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ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
vs.)	AC 03-27
)	(Administrative Citation)
VINCE HARVEY,)	
)	
Respondent.)	

The following is the transcript of a hearing held in the above-entitled 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 Sudman, Hearing Officer, at 401 East Third Street, Kewanee, Illinois, on the 12th day of November, A.D. 2003, commencing at 10:00 a.m.

1 PRESENT:

2

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

6

 APPEARANCES:

7

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

12

 VINCE HARVEY
13 1458 North East Street
 Kewanee, Illinois
14 (Appeared PRO SE)

15

 ALSO PRESENT:

16

 John G. Tripses

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1 HEARING OFFICER SUDMAN: Good morning. My name is
2 Carol Sudman. I'm a hearing officer with the Pollution
3 Control Board.

4 This is the hearing for AC 03-27, IEPA versus
5 Vince Harvey. It is November 12th, 2003, and we are
6 beginning at 10:00 a.m.

7 I'll note for the record that there are no
8 members of the public present. Members of the public
9 are allowed to provide public comment if they so choose.
10 At issue in this case is the EPA's allegation that
11 Mr. Harvey violated the Environmental Protection Act by
12 littering and disposing of construction or demolition
13 debris at 1456 North East Street in Kewanee, Henry
14 County.

15 You should know that it is the Pollution
16 Control Board and not me that will make the final
17 decision in this case. My purpose is to conduct the
18 hearing in a neutral and orderly manner so that we have
19 a clear record of the proceeding. I will also assess
20 the credibility of any witnesses on the record at the
21 end of the hearing.

22 This hearing was noticed pursuant to the Act
23 and the Board's rules and will be conducted pursuant to
24 sections 101.600 and 101.632 of the Board's procedural

1 rules.

2 At this time I would like to ask the parties
3 to please make their appearances on the record.

4 MS. RYAN: Michelle Ryan, special assistant
5 attorney general for the Illinois EPA. I apologize; I
6 don't have a written appearance here with me today. I
7 normally bring them, but I forgot.

8 HEARING OFFICER SUDMAN: I think you filed one.

9 MS. RYAN: It's possible but also not possible. I
10 will check tomorrow, and if I didn't I will file it
11 tomorrow.

12 HEARING OFFICER SUDMAN: Okay. I think you did,
13 but we will check on that.

14 Mr. Harvey, you are here representing
15 yourself; is that correct?

16 MR. HARVEY: Correct. And also the correct address
17 that the debris is located at is 1458 North East Street.

18 HEARING OFFICER SUDMAN: Thank you. Are there any
19 preliminary matters to discuss on the record?

20 MS. RYAN: No.

21 HEARING OFFICER SUDMAN: Michelle, would you like
22 to give an opening statement?

23 MS. RYAN: Yes. The Illinois EPA believes that the
24 evidence will show that on January 31st, 2003,

1 Mr. Harvey caused or allowed open dumping resulting in
2 litter and the deposition of demolition debris at 1458
3 North East Street in Kewanee.

4 HEARING OFFICER SUDMAN: Is that it?

5 MS. RYAN: That's it.

6 HEARING OFFICER SUDMAN: Okay. Mr. Harvey, you may
7 make an opening statement if you'd like, but you don't
8 have to.

9 MR. HARVEY: I don't have anything to say.

10 HEARING OFFICER SUDMAN: Ms. Ryan, you may present
11 your case.

12 MS. RYAN: I call Jeff Port.

13 HEARING OFFICER SUDMAN: Mr. Port, would you have a
14 seat on the stand please, and the court reporter will
15 swear you in.

16 (Witness sworn.)

17 JEFFREY A. PORT,
18 called as a witness, after being first duly sworn, was
19 examined and testified upon his oath as follows:

20 DIRECT EXAMINATION

21 BY MS. RYAN:

22 Q Can you state your name and spell it for the
23 record?

24 A My name is Jeff Port, J-e-f-f, P-o-r-t.

1 Q What is your job?

2 A I'm an inspector for the Illinois
3 Environmental Protection Agency at the Peoria regional
4 office.

5 Q How many years have you worked as an
6 inspector in the Peoria regional office?

7 A 11 years.

8 Q What are your job duties as an inspector for
9 that office?

10 A I am a solid waste inspector. That job
11 entails me to respond to citizen complaints and to visit
12 landfills, waste transfer stations. I am also an
13 inspector on the wrecker site. I visit facilities that
14 generate hazardous waste and make sure they are handling
15 it properly.

