

# JACKSON COUNTY HEALTH DEPARTMENT

## AFFIDAVIT

RECEIVED  
CLERK'S OFFICE

NOV 29 2004

IN THE MATTER OF:

0778095036 / Jackson County  
Makanda / Egon Kamarasy  
COMPLIANCE FILE

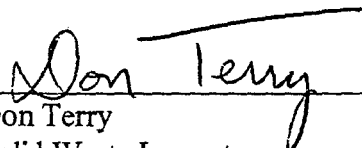
ORIGINAL

STATE OF ILLINOIS  
Pollution Control Board

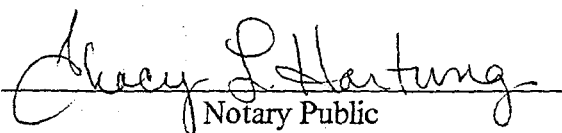
Respondent.

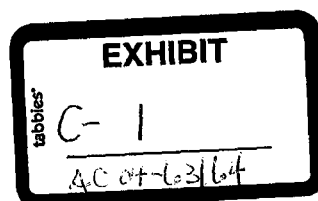
Affiant, Don Terry, being first duly sworn, voluntarily deposes and states as follows:

1. Affiant is a field inspector employed by Jackson County Health Department and has been so employed at all times pertinent hereto.
2. On March 25, 2004, between the hours of 2:32 pm and 2:35 pm, Affiant conducted an inspection of the open dump site known as Makanda/Egon Kamarasy, Jackson County, Illinois.
3. Affiant inspected said open dump site by an inspection from a location adjacent to the site.
4. As a result of the activities referred to in Paragraphs 2 and 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to said Egon Kamarasy, Makanda, Illinois, open dump site.

  
\_\_\_\_\_  
Don Terry  
Solid Waste Inspector

Subscribed and Sworn To before me  
this 29 day of March, 2004.

  
\_\_\_\_\_  
Notary Public



P1

- Exhibit A -

**NARRATIVE INSPECTION REPORT DOCUMENT**  
**OPEN DUMP SITE**

**Date of Inspection:** March 25, 2004

**Inspector:** Don Terry

**Site Code:** 077 809 5036

**County:** Jackson

**Site Name:** Makanda / Egon Kamarasy

**Time:** 2:32 pm – 2:35 pm

**Location:** Eastern end of Starvation Acres Rd

**Owner of Property:** Egon Kamarasy

**Approximate Volume of Waste at site:** 110 cu/yds

**GPS:** N 37° 40.580 W 089° 15.105

**GENERAL REMARKS**

During the above date and time, I conducted an inspection of this site as a follow-up of one done on December 5, 2003.

According to the Jackson County Assessor's Office, the site is owned by Egon Kamarasy of 474 Egret Lake Rd, Carbondale, IL 62901. The weather conditions at the time of the inspection were: partly cloudy, windy and a temperature of about 72°F.

I did not enter the property and conducted this follow-up inspection from the gate.

From the gate I observed a debris pile in approximately the same location as I had observed on December 5, 2003 (**Photo #1, see sketch**). It appeared larger than when I observed it on my last inspection, indicating more material has been open dumped at this location since December 5, 2003. The approximate volume of this debris pile is 110 cu/yds (**Photo #1, see sketch**). It appeared to consist of construction / demolition debris consolidated from off site and included: dimensional lumber, dark paneling, metal siding and other materials not readily identifiable from my location.

My inspection ended at approximately 2:35 pm.

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**Continuing Violations Observed:**

**Item #5(21)(a): Cause or allow open dumping; Item #8(21)(p)(1 and 7): 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 general construction or demolition debris; or clean construction or demolition debris:** During the inspection open dumping on the site was observed causing litter and the deposition of general or clean construction or demolition debris.

**Item #6(21)(d)(1): Conduct any waste-storage, waste-treatment, or waste-disposal operation: Without a permit; Item #6(21)(d)(2): Conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board:** Due to the volume and type of waste observed, the manner in which it was placed and the location, it can be assumed that the waste was not generated on site and was transported onto the site for the purpose of disposal. During the inspection violations of regulations and standards were observed. There is no record that Mr. Kamarasy was issued a permit by the Agency to conduct a waste-storage, waste-treatment, or waste-disposal operation.

