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ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

5

Plaintiff,)

6

) AC 04-77

Vs.

)(IEPA No. 205-00-AC)

7

)(Administrative Citation)

FRANK BENCIE,

)

8

)

Defendant.)

9

10 Proceedings held on November 17, 2005, at 11:30 a.m.,
11 at Benton City Hall, 500 West Main, Benton, Illinois,
before Carol Webb, Hearing Officer.

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A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD
HEARING OFFICER

BY: Carol Webb
1021 North Grand Ave
Springfield, Illinois 62794

FOR ENVIRONMENTAL PROTECTION AGENCY
SPECIAL ASSISTANT ATTORNEY GENERAL

BY: Ms. Michelle Ryan

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E X H I B I T S

NUMBER

MARKED

4	Exhibit No. 1	9
5	Exhibit No. 2	21
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P R O C E E D I N G S

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(November 17, 2005; 1:30 p.m.)

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HEARING OFFICER WEBB: Good morning, my name

5

is Carol Webb, I'm a hearing officer with the pollution

6 control board. This is here for AC-04-77, IEPA verses
7 Frank Bencie. It is November 17, 2005, and we are
8 beginning at 11:30, a.m. Ms. Ryan had a little trouble
9 getting here, so we're starting a little late, and I
10 appreciate Mr. Bencie's patience.

11 I'll note for the record that there are no
12 members of the public present. Members of the public are
13 allowed to provide public comment, if they so choose.

14 At issue in this case is the EPA's
15 allegation that respondent violated Sections 21(p)(1)
16 and (p)(4) of the Environmental Protection Act by
17 littering and disposing of waste in standing or flowing
18 waters at his facility located at 10220 Bencie Lane
19 south of West Frankfort in Franklin County.

20 You should know that it is the Pollution
21 Control Board, and not me, that will make the final
22 decision in this case. My purpose is to conduct the
23 hearing in a neutral and orderly manner so that we have
24 a clear record of the proceedings. I will also assess

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1 the credibility of any witnesses on the record at the
2 end of the hearing.

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

7 At this time, I would like to ask the
8 parties to please make their appearances on the record.

9 MS. RYAN: Michelle Ryan, specialist
10 assistant attorney general for the Illinois EPA, I
11 appreciate everyone's patience with my late arrival, and
12 ask for additional consideration in that I forgot my
13 formal appearance on my desk in the office, my formal
14 written appearance.

15 HEARING OFFICER WEBB: I don't think that's
16 going to be a problem, if you get that on file with the
17 clerk's office.

18 MS. RYAN: I will do that as soon as I get
19 back to the office.

20 HEARING OFFICER WEBB: Mr. Bencie, you are
21 here representing yourself, correct?

22 MR. BENCIE: Yes, I am present.

23 HEARING OFFICER WEBB: Are there any
24 preliminary matters to discuss on the record?

6

1 MS. RYAN: No.

2 HEARING OFFICER WEBB: Ms. Bencie, would you
3 like to make an opening statement?

4 MS. RYAN: Yes, a brief one. We believe the
5 evidence will show that on March 23, 2004, Mr. Bencie
6 property at 10220 Bencie Lane south of West Frankfort,
7 in Franklin County, the violations of open dumping
8 resulting in litter and deposition of waste in standing
9 or flowing waters were observed on the property, and
10 that there are no defenses to these violations.

11 HEARING OFFICER WEBB: Mr. Bencie, would you
12 like to make an opening statement, you're not required
13 to.

14 MR. BENCIE: Well, only thing I can say is
15 I'm dumping in open water, it's not my fault the water
16 is there. I don't have anything to do with that, that's
17 Mother Nature. That's --

18 HEARING OFFICER WEBB: Okay, well you can
19 address that more when it's time for you to present your
20 case. Miss Ryan, would you like to present your case.

21 (Witness Sworn.)

22 MS. RYAN: I would call Doug Hayward.

23 D I R E C T E X A M I N A T I O N

24 By Ms. Ryan:

7

1 Q. Could you state your name and spell it for the
2 court reporter?

3 A. My name is Doug Hayward, H-A-Y-W-A-R-D.

4 Q. On March 23, 2004, what was your job?

5 A. I was with the Bureau of Land, Environmental
6 Protection Agency, Environmental Protection Specialist
7 Inspector.

8 Q. And how many years had you been in that job?

9 A. Twelve.

10 Q. What were your duties as an inspector for the
11 Bureau of Land?

12 A. Conducting inspections on complaint inspections,
13 open dumps, tire facilities, RCRA facilities, till and

14 land fill.

