

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

RECEIVED  
CLERK'S OFFICE  
JAN 09 2009

STATE OF ILLINOIS  
Pollution Control Board

COUNTY OF JACKSON, )  
)  
Complainant, )  
)  
v. ) AC 09-9  
) (Site Code: 0778035022)  
)  
ALVIN VALDEZ and RUBEN J. )  
VALDEZ, )  
)  
Respondent. )

**COMPLAINANT'S POST HEARING BRIEF**

Complainant, the County of Jackson, files its post hearing brief in the matter.

**INTRODUCTION AND PROCEDURAL MATTERS**

On July 31, 2008, the Complainant filed an Administrative Citation against Alvin and Ruben J. Valdez, the Respondents, under Section 31.1 of the Illinois Environmental Protection Act 415 ILCS 5/1 *et. seq.*(2008)(the Act). It is alleged the Respondents violated Section 21(p)(1) and (p)(7) of the Act. The Respondent timely filed their response on August 27, 2008; and an amended response on October 17, 2008. Hearing Officer, Carol Webb, heard this matter on December 4, 2008, in Murphysboro, Illinois. On December 8, 2008, she filed her Hearing Report with the Board.

**FACTS**

On June 25, 2008, Environmental Compliance Inspector, Don Terry, inspected a site known herein after as the site (Site Code No. 0778035022) situated in a rural part of Jackson County, Illinois. Tr. 8, lines 14-7. See Also Complainant Ex. 2. The inspection was conducted

pursuant to the Jackson County Health Department's delegation agreement with the Illinois Environmental Protection Agency. Tr. 7, lines 8-15. The site, at the time of the inspection, was owned by the Respondent, Alvin Valdez, Tr. 8, lines 18-9. See also Complainant's Ex. 2. At the site Mr Terry observed abandoned vehicles, scrap metal, a mobile home and a variety of other construction demolition type materials.. Tr. 8, lines 22-4, Tr. 9, lines 1-2, Tr. 11, lines 22-4 and Complainant's Ex. 2. See also Complainant's Ex. 1 (Inspection photos). Mr. Terry also testified that most of the vehicles depicted in the photos in Complainant's Exhibit 1 could not be driven nor were used for more than seven days prior to his inspection on June 25, 2008. Tr. 12, lines 6-15 and Tr. 13, lines 5-12. Ruben Valdez also admitted that some of the vehicles were inoperable and had not been driven for at least a week prior to the inspection. Tr. 25, lines 5-10, 24 and Tr. 26, lines 1, 10-9. Mr. Terry testifies that he could see some of the debris with his naked eye from the public way adjoining the property. Tr. 14, lines 1-3 and Tr. 17, lines 18-22. Mr. Terry also stated that the other Respondent, Ruben J. Valdez, had told him that he had brought some of the abandoned vehicles onto the site. Tr. 14, lines 20-4 and Tr. 15, lines 1-4.

The Respondents generally admitted to the waste. Tr. 15, lines 22-4, Tr. 16, lines 1-5, Tr. 17, lines 8-13, Tr. 19, line 24 and Tr. 20, lines 1-24. It must be further noted that Respondents also generally admitted to the waste issue in their petition to contest the administrative citation that was filed with this Board on August 27, 2008 and its amendment filed October 17, 2008. Mr. Terry stated the site did not have the proper permits for storing waste items. Tr. 14, lines 8-10.

Mr. Terry further stated that there had been previous inspections at the site. Tr. 14, lines 11-3. Additionally there had been a previously dismissed administrative citation involving these Respondents, for this same site code, docketed as AC 07-34, Tr. 24, lines 1-9.

In its case in chief and in their written responses, filed earlier, the Respondents take the position they were storing items for parts or recycling. Tr. 20-5. They also objected to the inspectors entry onto their land, Tr. 18, lines 8-22; and also believed the previously dismissed matter, AC 07-34, had cleared them of any wrongdoing with respect to the same present allegations. Tr. 23-4. Mr. Terry, however, did state new debris had been placed on their site since his previous inspections. Tr. 14, lines 11-9.

