

ILLINOIS POLLUTION CONTROL BOARD  
October 7, 2010

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 09-40  
 ) (IEPA No. 51-09-AC)  
THOMAS AND VALERIE HILL, ) (Administrative Citation)  
 )  
Respondents. )

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

THOMAS AND VALERIE HILL APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On April 16, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation (AC) against Thomas and Valerie Hill (Respondents). The administrative citation involves Respondents' property located at Lot 18 Agnes Ussery Addition, in Anna, Union County. The property is commonly known to the Agency as the "Anna/Hill (Ussery St.)" site and is designated with Site Code No. 1810055092. For the reasons discussed below the Board finds that respondents violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and 21(p)(7) (2008)) by causing or allowing the open dumping of waste, resulting in litter and the deposition of demolition debris. The Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which Respondents may respond.

In this interim opinion and order, the Board first describes the administrative citation process, followed by procedural history and facts of this case. The Board then sets forth the pertinent provisions of the Act. Next, arguments of the parties are summarized as presented at hearing, in Respondents petition for review, and in the Agency's post-hearing brief. The Board then summarizes the alleged violations, before addressing the issue of penalties. Finally, after finding violations, the Board directs the Agency and the Clerk of the Board to provide hearing costs documentation, to which Respondents may respond. After the time periods for the hearing costs filings expire, the Board will issue a final opinion and order assessing the civil penalty and appropriate hearing costs.

**ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorizes the Agency and units of local government to enforce specified provisions of the Act through an AC. 415 ILCS 5/31.1 (2008). The Agency or

delegated authority must serve the AC on the respondents within “60 days after the date of the observed violation,” (415 ILCS 5/31.1(b) (2008)) and must file a copy of the AC with the Board no later than ten days after serving the respondents. 415 ILCS 5/31.1(c) (2008). To contest the AC, the respondents must file a petition with the Board no later than 35 days after being served with the AC. If the respondents fail to do so, the Board must find that the respondents committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(2) (2008); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondents timely contest the AC, but the complainant proves the alleged violations at hearing, the respondents will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. 415 ILCS 5/42(4, 4-5) (2008). Unlike other environmental enforcement proceedings in which only a maximum penalty is prescribed, (*e.g.* 415 ILCS 5/42(b)(1-3) (2008)), Section 42 sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2008). Thus, in cases such as this the Board has no authority to consider mitigating or aggravating factors in the Board’s determination of penalty amounts. *Id.* However, “if the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” (415 ILCS 5/31.1(d)(2) (2008)).

### **PROCEDURAL HISTORY**

On April 16, 2009, the Agency timely filed an AC against the Respondents. The Agency served the AC on the Respondents on May 4, 2009. On May 22, 2009, the Respondents timely filed their initial petition for review. On June 8, 2009, July 6, 2009, and July 24, 2009, the Respondents filed their amended petition for review, second amended petition for review, and third amended petition for review, respectively. The amended petitions were ordered by the Board to cure certain deficiencies in the initial petition for review. The Board will refer to the Respondents’ initial petition for review and three amended petitions for review collectively as the Respondents’ amended petition for review (Am. Pet.). On August 6, 2009, the Board accepted the Respondents’ amended petition for review to contest the AC.

On June 15, 2010, Board Hearing Officer Carol Webb conducted a hearing (Tr.) at the Union County Courthouse in Jonesboro, Union County. Tr. at 1. Attorney Michelle Ryan appeared on behalf of the Agency. *Id.* at 2. The Respondents appeared *pro se*. *Id.* At the hearing, Sheila Williams (Ms. Williams), an environmental protection specialist with the Agency, testified. *Id.* at 7. The Respondents also testified on their own behalf. *Id.* at 17, 21.

At the hearing, Hearing Officer Webb also set a schedule for filing post-hearing briefs, requiring that the Agency file a brief by July 9, 2010 and the Respondents file their response brief by August 9, 2010. *Id.* at 36. On June 30, 2010, the Agency filed a post-hearing brief on the matter (Comp. Br.). The Respondents did not file a post-hearing brief.