15 Q. When you say RCRA, that's RCRA?

16 A. Yeah.

17 Q. How many inspections do you think you conducted
18 in your twelve years as an land inspector?

19 A. Through the whole?

20 Q. Approximately.

21 A. Several thousand, I would say.

22 Q. What is your educational background?

23 A. I have an associates in Biology, Bachelors BA and
24 BS in Zoology from Southern Illinois University.

8

1 Q. And do you have any additional training besides
2 that education?

3 A. On a work training, landfill, design management,
4 RCRA inspections, remediation, basic open dump
5 inspection from EPA.

6 Q. Are you familiar with the Bencie property located
7 at 10220 Bencie Lane near West Frankfort?

8 A. Yes.

9 Q. Where in relation to West Frankfort is the
10 property located?

11 A. About mile, mile and a half south, southwest.

12 Q. Who owns that property?

13 A. Mr. Bencie, Frank Bencie.

14 Q. How many inspections have you conducted at that
15 property?

16 A. One.

17 Q. I'm showing you what I've marked as Exhibit 1,
18 can you tell me do you recognize that document?

19 A. Yes, that would be my inspection report, from
20 that inspection.

21 Q. That's all right.

22 A. From my inspection at the property in 2004.

23 Q. Can you page through it for me?

24 A. Okay.

9

1 Q. Is that a fair, accurate, and complete copy of
2 your report?

3 A. It appears to be, yes.

4 Q. Can you describe the Bencie property, generally?

5 A. From my observation, it's parcel of land, several
6 acres, with a house and some other buildings on it, and
7 a lot of open property at the time, a lot of debris on
8 it.

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

10 A. I took those.

11 Q. What do that show?

12 A. They show accumulation of a variety of different
13 waste, throughout the property. I did not actually enter
14 the property, they're all taken from the north boundary
15 road.

16 Q. Can you identify any of the materials in those
17 photographs?

18 A. Yes.

19 Q. You don't need to do each photograph, but
20 anything that stands out.

21 A. Well, as my report stated, there's a mixture of
22 materials, ranging anywhere from -- there was wood,
23 insulation, siding materials, wall board, plastics, a
24 variety of different metals, appliances, waste piles,

10

1 used tires, and other miscellaneous items that were
2 unidentifiable.

3 Q. If you could turn to photograph number nine, for
4 me, what does that picture show?

5 A. Nine is the photo that shows waste materials,
6 some plastic shelving, and other materials deposited in
7 an area which is undated by water.

8 Q. Could you at the time, or can you from the
9 photographs, identify any of those other materials?

10 A. At the time, and just from memory and looking at
11 the photographs, there's wood, and some tires, obviously
12 in the photo, plastic shelving, and what appears to be
13 right in front of the plastic shelving, just regular
14 household waste.

15 Q. And all those photos were taken from the road,
16 you say?

17 A. Yeah, they were taken from the road numerically
18 from east to west I believe, over a distance of about
19 500, 600 feet.

20 Q. Can you identify anything in photograph number

21 twelve?

22 A. Well, number twelve, the vegetation is over grown
23 quite a bit, but I believe that right in the center
24 that's an appliance, or like an old washer barrel, and

11

1 then there's some wood and some other metals in there.

2 MR. BENCIE: Number twelve, you're talking
3 about?

4 MR. HAYWARD: I'm sorry, I'm looking at the
5 wrong one.

6 Q. We're all on number twelve now, we're all on the
7 same page.

8 A. You got some plastic buckets in there, glass,
9 which to be honest with you, I'm not sure what that's
10 from, an old trailer frame in there, and then some
11 assorted metals piled on top and around them.

