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ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Vs.

No. AC-04-82

JOHN BROWN, d/b/a JOHN
BROWN PAINTING,

Respondent.

Proceedings held on November 9, 2004, at 12:00
P.m. at the offices of City Hall, 106 West 5th Street,
Metropolis, Illinois, Before Carol Webb, Chief Hearing
Officer.

VOLUME I

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ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Vs.

No. AC-04-82

JOHN BROWN, d/b/a JOHN
BROWN PAINTING,

Respondent.

APPEARANCES:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
By: Ms. Michelle M. Ryan
1001 North Grand Avenue East
Springfield, Illinois 62794
On Behalf of Illinois EPA

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Hearing Officer: Ms. Carol Webb
001 North Grand Avenue East
Springfield, Illinois 62794
On Behalf of Illinois EPA

For Respondent: John Brown & Kim Brown

2 (November 9, 2004, 12:00 p.m)

3 HEARING OFFICER WEBB: Good morning. My name

is

4 Carol Webb, and I'm a hearing officer with Pollution

Control

5 Board. This is the hearing for AC 04-82, IEPA v. John

Brown,

6 d/b/a John Brown Painting. It is November 9, 2004, and we

are

7 beginning at 12:00 p.m.

8 I want to note for the record that there are

no

9 members of the public present. Members of the public are

10 allowed to provide public comment if they so choose.

11 At issue in this case is the EPA's allegation

that

12 Mr. Brown violated the Environmental Protection Act by

allowing

13 the open dumping of waste at 955 Country Club Road in

14 Metropolis, Massac County.

15 You should know that it is the Pollution

Control

16 Board, and not me, that will be make the final decision in

this

17 case. My purpose is to conduct the hearing in a neutral

and

18 orderly manner so that we have a clear record of the

19 proceedings.

20 I will also assess the credibility of any

21 witnesses on the record at the end of the hearing.

22 This hearing was noticed pursuant to the Act

and

23 the Board's rules and will be conducted pursuant to

Sections

24 101.600 through 101.632 of the Board's procedural rules.

their 1 At this time I will ask the parties to make
2 appearances on the record.

3 MS. RYAN: Michelle Ryan, Special Assistant
4 Attorney General for the Illinois EPA, and I have my
formal 5 appearance here.

6 HEARING OFFICER WEBB: And Mr. Brown, you are
here 7 representing yourself; is that correct?

8 MR. BROWN: Yes, ma'am.

9 HEARING OFFICER WEBB: Are there any
preliminary 10 matters to discuss on the record?

11 MS. RYAN: No.

12 HEARING OFFICER WEBB: Ms. Ryan, would you
like to 13 make an opening statement?

14 MS. RYAN: Just a brief one. We believe the
15 evidence will show today that on April 7, 2004 open
dumping 16 resulting in litter and the deposition of general
construction 17 of demolition debris occurred at the site at 955 Country
Club 18 Road in Massac County, Illinois.

19 HEARING OFFICER WEBB: Mr. Brown, would you
like to 20 make an opening statement? You're not required to do so,
if 21 you don't want to.

22 MR. BROWN: No.

present 23 HEARING OFFICER WEBB: Ms. Ryan, you may
24 your case.

5

1 MS. RYAN: I call Ken Johnson.

testified as 2 KEN JOHNSON, having been duly sworn,
3 follows:

record? 4 Q. (By Ms. Ryan) Can you state your name for the

5 A. Ken Johnson.

6 Q. And in April of this year, what was your job?

7 A. Worked for the Bureau of Land as an Environmental
hazardous 8 Protection Specialist, conducting inspections for
9 waste, solid waste, making sure it's with compliance.

10 Q. For how many years was that your occupation?

11 A. Just short of twelve years at that time.

12 Q. And can you describe your duties in that role?

the 13 A. Conduct inspections to determine compliance with

as 14 Environmental Protection Act in regulation on issues such
15 open dumping, landfills, hazardous waste, things of that
16 nature.

17 Q. Over the almost twelve years that you worked as an
you 18 inspector, approximately how many inspections do you think
19 conducted?

