d) and 101.144(c) will apply to these  
8 post hearing filings or public comments.

9 Okay. Are there any closing arguments from the Agency?

10 MS. RYAN: No.

11 HEARING OFFICER LANGHOFF: Okay. Anything further before  
12 we conclude?

13 MS. RYAN: No.

14 HEARING OFFICER LANGHOFF: Okay. At this time I want to  
15 note again for the record that there are no members of the public  
16 present.

17 I am required to make a statement as to the credibility of  
18 witnesses testifying during this hearing. This statement is to  
19 be based on my legal judgment and experience and, accordingly, I

20 state that I find Mr. Johnson's testimony to be credible.  
21 Credibility should not be an issue for the Board to consider in  
22 rendering a decision in this case.

23 At this time I will conclude the proceedings. It is  
24 Tuesday, August 14th, 2001, at approximately 9:20 a.m. and we

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1 stand adjourned.

2 Thank you all for your participation. Everyone have a good  
3 day and a good drive.

4 MS. RYAN: Thank you.

5 MR. KIM: Thank you.

6 (Illinois EPA Exhibit 1 was retained by Hearing  
7 Officer Steven C. Langhoff.)

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

3 C E R T I F I C A T E

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5 I, DARLENE M. NIEMEYER, a Notary Public in and for the  
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that  
7 the foregoing 15 pages comprise a true, complete and correct  
8 transcript of the proceedings held on the 14th of August A.D.,  
9 2001, at 20 East Nolen Street, West Frankfort, Illinois, in the  
10 case of Illinois Environmental Protection Agency v. Billy  
11 Hammond, Sr.(West City/Billy Hammond, Sr.), in proceedings held  
12 before Hearing Officer Steven C. Langhoff, and recorded in  
13 machine shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed  
15 my Notarial Seal this 14th day of August A.D., 2001.

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Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

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CSR License No. 084-003677

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My Commission Expires: 03-02-2003

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