## FACTS

On March 4, 2009, Agency Field Inspector Sheila Williams (Ms. Williams) inspected Site No. 1810055092 (site), Lot 18 of a property owned by Thomas and Valerie Hill, and prepared a Narrative Inspection Report to describe her observations (Inspection Report). AC at 1; *see also* Inspection Report at 1. The site is located in the southwest portion of Jonesboro, Illinois, on the south side of Ussery Street. Tr. at 9-10.

The Agency has corresponded with and interviewed the Respondents since the Agency's original inspection of the site on November 13, 2008, and the Agency has performed a total of three inspections at the site. *Id.* at 9; Inspection Report at 1. Ms. Williams described conditions at the site appearing to be similar during both the original inspection on November 13, 2008 and the March 4, 2009 inspection. Inspection Report at 1. Additionally, although no one was present at the site during the inspection, Ms. Williams testified that, according to the Union County Supervisor of Assessments Office, the Respondents received the tax bills for the property on which the site is located. *Id.*

On March 4, 2009, Ms. Williams photographed the site from locations off of the Respondents' property because the Respondents had previously denied Ms. Williams access at another portion of their property. *Id.*; *see also* Tr. at 16. Ms. Williams observed two areas of violations, which she designated as "Area A" and "Area B." Inspection Report at 1. Although since the November 2008 inspection the Respondents had removed two appliances in Area A, Area A still contained a dilapidated mobile home, with an exposed interior where the roof and walls "had fallen in on [themselves] even more than previously observed." *Id.*; Inspection Report, photos 001-006; Tr. at 10-12. Also in Area A, Ms. Williams observed items on the porch of the mobile home, including a vehicle battery and couch. *Id.* In Area B, the ground contained demolition debris, consisting mostly of wood. *Id.* In addition to the Inspection Report, Ms. Williams completed an Open Dump Inspection Checklist on March 4, 2009 and an Affidavit on March 27, 2009. *See* AC. On April 16, 2009, the Agency filed the AC and included the all three of these documents. *Id.*

The Respondents also provided several facts surrounding the matter. First, in the summer of 2007, a company named "Truly Blessed, Incorporated" offered to remove the materials from the site in exchange for the scrap metal among these materials. Tr. at 18-19. The company removed one trailer off of the Respondents' Lot 17 parcel; however, the company did not remove the trailer on Lot 18, which is the 48-foot long trailer described in Ms. Williams' Inspection Report. *Id.* at 18, 34; *see also* Inspection Report at 1. Second, in November 2007, the City of Anna closed the entrance to Baker Street, which the Respondents were using to clean the site. Tr. at 18. Closing this Baker Street entrance has resulted in litigation between the Respondents and the City of Anna. *Id.* at 18-20. Additionally, the remaining road that the Respondents could use to access the site, Ussery Street, is narrow. *Id.* at 22-24. Third, the Respondents have exhausted all of their credit cards and are near bankruptcy after paying their attorney for the Baker Street litigation as well as their home and car payments. *Id.* at 18-21.

## **STATUTORY BACKGROUND**

Section 3.05 of the Act defines “open dumping” 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 5/3.05 (2008).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2008).

Section 3.535 of the Act defines “waste” as:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act....415 ILCS 5/3.535 (2008).

Section 3.160(a) of the Act defines “general construction or demolition debris” as follows:

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 other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials. 415 ILCS 5/3.160(a) (2008).

Section 3.160(b) of the Act defines clean construction or demolition debris as “uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities.” 415 ILCS 5/3.160(b) (2008).

Section 21(a) of the Act states that “[n]o person shall [c]ause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2008).

Section 21(p) of the Act states that no person shall:

[i]n violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter...

(7) deposition of:

- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or
- (ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act.

The prohibitions specified in this subsection (p) shall be enforceable...by administrative citation under Section 31.1 of this Act....415 ILCS 5/21(p) (2008).

Section 31.1(d)(2) of the Act states, in part:

If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.” 415 ILCS 5/31.1(d)(2) (2008).

Section 42(b)(4-5) of the Act states, in part:

In an administrative citation under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$1,500.00 for each violation of each provision, plus any hearing costs incurred by the Board and the Agency.... 415 ILCS 5/42(b)(4-5) (2008).