20 A. I have no kept record, but several hundred any way.

21 Q. What's your educational background?

22 A. I have a Bachelor's degree in aquatic biology.

23 Q. From?

24 A. Bemidji State University in Bemidji, Minnesota.

6

1 Q. And do you have any other training apart from your
2 educational background?

3 A. Ongoing training through Illinois EPA consisting of
4 inspection protocol, inspection training, investigation
5 training, anything of that nature.

Club 6 Q. Are you familiar with the property at 955 Country
7 Road, north of Metropolis?

8 A. I am.

property 9 Q. Can you describe more specifically where that
10 is located?

a 11 A. It's located basically just north of Metropolis, in
12 light residential area, as I said, on Country Club Road,
13 situated north of that road. It's a residence.

14 Q. And back in April of last year, who owned that
15 property?

16 A. To my knowledge, it was John and Kim Brown.

property? 17 Q. Have you conducted any inspections at that

18 A. I have.

19 Q. How many?

20 A. Two.

1. 21 Q. I'm going to hand you what I've marked as Exhibit

22 Can you tell me whether you recognize that document?

23 A. I do.

24 Q. What is it?

7

inspection 1 A. It is an open dump inspection report for the

2 that was conducted on April 7, 2004.

me? 3 Q. Can you page all the way through that document for

4 A. I have.

the 5 Q. Is that a fair and accurate and complete copy of

6 report that you prepared?

7 A. It appears to be, yes.

8 Q. Can you describe the property that's the subject of
9 this inspection generally?

the 10 A. Property is kind of a light residential area. It's
11 property consisting of a home and some equipment behind

property. 12 home. The area of concern is toward the rear of the

13 Q. You said some equipment?

usually 14 A. Some equipment, there's some trucks and things

15 parked there.

16 Q. Okay.

17 A. I believe from the business that Mr. Brown has.

18 Q. Who took the photographs that are attached to that

19 report?

20 A. As I recall, I did.

21 Q. And what do they show?

22 A. Photo one shows an area consistent of some
landscape
23 waste. Some -- it's primarily construction demolition
debris,
24 and a small amount of other material. All three photos

8

1 basically show the same area from different perspectives,
and
2 different angles.

3 Q. Can you tell us what the -- I'm not sure how to
word
4 this, the type of material that's out there?

5 A. As I said, the bulk of material consisted of
6 construction demolition debris. There were small amounts
of
7 other material, but the majority of it was construction
8 demolition.

9 Q. I was trying to get more specific with respect to
10 whether it was wood, metal, concrete, plastic, glass,
whatever?

11 A. The material primarily consisted of wood and metal.
12 There may have been a little bit of concrete in that, but
it
13 was primarily wood and metal.

14 Q. Did these photographs attached to your inspection
15 report accurately reflect what you saw on the property
that
16 day?

17 A. They do.

18 Q. I'm sorry, I don't know if we discussed what day
that
19 inspection report was?

20 A. April 7 of 2004.

21 Q. And that's when these photos were actually taken,
on
22 April 7, 2004?

23 A. Yes.

24 Q. When was the report generated?

9

1 A. Shortly thereafter. As far as an actual date, would
2 have been within probably a week or two.

3 Q. Does Illinois EPA keep these types of records in
4 regular course of it's business?

5 MS. RYAN: At this time, I would move Exhibit
1
6 into evidence.

7 HEARING OFFICER WEBB: Is there any objection
to
8 moving Exhibit 1 into evidence?

9 MR. BROWN: No.

10 HEARING OFFICER WEBB: Okay, Exhibit 1 is
admitted
11 into the record.

12 MS. RYAN: And that's all I have at this
point.

13 HEARING OFFICER WEBB: Mr. Brown, do you have
any
14 questions for this witness?

15 MR. BROWN: Yes, ma'am.

16 HEARING OFFICER WEBB: Go ahead.

17 Q. (By Mr. Brown) When you come out to my house, you
seen

18 the land?

19 A. I did.

20 Q. And you talked to me about Dan Mozer (phonetic) of
21 utility service. I called him and you talked to him, he
sent

22 you all the paperwork that you needed.

23 A. I did receive the paperwork. I believe it was
24 Mr. Mozer I this that was in reference to an earlier
inspection

10

1 that was conducted in October of '03.

2 Q. Right. And you come out three times. You come out
one

3 time and you come out one time with the state police, and
you

4 come out one time with a county cop?

5 A. Correct.

6 Q. The place was wet, right? Water holding up in
areas,

7 hard to get to?