**Item #7(21)(e): Dispose, treat, store, or abandon any waste, or transport any waste into the State at/to sites not meeting requirements of the Act:** Violations of this section of the Act were observed during the inspection.

**Item #10(812.101)(a): Failure to submit an application for a permit to develop and operate a landfill; Item #15(807.201): Failure to obtain a Developmental Permit to operate a solid waste management site; Item #15(807.202): Failure to obtain an Operational Permit to operate a solid waste management site:** There is no record that Mr. Kamarasy has submitted or received a permit to develop or operate a landfill or to develop or operate a solid waste management site.

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**OPEN DUMP INSPECTION  
SITE SKETCH**

**Date Of Inspection:** March 25, 20204

**Inspector:** Don Terry

**Site Code:** 077 809 5036

**County:** Jackson

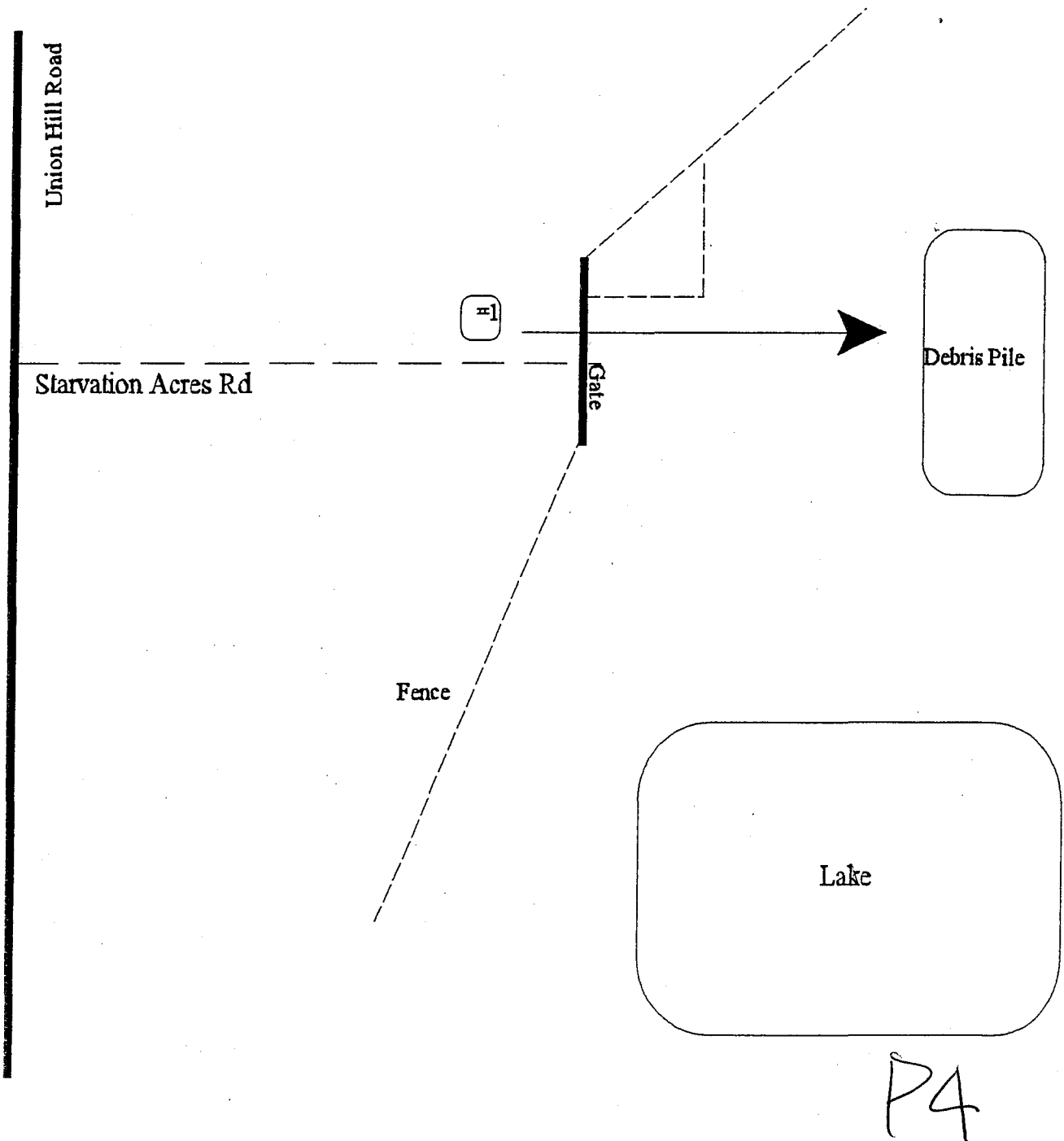
**Site Name:** Makanda / Egon Kamarasy

**Time:** 2:32 pm 2:35 pm

Not Drawn to Scale

All locations are approximate

O → indicates approx. location & direction of photos





# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## Open Dump Inspection Checklist

County: Jackson                      LPC#: 077 809 5036                      Region: 7 - Marion  
 Location/Site Name: Makanda / Egon Kamarasy  
 Date: 03/25/2004    Time: From 2:32 pm    To 2:35 pm    Previous Inspection Date: 12/05/2003  
 Inspector(s): Don Terry                      Weather: 72°F -- partly cloudy with moderate winds  
 No. of Photos Taken: # 1    Est. Amt. of Waste: 110 yds<sup>3</sup>    Samples Taken: Yes # \_\_\_\_\_ No   
 Interviewed: no one at site                      Complaint #: 2004-002

Responsible Party Mailing Address(es) and Phone Number(s):	<div style="border: 1px solid black; padding: 5px;">           Egon Kamarasy            474 Egret Lake Rd            Carbondale, IL 62901         </div> <div style="border: 1px solid black; height: 80px; width: 100%;"></div>
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	SECTION	DESCRIPTION	VIOL
<b>ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS</b>			
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit	<input checked="" type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT	<input checked="" type="checkbox"/>
8.	21(p)	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	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