### **RESPONDENTS' TESTIMONY**

The Respondents did not file a post-hearing brief in the matter, so the Board will note the defenses that the Respondents argued in their amended petition for review and at the hearing. The Board recognizes that the Respondents argue four primary defenses. First, the Respondents argue that they should not be penalized for leaving the materials on the site because Truly Blessed, Inc. (Truly Blessed) was supposed to remove these materials in 2007, but did not. Tr. at 18-19. Instead, Truly Blessed removed another mobile home from the Respondents' property, along with the axles and valuable materials from the Lot 18 mobile home at issue, and left the remaining portions of the Lot 18 mobile home. *Id.* at 18, 34.

Second, the Respondents argue that they should not be penalized for leaving the materials on the site because as they were attempting to remove the remaining mobile home, the City of Anna closed Baker Street, which limited their access to the site. Tr. at 18-20, 22-24. As a result, the Respondents could only access the site via Ussery Street. *Id.* at 22. The Respondents argue that Ussery Street is inadequate to remove the materials because the road is neither large enough nor stable enough to support a dumpster or large truck. *Id.* at 22-24. Additionally, the Respondents argue that even if they could access the materials using a small truck on Ussery Street, they would still be unable to move the 48-foot long mobile home without the items that Truly Blessed removed. *Id.* at 34. Further, the Respondents argue that the materials on the site

are evidence for their litigation against the City of Anna, which they should not have to remove until their case is resolved. *Id.* at 19.

Third, the Respondents argue that they should not be penalized for leaving the materials on the site because they lacked the financial resources to remove the materials. Tr. at 17-20. The Respondents argue that they have been in litigation against the City of Anna since 2007, have exhausted their credit cards paying for their attorney in that case, and have been unemployed until recently. *Id.* at 17-18.

Fourth, the Respondents argue that the Agency was trespassing on the Respondents' property when the Agency conducted the inspection. Tr. at 15. The Respondents describe that they told Ms. Williams that she was not allowed on their property without their permission and that they can determine where Ms. Williams was standing by the position of her photos. *Id.* at 15-16.

### **AGENCY'S ARGUMENTS**

The Agency argues that the Respondents violated Sections 21(p)(1) and (7) of the Act by causing or allowing the open dumping of waste, resulting in litter and the deposition of construction or demolition debris. Comp. Br. at 1. (415 ILCS 5/21(p)(1), (7) (2008)). First, to support that the Respondents violated Sections 21(p)(1) and (7), the Agency argues that the Agency's findings satisfy the requirements for "open dumping," "refuse," and "waste." Comp Br. at 1. Specifically, the Agency's March 4, 2009 inspection revealed several materials at the site, including a mobile home with an exposed interior, a vehicle battery, a couch, and demolition debris, consisting mostly of wood. *Id.* at 1-2. Additionally, the Agency argues that the materials have been on the site since 2007 and that the mobile home had continued to collapse since November 2008, when the Agency conducted the original inspection of the site. *Id.* at 2.

Second, the Agency argues that the Respondents' open dumping of waste resulted in "litter" under Section 21(p)(1) of the Act. *Id.* Although the Act does not define "litter," the Agency notes that in similar cases, the Board has applied the definition of "litter" from the Litter Control Act to argue that the dilapidated mobile home, vehicle battery, couch, and demolition debris satisfy the Litter Control Act's definition of "litter." *Id.*

Third, the Agency argues that the Respondents' open dumping of waste resulted in deposition of "construction or demolition debris" under Section 21(p)(7) of the Act because the mobile home, vehicle battery, couch, and demolition debris satisfy the definition of "demolition debris" under the Act. *Id.* Specifically, the Agency cites the Board's finding in Illinois EPA v. Yocum, et al. that "weathered dimensional lumber...clearly fall[s] under the definition of general construction or demolition debris at Section 3.78 of the Act." *Id.* at 3; PCB Nos. AC 01-29 and AC 01-30 (Consolidated)(June 6, 2002), p. 7; aff'd, Yocum, et al. v. Illinois Pollution Control Board, (4-02-0709), June 20, 2003 (unpub.). Additionally, the Agency describes that the mobile home contained items within the definition of "construction or demolition debris," including wood, wall coverings, roof coverings, and glass. Comp. Br. at 3.