16 Q How many inspections would you estimate you
17 have conducted during the years you have been an
18 inspector?

19 A I do approximately 80 inspections a year.

20 Q What is your educational background?

21 A I have an environmental science bachelor's
22 degree from Bradley University.

23 Q Do you have any other training apart from
24 your degree?

1 A We do receive various types of training
2 provided by the agency to assist with our jobs.

3 Q What types of training would that be?

4 A Different ways to perform inspections,
5 techniques and things, sampling.

6 Q Are you familiar with the Harvey property
7 located, I believe Mr. Harvey indicated, at 1458 North
8 East Street?

9 A Yes, I am.

10 Q And I believe that you had previously
11 indicated in your inspections that this property was
12 located 1456 North East Street; is that correct?

13 A That's correct.

14 Q Do you know where exactly is this property
15 located in Kewanee?

16 A On the north end of town near a rural area,
17 semirural.

18 Q Who owns this property?

19 A Mr. Vince Harvey.

20 Q How many inspections have you conducted at
21 this particular property?

22 A Two inspections.

23 Q I'm going to show you what I have marked for
24 identification as Exhibit 1. Can you tell me if you

1 recognize that document?

2 A Yes, I do.

3 Q What is it?

4 A It is the inspection report for the January

5 31st, 2003, inspection.

6 Q Will you page through that for me?

7 (Witness complies.)

8 Q Is that a fair, accurate and complete copy of

9 your report?

10 A Yes, it is.

11 Q Can you describe, generally, the property

12 that's involved in this report?

13 A The property basically is a lot with a

14 foundation present on the site. Several piles of dirt

15 and debris, some scrap metal and various other items on

16 the site.

17 Q Are there any other standing buildings on the

18 property?

19 A No.

20 Q Who took the photographs that are attached to

21 this Exhibit 1?

22 A I did.

23 Q Beginning with photograph number 1, which is

24 indicated for -- sorry. You actually made them easy to

1 read. Not everyone does.

2 Can you tell me what is depicted in that
3 photo?

4 A In the photograph in the foreground you can
5 see a portion of the foundation. This photo was taken
6 looking toward the south. And then we can see some
7 bricks on the corner of the foundation there, some scrap
8 metal and a window and some wood debris, it looks like,
9 in there as well.

10 Q Starting with photograph number 3 then,
11 what's shown in that photograph?

12 A That is one of the photographs of the piles
13 of gravel, dirt, some demolition debris, some slag,
14 pieces of plastic, material that was brought to the site
15 to be used as fill according to Mr. Harvey.

16 Q Can you identify any demolition debris
17 specifically in this photograph?

18 A In the lower center part of the photo there
19 is a brick there. There is some bricks on the bottom,
20 bottom left corner.

21 Q Are there other photographs in this report
22 that also show demolition debris besides the ones that
23 we have looked at already?

24 A Yes. Some demolition debris can be seen in

1 photograph 5 intermingled in the pile, pieces of wood,
2 processed wood. Photograph 8 you can see a -- it looks
3 like about a one-by-eight plank there and some
4 additional pieces of wood there, processed wood there.
5 Some additional wood material can be seen in photograph
6 11. Photograph 14 behind the cabinet there is a pile of
7 material that has some demolition debris, pieces of
8 wood. That material, I believe, was material that had
9 been taken out of the basement.

10 Q When you say "taken out of the basement," are
11 you referring to the foundation --

12 A Yes, I am.

13 Q -- that was in photographs 1 and 2?

14 A And 15 and 16 as well, yes.

15 Q Prior to this inspection, what kind of
16 material was in that basement there?

17 A Basically the remnants of the home that had
18 been burned there. So there was, I believe, wood debris
19 that had fallen in that had not completely burned, the
20 ashes then that had been remnants from the burning.

21 Q Looking at photographs 15 and 16, it appears
22 that the basement is practically empty if not
23 completely; is that accurate?

24 A That's correct.

1 Q So some of that material that was in that
2 basement you are saying is now in these piles in the
3 other photographs; is that correct?

4 A Is in one of the piles there, yes.

5 Q How many piles would you say there are on the
6 property?

7 A I believe 12 total. Eleven were from the
8 material that was brought to the site to be used as
9 fill. And then an additional 12th pile that can be seen
10 there in photograph 14 was the material that had been
11 removed from the basement.

12 Q What do you know about the 11 piles that
13 were -- that you said were brought there to be used as
14 fill; where did that material come from?

15 A According to Mr. Harvey, that was taken from
16 the former Kewanee Steel and Iron property.

17 Q Do you know how that material was generated?

18 A How the material was generated? I believe it
19 was scraped up from the yard there and brought to the
20 site.

21 Q Do the photographs attached to your report
22 accurately depict what you saw at the property on that
23 day?

24 A Yes.

1 Q Did you cite any violations in the report on
2 January 31st?

3 A Yes, I did.

4 Q When was this report generated?

5 A The report was generated approximately two
6 weeks after the inspection.

7 Q Are you required to complete these reports
8 after each inspection that you conduct?

9 A Yes.

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

12 A Yes.

13 MS. RYAN: At this time I would move Exhibit 1 into
14 evidence.

15 HEARING OFFICER SUDMAN: Mr. Harvey, do you have
16 any objection?

17 MR. HARVEY: No.

18 HEARING OFFICER SUDMAN: Exhibit 1 is admitted into
19 evidence.

20 MS. RYAN: That's all I have.

21 HEARING OFFICER SUDMAN: Mr. Harvey, would you like
22 to cross-examine the witness or basically just ask him
23 any questions about anything he just said?