PS

LPC # 077 809 5036

Inspection Date: 03/25/2004

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris	<input checked="" type="checkbox"/>
9.	55(a)	<b>NO PERSON SHALL:</b>	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
<b>35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G</b>			
10.	812.101(a)	FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL	<input checked="" type="checkbox"/>
11.	722.111	HAZARDOUS WASTE DETERMINATION	<input type="checkbox"/>
12.	808.121	SPECIAL WASTE DETERMINATION	<input type="checkbox"/>
13.	809.302(a)	ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST	<input type="checkbox"/>
<b>OTHER REQUIREMENTS</b>			
14.		APPARENT VIOLATION OF: ( <input type="checkbox"/> ) PCB; ( <input type="checkbox"/> ) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	<input type="checkbox"/>
15.	OTHER:	807.201 Developmental Permit & 807.202 Operational Permit	<input checked="" type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

*Donald Terry*

Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

P6



## DIGITAL INSPECTION PHOTOS

Date: March 25, 2004	Site #: 077 809 5036	County: JACKSON
Time: 2:32 pm	Site Name: Makanda / Egon Kamarasy	
Photograph taken by: Don Terry		
COMMENTS: Pictures taken toward:  East		
<b>PHOTO FILE NAME:</b>		
0778095036-03252004-01		

Date:
Time:
Photograph taken by:
COMMENTS: Pictures taken toward:
<b>PHOTO FILE NAME:</b>

No Photo

P7

**NARRATIVE INSPECTION REPORT DOCUMENT**  
**OPEN DUMP SITE**

**Date of Inspection:** December 5, 2003

**Inspector:** Don Terry

**Site Code:** 077 809 5036

**County:** Jackson

**Site Name:** Makanda / Egon Kamarasy

**Time:** 9:10 am – 9:15 am

**Location:** Eastern end of Starvation Acres Rd

**Owner of Property:** Egon Kamarasy

**Approximate Volume of Waste at site:** 100 cu/yds

**GPS:** N 37° 40.580 W 089° 15.105

**GENERAL REMARKS**

During the above date and time, I conducted an inspection of the site listed above. This inspection was made as a follow up to a report made to this office by Jackson County Health Department staff. According to the Jackson County Assessor's Office, the site is owned by Egon Kamarasy of 474 Egret Lake Rd, Carbondale, IL 62901. I was accompanied on this inspection by Matt Charles a Sanitarian at the Jackson County Health Department. The weather conditions at the time of the inspection were: cloudy, with rain/snow drizzle and a temperature of about 35°F.