8 A. In April, there were areas that were wet. There
were

9 also areas that were dry. The road, the access road going
back

10 to the area had muddy ruts in the access road going back
to

11 that area. There were areas around it that were dry. The

12 other two dates, I don't recall exactly.

13 Q. I told you when you come out there the first time,
my
14 mother lived in town and her building burned, and I
brought the
15 materials from in town out to the county and was going
burn it?

16 A. Correct, I believe that conversation was October of
17 2003, correct.

18 Q. There was no construction waste there. That was
waste
19 from the building that burned, and she didn't have
insurance,
20 and I told you that she could not afford a dumpster. I
bought
21 the stuff out there and I was going to dump it. I told
you I
22 did not know it was against the law, did I or did I not?

23 A. You did.

24 Q. I got pictures here where we cleaned the area up,
would

11

1 you like to look at them?

2 A. I make sure -- that's fine, I'm not sure when they
were
3 taken. I don't know if you have that ballpark time when
they
4 were taken.

5 Q. There's dates on the back of them.

6 I mean, did we ever not agree with you on anything
we
7 done?

8 A. As far as not agreeing, I'm not 100 percent sure
I'm

9 with you.

10 Q. I try to get you all the information you wanted.

11 A. When we spoke, we, you know, we agreed on what
needed
12 to be done.

13 Q. Right.

14 A. On each occasion. I think the issue was more of
15 timing, when it got done. The fact that it didn't get done
in a
16 timely manner to me is the issue. It was not that it
didn't
17 get done, just that it didn't get done when it should
have.

18 Q. Right.

19 HEARING OFFICER WEBB: Ms Ryan, do you have
any
20 further questions for your witness?

21 MS. RYAN: Yes, I do.

22 Q. (By Ms. Ryan) Was the April 7 inspection the first
time
23 you saw this waste on the property?

24 A. April 7, 2004 would have been the second occasion I
was

12

1 there.

2 Q. And when was first time?

3 A. October 23, 2003, as I recall.

4 Q. And approximately how much material was at the
property

5 on April -- on either one of those dates? On both of those
6 dates?

7 A. October of 2003, I would estimate probably 30 to 40
8 yards. April 7 didn't appear to be quite as much
material. I
9 would estimate 25 to 30 yards.

10 Q. And how many loads would you say that would be for,
I'm
11 going to say a standard truck, and see if that is?

12 MR. BROWN: We use CWI, which is a six yard
13 dumpster. A 20 yard dumpster, I mean, is what we used.

14 A. For a 20 yard dumpster, which is a kind of standard
15 role off box type of container, I would estimate probably
a
16 couple loads.

17 Q. And how long would you estimate it should take to
get
18 this amount of material off site?

19 A. Given access into the property, it shouldn't take
more
20 than a couple weeks, allowing for weather, finances, thing
of
21 that nature, but as far as physically to do it, it
wouldn't
22 take long.

23 MS. RYAN: Thank you.

24 HEARING OFFICER WEBB: Mr. Brown, do you have
any

13

1 further questions based on what she just said?

2 MR. BROWN: No.

3 HEARING OFFICER WEBB: Okay. Do you have
anything

4 further?

5 MS. RYAN: I have no other witnesses.

6 HEARING OFFICER WEBB: Okay, thank you very
much.

7 Mr. Brown, would you like to proceed, you may make a
statement

8 in your own defense.

9 JOHN BROWN, having duly been sworn, testified
as

10 follows:

11 MR. BROWN: I mean, I feel like we've been
honest

12 with this gentleman. We have had a lot of trouble with
rain,

13 finances. When we could afford it, we done it. He's
trying to,

14 you know, this was not off a construction site. I mean, it
15 wasn't off of a business or construction site. And as soon
as

16 we could have got the property cleaned up, as soon as we
could

17 afford it. And we got pictures of it showing it was
cleaned.

18 That's all I got to say.

19 HEARING OFFICER WEBB: May I have those
pictures

20 back please?

21 MR. JOHNSON: I didn't see a date on the
back, the

22 address and name.

23 MS. BROWN: There should be when we had it

24 developed, it was like a week -- it was around the first
week,

1 second week in October.

