

ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Complainant,

v.

AC 05-63  
(IEPA No. 78-05 AC)  
(Administrative Citation)

JOHN R. MALLOCH,

Respondent.

Proceedings held on November 2nd, 2005, at 10 a.m., at the  
City Hall Council Chambers, 102 N. Neil Street, Champaign,  
Illinois, before Carol Webb, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR  
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A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
(217) 525-8509  
By: Carol Webb, Hearing Officer

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
(217) 782-5544  
By: Michelle M. Ryan, Special Assistant Attorney General

JOHN R. MALLOCH, Respondent

1 HEARING OFFICER WEBB: Good morning. My name is Carol  
2 Webb. I'm a hearing officer with the Pollution Control Board.  
3 This is AC 05-63, IEPA vs. Malloch. It is November 2, 2005, and  
4 we are beginning at approximately 10 a.m.

5 I will note for the record that there are no members of the  
6 public present. Members of the public are allowed to provide  
7 public comment if they so choose.

8 At issue in this case is the EPA's allegation that the  
9 respondent violated Sections 21(p)(1), (p)(3) and (p)(7) of the  
10 Environmental Protection Act at 2572 County Road 600E in Dewey,  
11 Champaign County.

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

18 This hearing was noticed pursuant to the Act and the  
19 Board's rules and will be conducted pursuant to Sections 101.600  
20 through 101.632 of the Board's procedural rules.

21 At this time I will ask the parties to please make their  
22 appearances on the record.

23 MS. RYAN: Michelle Ryan, Special Assistant Attorney  
24 General for the Illinois EPA. I have my formal appearance here.

1 HEARING OFFICER WEBB: Okay.

2 MS. RYAN: The one on top is the original. Nine copies and  
3 one for you there.

4 HEARING OFFICER WEBB: And, Mr. John Malloch, you are here  
5 representing yourself; is that correct?

6 MR. MALLOCH: That's correct.

7 HEARING OFFICER WEBB: Okay. Are there any preliminary  
8 matters that we would like to discuss on the record?

9 MS. RYAN: No.

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

12 MS. RYAN: Yes. We believe that the evidence will show  
13 that on March 2nd, 2005, open dumping resulting in litter, open  
14 burning, and the demolition of construction or demolition debris  
15 in violation of 21(p)(1), (3), and (7) of the Act occurred at the  
16 property located at 2572 County Road 600E near Dewey in Champaign  
17 County, Illinois. That's all I have.

18 HEARING OFFICER WEBB: Mr. Malloch, would you like to make  
19 an opening statement? You're not required to do so.

20 MR. MALLOCH: It says on my paperwork affidavit conducted  
21 by an inspector of the site in Douglas County, Illinois, known as  
22 the John R. Malloch site, so I think this is not right.

23 HEARING OFFICER WEBB: Okay. And you will have an  
24 opportunity to present your case after we hear from the EPA's

1 witness. Ms. Ryan, would you like to present your case?

2 MS. RYAN: Yes. We call Mike Mullins to the stand.

3 HEARING OFFICER WEBB: Mr. Mullins, would you like to have  
4 a seat up here so the court reporter can hear you a little  
5 better?

6 MR. MULLINS: Okay.

7 HEARING OFFICER WEBB: Would you please swear the witness  
8 in.

9 (The witness was sworn by the reporter.)

10 DIRECT EXAMINATION

11 QUESTIONS BY MS. RYAN:

12 Q. Can you state your name and spell your last name for the  
13 court reporter?

14 A. Mike Mullins, M-U-L-L-I-N-S.

15 Q. And where are you employed?

16 A. Employed with the Environmental Protection Agency at the  
17 Champaign field office.

18 Q. In what position do you hold there?

19 A. I'm environmental protection specialist. I do field  
20 investigations for solid waste type materials.

21 Q. How long have you been employed with Illinois EPA?

22 A. Seven years.

23 Q. And have all of those been a field inspector?

24 A. That is not correct. I had a couple of years at the

1 Division of Laboratories and I have four and-a-half years as  
2 field inspector.

3 Q. Was the Division of Laboratories in Champaign?

4 A. That is correct.

5 Q. What are your duties as a field inspector?

6 A. I go out and primarily do solid waste inspections. That  
7 includes landfills, open dumps, composting facilities, salvage  
8 yards, these type of facilities as well as I do cleanups,  
9 supervise cleanups for the state of Illinois.