Fourth, the Agency argues against the Respondents' defenses. Comp. Br. at 3-5. In response to the Respondents' argument that they hired Truly Blessed to remove the Lot 18 mobile home, the Agency argues that Truly Blessed dissolved in 2005, two years before the Respondents hired the company; therefore, the Respondents should not have relied on Truly Blessed to clean and remove the mobile home. *Id.* at 3.

Next, the Agency cites the Board's previous decision in Illinois EPA v. John Brown, d/b/a John Brown Painting, to support that a lack of financial resources is not related to the statutory defense of "uncontrollable circumstances." *Id.* at 3-4; PCB AC 04-82 (May 19, 2005) p. 9. Further, regarding the City of Anna closing Baker Street and the Respondents' pending litigation, the Agency argues that Ussery Street is as good an access point to the site as Baker Street because Baker Street is an unimproved alley in contrast to Ussery Street, which is paved. Comp. Br. at 4. Moreover, the Agency argues that regardless of the Respondents' access to Baker Street, the Respondents could access the site via Ussery Street, using a small pickup truck or small utility trailer. *Id.*

Finally, the Agency cites the Board's finding in County of Will v. Utilities Unlimited, Inc., et al. that knowledge or intent are not necessary to violate the Act. *Id.* at 5; PCB AC 97-41 (July 24, 1997) p. 5, citing People v. Fiorini, 143 Ill.2d 318, 574 N.E.2d 612 (1991). The Agency relies on this finding to argue that even if the Respondents did not believe that they could remove the materials from the site without Baker Street, they nevertheless violated the Act. Comp. Br. at 5.

### **BOARD DISCUSSION**

The Agency alleges that Respondents violated Sections 21(p)(1) and (p)(7) of the Act by causing or allowing the open dumping of waste, resulting in litter (415 ILCS 5/21(p)(1) (2008)), and the deposition of general or clean demolition and construction debris (415 ILCS 5/21(p)(7) (2008)). Comp. Br. at 1. First, the Board will discuss whether the Respondents "cause[d] or allow[ed]" the "open dumping" of "waste." Next, the Board will discuss whether any open dumping which may have occurred at the site resulted in "litter" or the deposition of "clean or general construction or demolition debris." Finally, the Board will discuss the Respondents' defenses for their alleged actions and the Agency's counterarguments.

#### **"Open Dumping" of "Waste"**

To prove a violation of any subsection of Section 21(p) of the Act (415 ILCS 5/21(p) (2008)), the Agency must first prove that the Respondents violated Section 21(a) of the Act by causing or allowing the open dumping of any waste. 415 ILCS 5/21(a) (2008). "Open dumping" means "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 (2008). "Refuse" means "waste," (415 ILCS 5/3.385 (2008)) and "waste" includes "any garbage ...or other discarded material." (415 ILCS 5/3.535 (2008)).

The record shows that Ms. Williams observed and photographed several materials including a mobile home with an exposed interior, a vehicle battery, a couch, and demolition

debris, consisting mostly of wood. Tr. at 10-12. The Inspection Report describes that the mobile home “had fallen in on itself even more than previously observed,” and the Inspection Report photos support that the mobile home was dilapidated and exposed. Inspection Report, Photos 001-006. In similar factual scenarios, the Board has found that such visual evidence is proof of a lack of intent to use the materials in the future. See IEPA v. Stutsman, AC 05-70, slip op. at 7 (Sept. 21, 2006); see also IEPA v. Carrico, AC 04-27, slip op. at 7 (Sept. 2, 2004), and IEPA v. Cadwallader, AC 03-13, slip op. at 4 (May 20, 2004).