12 Q. And then in the later photograph that showed the
13 building, starting with number 18.

14 A. Yeah, 18 to probably the end of them.

15 Q. Okay. Are there additional materials in those
16 last photos, 18 through 22, that you would identify as
17 waste?

18 A. I would, just from the way that they're deposited
19 on the ground, got overgrowth around them, there's
20 metals, household, I believe in number 18, right next to
21 that, large white container, looks like it might be an
22 old sink, and then --

23 MR. BENCIE: No, it's not a sink.

24 A. It's not, okay. But well, I don't see any in the

12

1 picture.

2 Q. That's fine. Do those photographs accurately
3 depict what you saw from the road on the site on that
4 day?

5 A. Yes.

6 Q. When was this report generated?

7 A. Probably within about ten days of the inspection
8 date, so most likely by the end of March.

9 Q. Does IEPA keep those reports in the regular
10 course of it's business?

11 A. Yes.

12 MS. RYAN: At this time, I'd move Exhibit 1
13 into evidence.

14 HEARING OFFICER WEBB: Mr. Bencie, do you
15 have any objection?

16 MR. BENCIE: No.

17 HEARING OFFICER WEBB: Okay, Exhibit 1 is
18 admitted into evidence.

19 MS. RYAN: That's all I have on direct.

20 HEARING OFFICER WEBB: Okay, Mr. Bencie, do
21 you have any questions for this witness.

22 MR. BENCIE: No, looks like he's a pretty
23 good photographer.

24 MS. RYAN: That's all I have then, and Mr.

13

1 Bencie can have his turn then.

2 HEARING OFFICER WEBB: Thank you, Michelle.

3 Okay, Mr. Bencie, now it's your turn to
4 present your case.

5 (Witness Sworn.)

6 MR. BENCIE: Well, since these pictures have
7 been taken, a lot of this merchandise or junk, or
8 refuse, or whatever you want to call it, has been removed
9 from the premises. From these photos, there is a lot
10 of, just like in the driveway these are empty barrels
11 that I dispose of trash and garbage in, and recycle
12 materials, and but I have been working on this and I
13 have proof and receipts on my person right now, that I
14 will give to the court, showing that I have been working
15 on this, as much as I can, and I am not in the best of
16 shape, I'm 57 years of age, and I've been doing 75
17 percent of it myself, and I can prove to you where I've
18 got swollen legs, and I don't know what you call it,
19 heart disease or what, but, I've been doing so much and
20 I can just pay out so much, and that's it. My helper
21 that I had two weeks ago, he went to school, he's 16
22 years of age, and on Tuesday his right lung collapsed.

23 Now, this is not my fault, and I'm not
24 saying -- give you a sob story, but if there's nobody

14

1 that wants to work, and I can't afford to pay eight, ten
2 dollars an hour, and I can just do so much, and I've got

3 other bills besides taking care of, disposing of this,
4 and the way gas is going up, I've still been hauling off
5 regular, but I think that I've, you know, complied with
6 it and been courteous to you folks, and I've called
7 every time that I was supposed to be calling
8 Springfield, sometimes somebody is not there at their
9 office, or away from their desk, I can't help that. I
10 know they're human beings, they're not God or anything
11 else, but I think, you know I've complied with it tried
12 to work this out with you all, and tried to do my best
13 to clean it up.

14 I don't know, he hasn't made any inspections
15 since March or whatever it was, but I've got proof, like
16 I said, receipts where I disposed of this, like I said,
17 a lot of it's recycled material, and the landfill
18 wouldn't take a lot of this stuff. No use taking to the
19 landfill where I can take and recycle it, because this
20 government needs the money right now, we're in war.
21 That's all I can say.

22 HEARING OFFICER WEBB: Ms. Ryan, do you have
23 any questions of Mr. Bencie?

24 Q. (By Ms. Ryan) Have you brought additional

15

1 material to the property since the March 23, 2004
2 inspection?

3 A. No.

4 Q. And how much material would you estimate was

5 removed from your property, if you could do it by a
6 percentage of what you had out there?

7 A. By a percentage?

8 Q. Yeah.

9 A. Well, in that field and everything, I'd say a
10 good 65, 70 percent of it, and I just got some stuff out
11 of there, stuff that I don't want to keep, you said the
12 wood, but I bought the wood in an action to repair a
13 building, and the wood is two by fours and two by sixes.
14 Some of it is new, some of it was used.