10 Q. Okay. Over the four and-a-half years that you say that  
11 you were conducting inspections, how many inspections would you  
12 estimate you would have done?

13 A. I've done about 400 inspections plus or minus a few.

14 Q. Okay. What is your educational background?

15 A. I have a Bachelor of Science in agriculture. I also  
16 have a Bachelor of Science in biology and some additional studies  
17 in chemistry.

18 Q. And in addition to your education, have you had  
19 additional training?

20 A. I've had additional training both in my previous career,  
21 which was the United States Army, as well as the Environmental  
22 Protection Agency as well has placed me in various courses which  
23 involves solid waste type matters, asbestos, ground waters,  
24 investigations of landfills, air pollution, these type of

1 matters.

2 Q. Are you familiar with the property located at 2572  
3 County Road 600E near Dewey in Champaign County?

4 A. Yes, I am.

5 Q. Mr. Malloch had mentioned earlier that the affidavit  
6 that was attached to the Administration Citation that was signed  
7 by you indicated that the property was in Douglas County. Is  
8 that -- is that where this property is located?

9 A. No, the property is actually in Champaign County. That  
10 obviously was an administrative error in my affidavit.

11 Q. Okay. But are you familiar with the property we are  
12 talking about?

13 A. Yes, I am.

14 Q. Where is that property located?

15 A. That property is located at that physical address 2572  
16 North and 600E. It would be about four and-a-half miles south of  
17 the City of Fisher or about six miles southwest of Dewey.

18 Q. Okay. Who owns that property?

19 A. According to the deed that I got from the Champaign  
20 County Courthouse it's owned by John R. Malloch.

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

23 A. I've conducted two.

24 Q. And was the first one the one that is the subject of

1 this Administrative Citation?

2 A. That's correct, the March 2nd, 2005, inspection.

3 Q. Mike, I've handed you what I marked as Exhibit 1. Can  
4 you look at this document and tell me whether you recognize it?

5 A. I -- I do recognize the document.

6 Q. What is it?

7 A. It's the field inspection report that I did after the  
8 site inspection on March 2nd, 2005.

9 Q. And I see that you're paging through there, could you  
10 continue to do that through the end? Does this -- is this a  
11 fair, accurate, and complete copy of the report that you  
12 prepared?

13 A. It is.

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

16 A. Okay. The property at that location is really separated  
17 into two parts, a north part and a south part, separated by a  
18 stream or a small river which is thought to be the Sangamon  
19 River. The property on the north side is -- has a wooded area  
20 and then it's surrounded by open farm fields. The area south of  
21 the -- of the river is the area that I was out on March 2nd and  
22 there's only a few trees there, and it's primarily a farm field.

23 Q. Okay. There -- Excuse me. Is there a fence around this  
24 area of the property, the south area of the property?



1 A. There was no observed fence at the property.

2 Q. Is there any other means of restricting access to this  
3 portion of the property?

4 A. There was none that I observed.

5 Q. Who took the photographs that are attached to the back  
6 of this report?

7 A. I took the four photos.

8 Q. If you could look at, starting with Photo Number 1, can  
9 you describe what is shown in the photograph?

10 A. Well, Photograph 1 was what -- what caught my concerns  
11 when I arrived at the property. I could see smoke north of the  
12 entrance and so that photo is of an area I would term as a burn  
13 area that has smoke. Apparently there had been some wood burning  
14 there and there was some metal in there that would be consistent  
15 with maybe springs out of a sofa or a chair. And then behind  
16 this burn area then was other debris, metals, plastics as well as  
17 equipment such as a crane and a motor home.