The Board need not address the issue of whether certain items, such as the mobile home with an exposed interior, a vehicle battery, a couch, and demolition debris have “value,” thus removing them from the statutory definition of waste.<sup>1</sup> The Board has repeatedly stated that if at least some of the items consolidated at a site are waste, open dumping has occurred. Stutsman, at 8; see also IEPA v. Moreton, AC 04-51, slip op. at 8 (February 1, 2007).

The Board finds that the mobile home with the exposed interior, the vehicle battery, the couch, and the demolition debris at the site constitute “any garbage...or other discarded material” (415 ILCS 5/3.535 (2008)) and that the Respondents have consolidated refuse. Further, the Respondents do not dispute that these items were discarded materials because they describe that they intended and attempted to clean these materials from the site, but could not. Tr. at 18. Moreover, it is undisputed that the site does not meet the requirements of a sanitary landfill. Therefore, the Board finds that “waste” has been “open dumped” at the site.

### **“Cause or Allow”**

Although the Respondents did not expressly argue it at hearing or in their amended petition for review, the Board addresses the issue of their operational control of the property as a result of the lack of discussion at hearing regarding this essential element of the statutory language. For the Board to find that the Respondents caused or allowed the open dumping of waste in violation of the Act, the Agency must prove that the Respondents were “in control of the premises where the pollution occurred.” County of Vermilion v. Village of Tilton, AC 04-22 slip op. at 11 (Dec. 16, 2004); citing People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793, 618 N.E.2d 620.

Here, the Board finds that the Respondents owned and controlled the premises where and when the open dumping occurred and thus caused or allowed the dumping. Respondents owned the property on which the site is located. AC at 1; Tr. at 9, 23. Mrs. Hill acknowledges that the Respondents left the materials on the site and that they attempted to remove the mobile home from their lot by retaining Truly Blessed to remove the materials in exchange for the scrap metal.

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<sup>1</sup> The Board has addressed the issue of apparently abandoned mobile homes in previous cases, holding that a determination that a mobile home is abandoned and therefore “waste” depends upon the factual circumstances. See County of Jackson v. Bob Osinga, AC 07-43, slip op. at 2 (Dec. 6, 2007) (“collapsing mobile home, with one end open and falling, which allows the elements to get inside”); County of Jackson v. David Skidmore, AC 06-32, slip op. at 3 (March 1, 2007) (“abandoned mobile home that was missing a door and window, and had material spilling out”).

Tr. at 18. Additionally, Mrs. Hill admits that they were attempting to clean the site when the City of Anna closed Baker Street. *Id.* Further, the Respondents describe their intent to clean the site when they could afford to clean it and when the City of Anna reopens Baker Street. *Id.* at 18. Thus, the Respondents' attempts to clean the materials from the site supports that they controlled the property and materials at the site.

Additionally, the Board has previously found that a respondent's ability to enter onto a site for the purposes of clean up is not relevant to the determination of whether the respondent caused or allowed open dumping to occur because the relevant issue is whether the respondent "exercised control over the site when the alleged pollution occurred." IEPA v. Harrison, et al, AC 05-8, slip op. at 4 (April 6, 2006). As a result, even if the City of Anna closed Baker Street and prevented the Respondents from entering the site to clean it, this defense is not relevant to the Board's determination of whether the Respondents controlled the site when they caused or allowed open dumping to occur. Accordingly, the Board finds that the Respondents "caused or allowed" the violations of the Act.

### **"Litter"**

Although the Act does not define "litter," the Board has looked to the definition in the Litter Control Act: "[l]itter means any discarded, used, or unconsumed substance or waste. 'Litter' may include, but is not limited to, any garbage, trash, refuse, debris, rubbish...or anything else or an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly." 415 ILCS 105/3(a) (2008); *see also* St. Clair County v. Louis I. Mund, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991). The record is clear that on March 4, 2009, the site contained discarded materials such as a mobile home with an exposed interior, a vehicle battery, a couch, and demolition debris consisting of wood. Tr. at 10-12; Inspection Report Photos 1-6. In addition, the Respondents do not dispute that these materials were among the materials that the Agency observed on the site. Therefore, the Board finds that these materials fall within the definition of "litter" (415 ILCS 105/3(a) (2008)) and that the Respondents violated Section 21(p)(1) of the Act.