15 Q. That wood you're talking about, can you identify
16 it from one of those photographs?

17 A. It was in that blue trailer, and I don't know
18 which number that was, but that's what he's talking
19 about.

20 Q. It is number five, there's a blue truck in number
21 five?

22 A. We had a heavy wind storm prior to that, and I
23 had guy pick it up and put it in there, and believe it
24 or not, the trailer had blown over.

16

1 Q. Is that in number five?

2 A. Yeah, number five, but all this stuff behind it
3 is gone. The only thing I've kept the wood.

4 On some of the tires, I'll be honest with you, in
5 the last two woks, I've had tires, I had about twelve
6 fifteen tires dumped on me, and I said boy, somebody's
7 really nice to me. Two days later, the tires

8 disappeared. I don't know where they went, but I've had
9 tires and I've had gas tanks thrown out there. It's a
10 country road, people think well, there's all this junk
11 here, they just dump it out. I've had lawn mowers in my
12 driveway, I've had hot water heaters dumped in my
13 driveway, washing machines, dryers, and you know, the
14 people that dump them out, more richer type people, they
15 say, oh, I did haven't no way to dispose of it, so I
16 dumped it off at your house, you know. I don't know
17 what you call it, high society, but I didn't want to pay
18 to haul it off, so I got rid of it for the. I threw it
19 in the trailer and hauled it off.

20 I've had law enforcement people give me stuff and
21 stuff like that, you know, I don't mind hauling it off,
22 but you know, because they're too dog gone tight to pay
23 to have it hauled off some place else.

24 Q. Mr. Bencie, the material that we see in the photo

17

1 here, for example, photo number two, there's a large
2 pile of gray things, I'm sorry. It looks like carpeting
3 and wood and some green stuff growing on it, to me. Do
4 you know how long that material was sitting there by the
5 time the inspection occurred on March 23, 2004?

6 A. I'm trying to figure out what it was even.

7 Q. If you need help locating where it is, there's a
8 site sketch just before the photographs.

9 A. I got the photograph, but I mean, that was

10 disposed of a long time ago, that was -- that I had
11 bought, there was some materials I bought from an
12 auction, that I wanted some other stuff, and I had to
13 take it off, and that's been gone a long time ago. That
14 looks like that from the boat factory.

15 Q. But my question was how long had it been sitting
16 there by the time we inspected on March 23, 2004, do you
17 know when you acquired that?

18 A. Well, it was, they had an auction, I don't know
19 when they had an auction prior before that, but it
20 wasn't too long before that, but that's been gone a long
21 time.

22 Q. Can you identify the green material on top of
23 that pile?

24 A. It looks like straw, or weeds or something. It's

18

1 grass growing on top of whatever it is.

2 Q. Okay.

3 A. But that green stuff, I don't know what that is.

4 Q. That's fine.

5 A. I mean. I believe that's mud, I'll be honest with
6 you, where it's pushed up into a pile where it was
7 hauled off. You got any idea what this is, Doug? I know
8 it's on my property, I should know what it is.

9 HEARING OFFICER WEBB: He's done testifying
10 for now, he's off the hook.

11 A. I think we have what I was looking for.

12 HEARING OFFICER WEBB: Mr. Bencie, you have

13 some receipts you'd like to offer into evidence to
14 demonstrate that you have attempted to comply?

15 MR. BENCIE: Yes, I've got several receipts,
16 from 2004 and 2005 where I've hauled off merchandise,
17 and mostly my metals and everything. Who do I give
18 these too?

19 HEARING OFFICER WEBB: I'm going to let Ms.
20 Ryan take a look at them, and then you can give them
21 back to me.

22 MR. BENCIE: This is all non ferrous metals
23 that I've hauled, junk and tin and everything else, but
24 going back to this figure, I mean, this picture two,

19

1 there's tin in there, that's a lot of ten under there,
2 and it's gone. There's 2004 and 2005 on there, I think
3 the dates, I'm sorry, but I got those copied late last
4 night, and I don't know if you can read them that good
5 or not, the dates on them.

6 HEARING OFFICER WEBB: I'm guessing you want
7 to introduce those into evidence?

8 MR. BENCIE: Yes, definitely, shows that I've
9 done something.

10 MS. RYAN: I have objection to those that
11 predate the inspection on March 23, 2004, which are the
12 bottom three pages, it looks like. I do object to the
13 ones that post date the inspection, in that they're not
14 relevant to administrative citation at issue. I also

15 kind of object, generally, that those are very generally
16 very difficult to read, and I'm not sure what they mean.