18 Q. Does the material in the central photograph, there  
19 appears to be sort of a white haze under it, was the pile  
20 actually burning while you were there during the inspection?

21 A. I observed no flames. It was only the smoke and -- and  
22 the odor of the smoke.

23 Q. But the white haze that we can see in the picture, would  
24 that -- would you characterize that as smoke then?

1           A.    I would -- Yes, that is --

2           Q.    Rather than some fault of the camera or the printer?

3           A.    Where I was not the fault.  There actually was smoke.

4           Q.    Okay.  Were there any other materials in that pile there

5   besides the sofa spring and the wood you mentioned?

6           A.    Well, there was some metal and it appeared that all of

7   the stuff that could burn had already been burned, so there was

8   just primarily ash.

9           Q.    Okay.  But if you would like to move to Photograph

10   Number 2 and describe where that is?

11          A.    Okay.  Photograph Number 2 is of the same area.  It's a

12   large area of about 250 feet estimated in diameter and this would

13   be panning to the left of Photo 1.  And this area consists of

14   small shards of debris which would be some metals, some plastics,

15   some larger pieces of lumber that did not completely burn as well

16   as what appeared to be either insulation or fibrous material,

17   maybe even clothing.

18          Q.    Okay.  And moving then to Photograph Number 3?

19          A.    I took Photograph Number 3 primarily to annotate that

20   there was a lot of tires on this site.  These are waste or

21   considered waste or used tires.  But also on that photo again is

22   a motor home that I do not know if it's functional, the large

23   metal tanks as well as the trackhoe or construction piece of

24   equipment and some scrap rusted metals.

1 Q. Do you have an estimate as to how many tires are in this  
2 photograph here?

3 A. It would truly be an estimate, but there's probably  
4 roughly around 100.

5 Q. And finally Photo Number 4?

6 A. Photo Number 4 I took to show, as I was leaving the  
7 property right next to the road, which would be 2550 North, the  
8 entrance of the property was an area that had possibly been used  
9 as a burn area and prior to -- to my visit. And in that was a  
10 pallet or appeared to be a composite material pallet and some  
11 other ash as well as on the left side of that appears to be a  
12 metal or plastic sink which I considered possibly to be waste.

13 Q. And is that the road there visible in the upper right  
14 corner of the photo that you're referring to?

15 A. That is correct. It's 2550 North. It's an east-west  
16 road.

17 Q. If we could return to Photograph No. 1, I think.  
18 There's an item in the center of the photograph on the far left  
19 side it looks like it may be a cinder block, is that what that is  
20 there in the middle?

21 A. Yes, that is a cinder block that's turned with the two  
22 holes up and down and vertical.

23 Q. Okay. Were there other materials that you observed in  
24 this pile or elsewhere on the property that you had characterized

1 as construction or demolition debris?

2 A. Well, in Photo 2, not knowing what all of the fibrous  
3 material was, if it's consistent to insulation, then that could  
4 be, as I saw, demolition debris as well as the concrete block.  
5 But also the larger pieces of dimensional lumber may have come as  
6 a result of either wrecking a building or a mobile home.

7 Q. And the fibrous material you're referring to, does that  
8 include the little pink blobs that are shown in the photograph  
9 here, is that pink color accurate to your recollection to the  
10 color of the material on the property?

11 A. The pink color is accurate.

12 Q. Do those four photographs accurately depict what you saw  
13 on the south side of the property on that day?

14 A. Yes, they do.

15 Q. When was this report generated?

16 A. It was generated within 10 days of the inspection. I  
17 don't know the exact date that I had it done. I'm going to guess  
18 within five because it's such normally how my -- my inspections  
19 go.