24 MR. HARVEY: Yes, I would.

1 CROSS-EXAMINATION

2 BY MR. HARVEY:

3 Q In picture 8 there is the plank that you
4 described. To your knowledge was that plank already on
5 the property or was it used to hold the plastic that is
6 in the picture there from blowing away?

7 A That I do not know. It was present when I
8 did the inspection on the 31st.

9 Q So that board that is there could be used to
10 hold that plastic in place to keep the wind from blowing
11 it away, correct?

12 A It could be.

13 Q You will agree that the basement has been
14 cleaned out?

15 A Yes.

16 Q All the material?

17 A The material that was in the main part of the
18 basement has been cleaned out. Although the material on
19 the front part, the scrap metal in photograph 1 is still
20 there or was still there at the time I took the
21 photographs.

22 Q And on the first page of the document it
23 says, "Cause, threaten or allow water pollution in
24 Illinois." Can you please describe how the piles would

1 cause water pollution?

2 MS. RYAN: I would object as beyond the scope.

3 HEARING OFFICER SUDMAN: It's true, but he is pro
4 se; I'm going to allow it. Plus, you did enter this as
5 an exhibit. So I will let you ask the question,
6 Mr. Harvey.

7 Q Can you please describe how that would allow
8 water pollution?

9 A Yes. That material being a waste through
10 infiltration from precipitation will -- has potential to
11 contaminate the ground water beneath the site by
12 allowing the material -- the rain water to pass through
13 it. And then that goes down into the ground water.

14 Q So piles of -- as you have said these piles
15 consist of soil, rock, pieces of metal, plastic,
16 processed wood and small branches and chunks of metal
17 slag. That would cause water pollution?

18 A That has the potential to cause water
19 pollution, yes.

20 MR. HARVEY: I have no further questions.

21 HEARING OFFICER SUDMAN: Any redirect?

22 MS. RYAN: No, thank you.

23 HEARING OFFICER SUDMAN: Thank you, Mr. Port. You
24 may step down.

1 Ms. Ryan?

2 MS. RYAN: I have no further witnesses at this
3 time.

4 HEARING OFFICER SUDMAN: You have no further
5 witnesses. Okay.

6 Mr. Harvey, you may take the witness stand.
7 And the court reporter will swear you in and you may
8 make your statement on your behalf.

9 (Witness sworn.)

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

13 MR. HARVEY: Since Mr. Port has made his inspection
14 in January there has been cleanup done. I do have
15 receipts I will enter into the Court today. The
16 gentleman that I received the dirt from has agreed to
17 have the dirt removed by the first of the year. As far
18 as I know -- and this is -- Mr. Port has this in all his
19 paperwork that I didn't know I was doing anything wrong.
20 As in the debris that was inside the basement for being
21 burned, I contacted the community -- Kewanee Community
22 Fire Department. They gave me the okay. I could burn
23 it. I contacted William Philhower from the building and
24 zoning office in Cambridge. And he said I could burn

1 it.

2 And as for the dirt that was hauled in,
3 myself and the gentleman I received it from, we didn't
4 think that it would be, as the EPA classifies it,
5 "contaminated" because it has the wood, rock and such in
6 it. And I feel that we didn't do anything wrong, and I
7 have tried the best that I can to remove the dirt. I
8 have already spent over \$3,000 having half the dirt
9 removed. And I just -- I didn't believe I was doing
10 anything wrong. I guess that's all I have to say.

11 HEARING OFFICER SUDMAN: Ms. Ryan.

12 CROSS-EXAMINATION

13 BY MS. RYAN:

14 Q Mr. Harvey, there are pieces of metal in
15 those piles of dirt, aren't there?

16 A Yes.

17 Q And plastic?

18 A The plastic that was in there was a sheet of
19 plastic that I had put over the piles of dirt.

20 Q Can I ask you to look at my Exhibit 1? I
21 don't know if you brought one up. I can hand it to you.

22 (Witness complies.)

23 Q Photograph number 3 there, do you see that
24 yellow thing?

1 A That was -- that yellow thing is a piece of
2 tape that I -- it's like a warning, construction zone
3 piece of tape that I had around the foundation to warn
4 people that this foundation is open. And that pile
5 there, picture number 3 and also picture 4, picture 14,
6 are -- that is the pile of material that was removed
7 from the basement.