17 HEARING OFFICER WEBB: Okay. Mr. Bencie, I am
18 going to accept into evidence your receipts that predate
19 the inspection, but I will take the other receipts as
20 well as an offer of proof to let the board review them
21 to see if they feel they should be admitted or relevant.

22 MR. BENCIE: Those there?

23 HEARING OFFICER WEBB: Right, I'll take all
24 of them.

20

1 MR. BENCIE: That's what I gave you copies
2 for.

3 HEARING OFFICER WEBB: The ones that predate
4 the inspection will be marked as Exhibit 2.

5 MR. BENCIE: I have several more, I didn't
6 locate them all, just a bunch of them that I copied late
7 last night, and I've got in the past, and then lately,
8 and then here, that I've hauled off stuff. Can I still
9 say something?

10 HEARING OFFICER WEBB: All right Mr. Bencie,
11 do you have anything further?

12 MR. BENCIE: A lot of those pictures here,
13 there's a lot of the stuff that's completely gone from
14 here. I mean, Mr. Hayward could come out and see what
15 he thinks, because all of this stuff is gone.

16 HEARING OFFICER WEBB: Do you have any
17 further questions?

18 MS. RYAN: No, I don't.

19 HEARING OFFICER WEBB: Okay. We're going to
20 go off the record for a minute, so that I can explain to
21 Mr. Bencie what a post hearing brief is, and we will
22 also talk about schedules.

23 (Whereupon, a discussion was held off the
24 record.)

21

1 HEARING OFFICER WEBB: We've just had an off
2 the record discussion regarding post hearing briefs.
3 The parties have agree to a briefing schedule. The
4 transcript of these proceedings will be available from
5 the court reporter by December 1, and will be posted on
6 the board's web site. The public comment deadline is
7 December 15, 2005, and public comment must be filed in
8 accordance with section 101.628 of the board's procedure
9 rules. The complaint's brief due December 22, 2005 and
10 respondent's brief due January 12, 2006. The
11 complainant reply, if any, is due January 19, 2006.

12 Ms. Ryan, would you like to make any closing
13 arguments?

14 MS. RYAN: No, I would like to reserve that
15 for my brief.

16 HEARING OFFICER WEBB: Mr. Bencie, would you
17 like to make any closing arguments?

18 MR. BENCIE: I hope you understand me. I
19 mean, I don't know too much on all these procedures.

20 HEARING OFFICER WEBB: You're doing fine. You
21 can do what Michelle, Ms. Ryan, did in that you may
22 reserve your argument for your post hearing brief, if
23 you'd like to do that.

24 MR. BENCIE: I wish Matlock was here to help

22

1 me out. But he's not here. I'm just plain old common
2 person, nobody fancy, you know, I can just do so much
3 and that's it.

4 HEARING OFFICER WEBB: Okay.

5 MR. BENCIE: I hope you understand what I'm
6 trying to say.

7 HEARING OFFICER WEBB: All right.

8 MR. BENCIE: Well, I'm human being, I'm not
9 supernatural.

10 HEARING OFFICER WEBB: That's okay. Since
11 there are no members of the public present to make any
12 statements on the record, I will proceed to make my
13 statement as to the credibility of the witnesses
14 testifying during this hearing.

15 Based on my legal judgement and experience,
16 I find both of the witnesses testifying to be credible.
17 At this time, I will conclude the proceeding, we stand
18 adjourned, and I thank you all for your participation.

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1 STATE OF ILLINOIS)

2 MARION COUNTY)

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5 I, ANGIE R. KELLY, a Notary Public in and for the
6 County of Marion, State of Illinois, and St. Louis City,
7 State of Missouri, DO HEREBY CERTIFY that appeared
8 before me on November 17, 2005 at the offices of Benton
9 City Hall Council Chambers, 500 West Main Street,
10 Benton, Illinois, that a hearing by the Illinois
11 Pollution Control Board was held.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my Notarial Seal this 18th day of November,
14 2005.

15

16

17 _____
Angie R. Kelly

18 My Commission Expires September 27, 2009

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