I drove east on Starvation Acres Road. I observed a section of dark wood paneling lying on the north side of the road about 100 feet west of the gate we were approaching. The road ended at this gate which opened into a pasture containing a lake (**Photo #4, see sketch**) and several horses. A sign with "Welcome to Bittersweet Farm, 457-6167" was posted at the gate along with a "No Trespassing" sign (**Photo #1, see sketch**). After checking the phone book, I found that the phone number 457-6167 is listed to the name Egon Kamarasy at 474 Egret Lake Rd, Makanda, IL 62958.

I did not enter the property and conducted my inspection from the gate.

From the gate I observed a large debris pile approximately 100 cu/yds in volume (**Photos #2 and #3, see sketch**). It appeared to consist of construction / demolition debris consolidated from off site and included: dimensional lumber, dark paneling, metal siding and other materials not readily identifiable from my location.

My inspection ended at approximately 9:15 am.

PT

**Violations Observed:**

**Item #5(21)(a): Cause or allow open dumping; Item #8(21)(p)(1 and 7): 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 general construction or demolition debris; or clean construction or demolition debris:** During the inspection open dumping on the site was observed causing litter and the deposition of general or clean construction or demolition debris.

**Item #6(21)(d)(1): Conduct any waste-storage, waste-treatment, or waste-disposal operation: Without a permit; Item #6(21)(d)(2): Conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board:** Due to the volume and type of waste observed, the manner in which it was placed and the location, it can be assumed that the waste was not generated on site and was transported onto the site for the purpose of disposal. During the inspection violations of regulations and standards were observed. There is no record that Mr. Kamarasy was issued a permit by the Agency to conduct a waste-storage, waste-treatment, or waste-disposal operation.

**Item #7(21)(e): Dispose, treat, store, or abandon any waste, or transport any waste into the State at/to sites not meeting requirements of the Act:** Violations of this section of the Act were observed during the inspection.

**Item #10(812.101)(a): Failure to submit an application for a permit to develop and operate a landfill; Item #15(807.201): Failure to obtain a Developmental Permit to operate a solid waste management site; Item #15(807.202): Failure to obtain an Operational Permit to operate a solid waste management site:** There is no record that Mr. Kamarasy has submitted or received a permit to develop or operate a landfill or to develop or operate a solid waste management site.

# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## Open Dump Inspection Checklist

County: Jackson                      LPC#: 077 809 5036                      Region: 7 - Marion  
 Location/Site Name: Makanda / Egon Kamarasy  
 Date: 12/05/2003 Time: From 9:10 am To 9:15 am Previous Inspection Date: \_\_\_\_\_  
 Inspector(s): Don Terry                      Weather: rainy/snow, cloudy - 31°F  
 No. of Photos Taken: # 4 Est. Amt. of Waste: 100 yds<sup>3</sup> Samples Taken: Yes # \_\_\_\_\_ No   
 Interviewed: no one at the site                      Complaint #: 2004-002

Responsible Party  
 Mailing Address(es)  
 and Phone  
 Number(s):

Egon Kamarasy 474 Egret Lake Rd Carbondale IL 62901	
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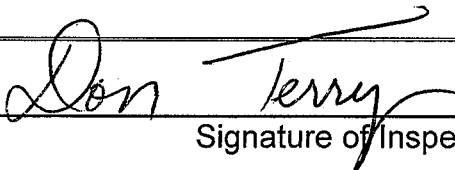
	SECTION	DESCRIPTION	VIOL
<b>ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS</b>			
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit	<input checked="" type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT	<input checked="" type="checkbox"/>
8.	21(p)	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	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