8 Q Can I ask you to look at photograph number
9 11?

10 (Witness complies.)

11 Q You can see about the center of that
12 photograph there is a bright green thing there. Do you
13 happen to know what that is?

14 A Not off the top of my head I don't know.

15 Q Just to the left of that there is also a
16 bright blue thing. Do you happen to know what that is?

17 A No, I don't.

18 Q Would you say that it's not metal, though?

19 A I would say it's probably not metal, no.

20 MS. RYAN: That's all I have. Thanks.

21 HEARING OFFICER SUDMAN: Mr. Harvey, do you have
22 anything else you would like to say before you step
23 down?

24 MR. HARVEY: No, I don't.

1 HEARING OFFICER SUDMAN: Okay. You may step down.

2 (Discussion off the record.)

3 HEARING OFFICER SUDMAN: We have just had an
4 off-the-record discussion regarding posthearing briefs.
5 The parties have agreed to a briefing schedule as
6 follows: First off, the transcript of these proceedings
7 will be available from the court reporter by November
8 24th and should appear on the Board's web site by the
9 next day generally. The public comment deadline is
10 December 1st, 2003. Public comment must be filed in
11 accordance with section 101.628 of the Board's
12 procedural rules. The Complainant's brief will be due
13 December 11th, 2003. Respondent's brief is due January
14 5th, 2004. And Complainant's reply, if any, will be due
15 January 14th, 2004, and the mailbox rule will apply.

16 Ms. Ryan, would you like to make a closing
17 argument?

18 MS. RYAN: No. I would like to reserve it for my
19 brief.

20 HEARING OFFICER SUDMAN: Mr. Harvey, would you like
21 to make any closing argument?

22 MR. HARVEY: No.

23 HEARING OFFICER SUDMAN: Okay.

24 MR. HARVEY: May I enter the receipts that I have

1 for the material I have hauled out already? Is that
2 something that would be relevant to this?

3 HEARING OFFICER SUDMAN: Yeah. Why don't you show
4 Ms. Ryan, and I will take a look at it and let's see
5 what you have.

6 MR. HARVEY: This is metal. The white goods that
7 were in the basement. And this is from -- that was from
8 Sonovitch's (phonetic) junk yard. If you want to make
9 copies. If you guys want copies of those.

10 HEARING OFFICER SUDMAN: I imagine there probably
11 is a copier here we can use because we would like to
12 have a copy. Do you have any objection?

13 MS. RYAN: No.

14 HEARING OFFICER SUDMAN: Let me take a look at
15 these.

16 MR. HARVEY: If my math is correct, I believe there
17 is approximately 80,000 pounds hauled out.

18 HEARING OFFICER SUDMAN: Mr. Harvey, since Ms. Ryan
19 doesn't object to admitting these as exhibits, I will do
20 so. However, would you like to explain a little more?
21 I'm looking at them and I don't really understand what
22 they mean.

23 MR. HARVEY: The "NT," that would be the net
24 weight. That is how much weight I hauled in. Like on

1 this ticket in particular it would be 18,460 pounds.

2 They say how much weight that I hauled in.

3 HEARING OFFICER SUDMAN: So these documents show
4 waste that you transported to --

5 MR. HARVEY: To the City of Kewanee, the transfer
6 station.

7 HEARING OFFICER SUDMAN: Okay. Thank you. I will
8 mark Respondent's receipts as Exhibit 2 and I will make
9 sure that Ms. Ryan receives a copy as well.

10 At this time I will ask if there are any
11 members of the public present who would like to make
12 statements on the record? Seeing none, I will proceed
13 to make a statement as to the credibility of witnesses
14 testifying during this hearing. Based on my legal
15 judgment and experience, I find both of the witnesses
16 testifying to be credible.

17 Is there anything further to discuss before
18 we adjourn?

19 MS. RYAN: No.

20 HEARING OFFICER SUDMAN: Okay. At this time I will
21 conclude the proceedings, and I thank all of you for
22 your participation. We stand adjourned.

23 (Whereupon, the proceedings concluded
24 at 10:30 a.m.)

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

3

4

CERTIFICATE OF REPORTER

5

6

I, GALE G. EVERHART, CSR-RPR, Notary Public

7

in and for the County of Peoria, State of Illinois, do

8

hereby certify that the foregoing transcript, consisting

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of pages 1 through 21, both inclusive, constitutes a

10

true and accurate transcript of the original

11

stenographic notes recorded by me of the foregoing

12

proceedings had before Hearing Officer Carol Sudman, in

13

Kewanee, Illinois, on the 12th of November, A.D. 2003.

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Dated this 17th day of November, A.D. 2003.

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

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