### **ARGUMENT**

Open dumping is defined as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305 (2006). Refuse is defined as "waste" (415 ILCS 5/3.385 (2006)). Disposal is defined as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste . . . into or on any land . . . ." 415 ILCS 5/3.185 (2006)). Litter is defined in the Litter Control Act as "any discarded, used or unconsumed substance or waste . . . abandoned vehicle (as defined in the Illinois Vehicle Code . . . ) . . . or anything else of unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." 415 ILCS 105/3 (2006). Section 3.535 defines waste as "any garbage . . . or other discarded material. . . ." General construction or demolition debris is defined in Section 3.160 of the Act (2006) as non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and

demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation, roofing shingles and roof coverings . . . .” Finally, an abandoned vehicle is defined as any vehicle in a state of disrepair rendering it incapable of being driven or any vehicle that has not been moved or used for seven consecutive days or more. 625 ILCS 5/1-101.05 (2008). The evidence presented herein clearly shows the Respondents caused or allowed the deposition of litter, waste and general construction demolition debris at the site. It is not contested the Respondents owned and/or controlled the site at all material times.

Respondents attack the inspection as an unlawful search and seizure. There are several problems with this attack. First, there had been previous inspections of the site where there apparently had not been any objections by the Respondents. Moreover, debris had been found at these inspections. Second, ample evidence was provided, contrary to Respondents’ unproven and contradictory assertions, that some of the debris could be seen from the public road. Therefore, Respondents could not have an expectation of privacy. There is no illegal search and seizure if there is no expectation of privacy. Miller v. Ill. Pollution Control Bd., 267 Ill. App.3d 160; 642 N.E.2d 475 4<sup>th</sup> Dist. 1994); See also County of Jackson v. Kamarasy, AC-04-63 and 64 (June 16, 2005). Nonetheless, the burden of persuasion with this defense lies with the Respondents. Id. Respondents have not met their burden of persuasion.

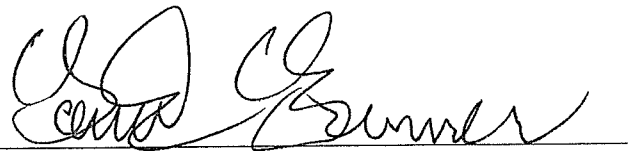
Respondents next argue that the previous dismissal by the Board (AC 07-34) serves as a legal defense. They believe because the matter was dismissed the alleged debris or

waste or violations, at that time, were unfounded and the Respondents were not in violation of regulatory and statutory requirements. There are several problems with the Respondents' argument. First, the previous matter was dismissed without prejudice and did not adjudicate the issue of the Respondents alleged violations of Section 21 of the Act. Second, the inspector testified that additional debris had been added to the site since the inspections that led to the 2007 administrative citation. That has not been refuted. Third, the burden of persuasion with this defense would lie with the Respondents. The Respondents' argument must fail because additional debris had been added to the site; and the Respondents have failed to meet its burden with the defense.

### CONCLUSION

Therefore, based on the record, the findings of the Hearing Officer and the arguments presented above, Complainant requests this Board to find that the Respondents violated Section 21(p)(1) and (p)(7) of the Act on June 25, 2008, and impose a fine of \$3,000.00 (\$1,500.00 for each of the alleged violations).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Brenner", written over a horizontal line.

Daniel Brenner  
Assistant State's Attorney  
Jackson County Courthouse, Third Floor  
Murphysboro, Illinois 62966  
618-687-7200

For the Complainant

PROOF OF SERVICE

I hereby certify that I did on the 6<sup>th</sup> of January 2009 send by U.S. Mail, with postage thereon fully prepaid, by depositing in U.S. Post Office Box a true and correct copy of the following instrument(s) entitled COMPLAINANT'S POST HEARING BRIEF.

To:	Carol Webb	Alvin and Ruben J. Valdez
	Hearing Officer	211 N. Walnut
	Illinois Pollution Control Board	P.O. Box 162
	1021 North Grand Avenue East	DeSoto, IL 62924
	P.O. Box 19274	
	Springfield, IL 62794-9274	

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid.

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601



Daniel Brenner  
Assistant State's Attorney  
Jackson County Courthouse, Third Fl.  
Murphysboro, IL 62966  
618-687-7200