### **"Construction or Demolition Debris"**

The Act defines "construction or demolition debris" at Section 3.160(a) of the Act. *See* 415 ILCS 5/3.160(a) (2008). Among other things, the statutory definition includes "wood, including non-hazardous painted, treated, and coated wood and wood products." *See* 415 ILCS 5/3.160(a). The record shows that the site contained materials including wood debris. Tr. at 10-12; Inspection Report Photos 1-6. In addition, the Respondents do not dispute that these materials were among the materials that the Agency observed at the site. The Board accordingly finds that respondent violated Section 21(p)(7) of the Act.

### **Respondents' Defenses**

The Board notes that the Respondents have raised four general defenses without citation to authority. However, the Board finds these defenses insufficient. First, the Respondents argue that they should not be penalized for leaving the materials on the site because Truly Blessed was

supposed to remove these materials in 2007, but did not. Tr. at 18-19. The Board has previously found the following:

the administrative citation was created by statute with clearly delineated procedures and defenses as a streamlined way in which to enforce the Illinois Environmental Protection Act. See 35 Ill. Adm. Code 108 et seq...the legislature defined narrow parameters for contesting an administrative citation, limited to questions of ownership of the property at issue, whether the alleged violator caused or allowed the alleged violations; whether the citation was timely served; and whether the alleged violations resulted from uncontrollable circumstances. 35 Ill. Adm. Code 108.206; IEPA v. Bobby G. Myers and Donald D. Myers, AC 07-30, slip op. at 11 (May 21, 2009).

Under the administrative citation program, once the Board finds that a violation has occurred, the Board has neither the authority nor discretion to consider clean-up efforts as grounds to dismiss an administrative citation. *See, e.g. City of Chicago v. City Wide Disposal Inc.*, AC 03-11, slip op. at 5-6 (Sept. 4, 2003); County of Jackson v. Dan Kimmel, AC 09-8, slip op. at 8 (June 4, 2009). Therefore, this clean-up defense is insufficient because the Board cannot consider Respondents' clean-up efforts as grounds to dismiss the administrative citation.

Second, the Respondents argue that they should not be penalized for leaving materials on the site because the City of Anna closed Baker Street as the Respondents were cleaning Lot 18, limiting the Respondents' access to the site. *Id.* at 18-20, 22-24. Where the Board finds that uncontrollable circumstances cause an alleged violation of the Act, the Board will issue a finding of no violation. 415 ILCS 5/31.1(d)(2) (2008). A party can claim uncontrollable circumstances as a defense only when unpredictable conditions make it nearly impossible to come into compliance at the time the violation is observed. County of Jackson v. Alvin Valdez, AC 09-09, slip op. at 9 (April 16, 2009) (finding that adverse weather conditions were usually not uncontrollable circumstances).

Here, even if the City's actions were unpredictable, the City's actions did not make it nearly impossible for the Respondents to clean the property. Ms. Williams testified that the Respondents could likely have accessed the site to clean most of the materials using a pickup truck or utility trailer via Ussery Street. Tr. at 32. Further, although the Respondents argue that a pickup truck or utility trailer could not move the 48-foot mobile home after Truly Blessed removed the axles (Tr. at 33-34), the Respondents could likely have removed the other materials from the site and disassembled the mobile home to remove it. Moreover, the Board rejects the Respondents' argument that they must preserve the materials at the site as evidence for any pending litigation with the City of Anna. *See* Tr. at 18-19. Therefore, the Board finds that the City of Anna closing Baker Street was not an uncontrollable circumstance because the closure did not make it nearly impossible for the Respondents to clean the site.

Third, the Respondents argue that they should not be penalized for leaving the materials on the site because they lacked the financial resources to remove the materials. *Id.* at 17-20. However, the Agency is correct in citing the Board's prior finding that delays in removing waste from a site due to lack of financial resources is irrelevant to the statutory defense of

“uncontrollable circumstances” where a lack of financial resources did not cause the violations. Illinois EPA v. John Brown, d/b/a John Brown Painting, PCB AC 04-82 (May 19, 2005), p. 9. Therefore, the Board finds that the Respondents’ lack of financial resources is irrelevant to the defense of uncontrollable circumstances.