20 Q. Okay. Does the Illinois EPA keep these reports in the  
21 regular course of its business?

22 A. Yes, they do.

23 MS. RYAN: At this time I would like to move Exhibit 1 into  
24 evidence.

1 HEARING OFFICER WEBB: Do you have any objection, Mr.  
2 Malloch?

3 MR. MALLOCH: No.

4 HEARING OFFICER WEBB: Exhibit 1 is admitted into evidence.

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

6 HEARING OFFICER WEBB: Mr. Malloch, do you have any  
7 questions that you would like to ask this witness?

8 MR. MALLOCH: No.

9 HEARING OFFICER WEBB: Okay. Thank you. You may step  
10 down. Ms. Ryan, do you have anything further to present at this  
11 time?

12 MS. RYAN: I do not.

13 HEARING OFFICER WEBB: Okay. Mr. Malloch, I will allow you  
14 to present your case at this time. Okay, Mr. Malloch, this is  
15 your opportunity now to present your defense as you, you know,  
16 alleged in your petition, so you may just speak.

17 MR. MALLOCH: What you see here in this photo is a concrete  
18 block which we used to block up the tongues of the trailers and  
19 stuff when we unhook from them.

20 HEARING OFFICER WEBB: Which photo are you looking at?

21 MR. MALLOCH: Number 1. I don't see any other material in  
22 there that would be considered burning or anything. That's all I  
23 have to say about Photo Number 1.

24 HEARING OFFICER WEBB: Okay. Would you like to comment on

1 any of the other photos or just in general present your defense?

2 MR. MALLOCH: This was an old building site and we were  
3 trying to clean it up. There was old farm buildings there. It's  
4 cleaned up back -- oh, it's cleaned up back to the edge of the  
5 hill. Everything west of the driveway where you see these  
6 pictures we have cleaned up. We hauled out several loads of  
7 stuff there that I consider litter. And the site is pretty well  
8 cleaned up now everything west of the road where these pictures  
9 were taken. And anything that you see there was from buildings  
10 that were there. It wasn't hauled in so I don't think it could  
11 be considered dumping or littering if something is already there.  
12 They were there when I bought the place in 1970. I think that's  
13 it.

14 HEARING OFFICER WEBB: Okay. Ms. Ryan, do you have any  
15 questions?

16 MS. RYAN: No, actually I don't.

17 HEARING OFFICER WEBB: Okay. Ms. Ryan, I see -- is that  
18 your other witness?

19 MS. RYAN: It is, but I don't need to call him.

20 HEARING OFFICER WEBB: Okay. Let's go off the record to  
21 discuss a briefing schedule.

22 (A discussion was held off the record.)

23 HEARING OFFICER WEBB: We've just had an off-the-record  
24 discussion regarding post-hearing briefs. The parties have

1 agreed to a briefing schedule as follows: The transcript of  
2 these proceedings will be available from the court reporter by  
3 November 15th and will be posted on the Board's website. The  
4 public comment deadline is November 30th, 2005. Any public  
5 comment must be filed in accordance with Section 101.628 of the  
6 Board's procedural rules. The complainant's brief will be due  
7 November 30th, 2005. Respondent's brief will be due December  
8 16th, 2005, and complainant's reply, if any, is due December  
9 23rd, 2005. Ms. Ryan, would you like to make any closing  
10 arguments?

11 MS. RYAN: No, I would like to reserve that for my brief.  
12 Thank you.

13 HEARING OFFICER WEBB: Mr. Malloch, would you like to make  
14 any closing arguments?

15 MR. MALLOCH: No, thank you.

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

23

24

STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 15 pages comprise a true, complete and correct transcript of the proceedings held on the 2nd day of November, A.D., 2005, at City Hall Council Chambers, 102 N. Neil Street, Champaign, Illinois, in the case of IEPA vs. John R. Malloch, in proceedings held before Hearing Officer Carol Webb, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 8th day of November A.D., 2005.

---

Beverly S. Hopkins  
Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

CSR License No. 084-004316