2 HEARING OFFICER WEBB: I'll just mention this

is

3 Mrs. Kim Brown.

4 MS. BROWN: Right.

5 HEARING OFFICER WEBB: This is the

Respondent's

6 wife, were you the one who took those pictures?

7 MS. BROWN: Yes.

8 HEARING OFFICER WEBB: You took pictures of

this

9 site.

10 MS. BROWN: Yes.

11 HEARING OFFICER WEBB: What date were those

taken?

12 MS. BROWN: It was the first or second week in

13 October.

14 HEARING OFFICER WEBB: Of 2003 or 2004.

15 MS. BROWN: 2004.

16 HEARING OFFICER WEBB: What do your pictures

17 reflect?

18 MS. BROWN: I tried to do about the same angle

from

19 remembering what those pictures showed, where he had taken

20 pictures, where I had seen him, where it's all gone, you

know,

21 cleaned up.

22 HEARING OFFICER WEBB: And would you like to

move

23 to admit these into the record?

24 MS. BROWN: Yes.

1 HEARING OFFICER WEBB: Is there any objection?

not
which
2 MS. RYAN: Yeah, I'd have to object. That's
3 relevant to the violation that occurred on April 7, 2004,
4 is what we are here about.

problem
corrected
trying
5 MS. BROWN: I would say this shows that the
6 had been corrected. That's what I think that I have
7 the problem, and that's all I'm trying to say. I'm not
8 to say that we weren't in violation in this at all. The
9 property has been sold, we no longer live there. It's all
10 cleaned up.

11 MR. BROWN: What you're griping about here,
12 complaining, is the time length that it took to clean the
13 property?

answer
14 HEARING OFFICER WEBB: Well, do you want to
15 that? You don't have to.

16 MS. RYAN: What we're here about is the
17 administration citation we filed against you. That the
18 violation occurred on April 7, 2004.

and
19 MR. BROWN: Right, that we had a dump site,
20 we're showing you that it is clean.

saying
violation
21 MS. RYAN: And I understand that. What I'm
22 that legally that's not relevant to the fact that the

the 23 occurred on April 7, which is really the only issue before
24 board in this case.

16

so 1 MS. BROWN: Okay, so we're going to get fined,
we 2 what -- no, I'm -- we're going to get fined on this. So
of 3 cleaned it up, we don't have the money to pay for a bunch
even 4 fines, okay, we done the best we could. Financially, John
I 5 Brown Painting no longer exists, you know. I mane we've
I 6 had to sell our house. You know, I didn't go into detail,
in 7 didn't tell this man financially we had to sell the house.
can 8 told him we had problems with the neighbors, which we did
to 9 fact. We've cleaned and corrected up the problem. You
off. 10 fine us. I don't know when we can get you the money, just
but 11 be quite honest about it. We'll do our best to pay it
12 You know, she sits over there and she thinks it's funny,
13 it's not funny.

these 14 HEARING OFFICER WEBB: Well, my problem with
what 15 photos, in addition to the relevance, is I'm just not sure
16 they are pictures of.

17 MS. BROWN: They're pictures of that ground

with

18 all that stuff gone.

three

19 MR. BROWN: Mr. Johnson has been out there

20 times.

placed

21 MS. RYAN: If I could suggest, if that's your

22 concern, you know, maybe Mrs. Brown would like to be

23 under oath to testify what the pictures are about.

that?

24 HEARING OFFICER WEBB: Would you like to do

17

1 MS. BROWN: That's fine.

testified

2 KIM BROWN, having been first duly sworn,

3 as follows:

4 Q. (By Ms. Ryan) Okay. Now Ms. Brown, you took those
5 pictures this October, this last --

6 A. Correct.

7 Q. This last month?

8 A. Correct.

reflected

9 Q. And they are pictures of the same location as

10 in the Complainant's Exhibit 1?

took

11 A. Right. He took the pictures, I was there when he

stood

12 some of the picture, okay. Here is the debris, okay. He

13 over here and he took a picture that way. That is the same

the

14 general direction which I took the picture to show that

all 15 property and the debris had been cleaned up, okay. That's
a 16 I was doing. I showed where the ruts, where we had to get
know, and 17 tractor and get in there and I showed those ruts, you
pointed out 18 in one of those pictures, I think there was tire he
know, to 19 to me, and showed that the tire was gone. For him, you
but 20 view in the pictures. My intent was to mail these to him,
and I 21 in the process of moving, I got busy. I forgot about it
22 didn't get them to him, well, you know a week is taking a
23 chance on getting them there to him, and I'll just bring
them 24 with me here.