Fourth, the Respondents argue that the Agency conducted the inspection while on the Respondents’ private property. The Agency’s authority to enter private property at reasonable times to inspect and investigate possible violations of the Act is subject only to constitutional limitations. *See* 415 ILCS 5/4(d) (2008); County of Jackson v. Valdez, AC 09-09, slip op. at 8 (April 16, 2009). Parties seeking to suppress evidence based on an invasion of privacy have the burden of showing that an unreasonable search has occurred. County of Jackson v. Kamarasy, PCB 04-63, slip op. at 22-23 (June 16, 2005). Here, the Respondents do not meet the burden of showing that the Agency conducted an unreasonable search. Ms. Williams described that she took her inspection photos from areas outside of the Respondents’ property. Tr. at 16; Inspection Report at 1. Accordingly, the Board declines to suppress the Agency’s evidence based on the Respondents’ invasion of privacy defense.

### **Civil Penalties and Hearing Costs**

Because the Board finds that the Respondents violated Sections 21(p)(1) and (p)(7) of the Act on March 4, 2009, and that those violations were not the result of uncontrollable circumstances, the Board now discusses civil penalties and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)).

In an administrative citation action under Section 31.1 of the Act, any person found to have violated any provision of subsection (p) of Section 21 of the Act shall pay a civil penalty of \$1,500 for each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be \$3,000 for each violation of any provision of subsection (p) of Section 21 that is the person’s second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2008).

The Board finds that the violations in the Administrative Citation were the Respondents’ first violations. Thus, the statutory penalty will be \$1,500 for each violation of the Act. The respondent violated Sections 21(p)(1) and (p)(7), therefore their total penalty will be \$3,000.

The Board directs the Agency and the Clerk of the Board to file hearing costs documentation, to which the Respondents may respond within 21 days after service of the claimed costs. 35 Ill. Adm. Code 108.506(a). After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

### **CONCLUSION**

After reviewing the record in this case and the relevant portions of the Act, the Board finds that the Respondents caused or allowed the opening dumping of waste resulting in litter and the deposition of general construction or demolition debris or clean construction or

demolition debris. The Board finds that the Respondents have not persuasively argued either of the available statutory defenses – “uncontrollable circumstances” or non-occurrence of the alleged violations. Therefore, the Board finds that the Respondents have violated Sections 21(p)(1) and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1) and (p)(7) (2008). In the Board’s final order, the Board will order Respondents to pay a civil penalty of \$3,000.00. As set forth below, the Board directs the Clerk and the Agency to document hearing costs and serve them upon Respondents, after which the Board will issue a final order.

This interim opinion and order constitutes the Board’s finding of fact and conclusions of law.

### **PENALTY**

The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 per violation, except that the penalty amount is \$3,000 for each violation that is the person’s second or subsequent adjudicated violation of that provision. The Board is also directed to assign hearing costs incurred by the Board and the Agency to the Respondents. 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and they are the Respondents’ first adjudicated violations, the Board will order the Respondents to pay a civil penalty of \$3,000.00 plus costs in the Board’s final order.

### **ORDER**

1. The Board finds that Thomas and Valerie Hill (Respondents) violated Sections 21 (p)(1) and (p)(7) of the Act.
2. The Illinois Environmental Protection Agency must file a statement of hearing costs within 14 days of this order, by October 21, 2010. The statement must be supported by affidavit and served upon the Respondents. Within the same 14-day period, the Clerk of the Illinois Pollution Control Board must also file and serve upon the Respondents a statement of the Board’s hearing costs supported by affidavit.
3. Respondents may file any objections to those statements within 32 days of service of those statements, by a date on or about November 22, 2010. 35 Ill. Adm. Code 108.506(a). The Agency may then file a reply to the Respondents’ response within 14 days of service of that response. 35 Ill. Adm. Code 108.506(b).
4. The Board will then issue a final order assessing a statutory penalty of \$3,000.00 for the violations and awarding appropriate hearing costs. 35 Ill Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 7, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board