18

these 1 HEARING OFFICER WEBB: I'll tell you what, I'm
2 going to accept them as an offer of proof, so I will keep
3 if that's okay by you?

the 4 MR. BROWN: And we also mailed you a copy of
5 CWI record.

6 HEARING OFFICER WEBB: Yes.

a 7 MR. BROWN: Where we got CWI to come in with
8 dumpster and hauled the waste off. We also mailed a copy
of 9 that ticket to Mr. Johnson.

I 10 MS. BROWN: After that point, I called him and

you
because
and
as CWI
ticket
later
to
to
but's
know, to
done. I

11 told him that it was not all gone, but I will have to get
12 the cancelled check from my dad where he paid for it
13 Johnny got me the dump ticket. I didn't check his pocket,
14 I washed the receipt okay, but it was all, you know, put
15 in Paducah.
16 MR. JOHNSON: As I recall, the CWI roll off
17 was received on August 31, and I did speak to Mrs. Brown
18 on that day. She did tell me yes, there was more material
19 there at the time, and as I recall, I think you were going
20 call me when everything got taken care of.
21 MS. BROWN: Correct, and we had -- I was going
22 let you know these were done, when I sent them to you,
23 just my fault being busy trying to work and move, you
24 get them to you. It's my fault I neglected to get it

19

making
Do you

1 should have made it a priority, and I didn't.
2 HEARING OFFICER WEBB: Are you finished
3 your statements, or do you have anything further to add?
4 have any questions for either witness?
5 MS. RYAN: No, I don't. Thanks.

6 HEARING OFFICER WEBB: Before we hear closing
7 arguments, I'd like to go off the record to discuss the
8 transcript and briefing schedules.

9 (Whereupon, a discussion will be held off the
10 record.)

11 HEARING OFFICER WEBB: We've just had an off
the
12 record discussion regarding post hearing brief. The
parties
13 have agreed to a briefing schedule as follows.

14 The transcript of these proceedings will be
15 available from the court reporter by November 22, 2004,
and
16 will be posted on the board's web site. The public
comment
17 deadline is December 1, 2004. Public comment must be filed
in
18 accordance with section 101.628 of the board's procedural
19 rules. Complaint's brief is due December 13, 2004.
20 Respondent's brief is due January 10, 2005, and the
mailbox
21 rule will apply. Complainant's reply, if any, is due by
22 January 24, 2005.

23 Ms. Ryan, would you like to make a closing
24 argument?

20

1 MS. RYAN: No, I would like to reserve that
for my
2 brief, thank you.

3 HEARING OFFICER WEBB: Mr. Brown or Mrs.
Brown,

4 would you like to make a closing comment?

5 MR. BROWN: No.

6 HEARING OFFICER WEBB: Okay. Since there are
no

7 members of the public here, I will move to make a
statement as

8 to the credibility of witnesses testifying during this
hearing.

9 Based on my legal judgment and experience, I
find

10 both of the witnesses testifying to be credible. At this
time,

11 I will conclude the proceedings and I thank all of you for
your

12 participation. We stand adjourned.

13 (Adjourned at 12:20 p.m.)

14

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21

1 STATE OF ILLINOIS)

2 MARION COUNTY)

of

November

BROWN,

of

concerning

affixed

3

4

5 I, ANGIE R. KELLY, a Notary Public in and for the County

6 Marion, State of Illinois, and St. Louis City, State of

7 Missouri, DO HEREBY CERTIFY that appeared before me on

8 9, 2004 at the offices of City Hall, 106 W. 5th Street,

9 Metropolis, Illinois, JOHN BROWN, KENT A. JOHNSON, KIM

10 who was first duly sworn by me to testify the whole truth

11 their knowledge, touching upon the matter in controversy

12 aforesaid, so far as he/she should be interrogated

13 the same.

14 IN WITNESS WHEREOF, I have hereunto set my hand and

15 my Notarial Seal this 18th day of November, 2004.

16

17

18 Angie R. Kelly

19 My Commission Expires September 20, 2005

20

21

22

23

24