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LPC # 077 809 5036

Inspection Date: 12/05/03

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris	<input checked="" type="checkbox"/>
9.	55(a)	<b>NO PERSON SHALL:</b>	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
<b>35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G</b>			
10.	812.101(a)	FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL	<input checked="" type="checkbox"/>
11.	722.111	HAZARDOUS WASTE DETERMINATION	<input type="checkbox"/>
12.	808.121	SPECIAL WASTE DETERMINATION	<input type="checkbox"/>
13.	809.302(a)	ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST	<input type="checkbox"/>
<b>OTHER REQUIREMENTS</b>			
14.		APPARENT VIOLATION OF: ( <input type="checkbox"/> ) PCB; ( <input type="checkbox"/> ) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	<input type="checkbox"/>
15.	OTHER:	807.201, 807.202	<input checked="" type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>


  
Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.



## DIGITAL INSPECTION PHOTOS

Date: December 5, 2003	Site #: 077 809 5036	County: JACKSON
Time: 9:12 am	Site Name: Makanda / Egon Kamarasy	
Photograph taken by: Don Terry		
COMMENTS: Pictures taken toward:  East		
<b>PHOTO FILE NAME:</b>		
0778095036-12052003-01		

Date: December 5, 2003
Time: 9:13 am
Photograph taken by: Don Terry
COMMENTS: Pictures taken toward:  East
<b>PHOTO FILE NAME:</b>
0778095036-12052003-02




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## DIGITAL INSPECTION PHOTOS

Date: December 5, 2003	Site #: 077 809 5036	County: JACKSON
Time: 9:14 am	Site Name: Makanda / Egon Kamarasy	
Photograph taken by: Don Terry		
COMMENTS: Pictures taken toward:  East		
<b>PHOTO FILE NAME:</b>		
0778095036-12052003-03		

Date: December 5, 2003
Time: 9:14 am
Photograph taken by: Don Terry
COMMENTS: Pictures taken toward:  Southeast
<b>PHOTO FILE NAME:</b>
0778095036-12052003-04



P11

# JACKSON COUNTY HEALTH DEPARTMENT

## AFFIDAVIT

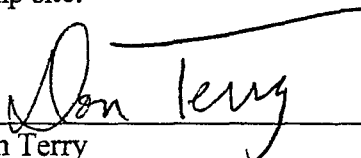
IN THE MATTER OF:

077 812 5013/ Jackson County  
Carbondale / Egon Kamarasy  
COMPLIANCE FILE

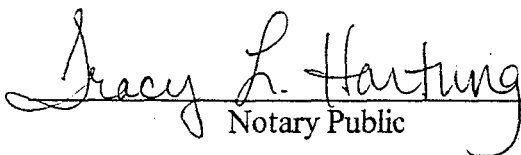
Respondent.

Affiant, Don Terry, being first duly sworn, voluntarily deposes and states as follows:

1. Affiant is a field inspector employed by Jackson County Health Department and has been so employed at all times pertinent hereto.
2. On March 25, 2004, between the hours of 2:25 pm and 2:30 pm, Affiant conducted an inspection of the open dump site known as Carbondale / Egon Kamarasy, Jackson County, Illinois.
3. Affiant inspected said open dump site by an on-site inspection.
4. As a result of the activities referred to in Paragraphs 2 and 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to said Egon Kamarasy, Carbondale, Illinois, open dump site.

  
\_\_\_\_\_  
Don Terry  
Solid Waste Inspector

Subscribed and Sworn To before me  
this 29 day of March, 2004

  
\_\_\_\_\_  
Notary Public



P12

- Exhibit A -

**NARRATIVE INSPECTION REPORT DOCUMENT**  
**OPEN DUMP SITE**

**Date of Inspection:** March 25, 2004

**Inspector:** Don Terry

**Site Code:** 077 812 5013

**County:** Jackson

**Site Name:** Carbondale / Egon Kamarasy

**Time:** 2:25 pm – 2:30 pm

**Location:** 786 Green Ridge Rd

**Owner of Property:** Egon Kamarasy

**Volume of Waste at site:** 10 cu / yds

**GPS:** N 37°40.869 W 089°16.646

**GENERAL REMARKS**

During the stated date and time, I conducted an inspection of the site listed above. This inspection was made as a follow up to an inspection made of this site on March 11, 2004. Weather conditions at the time of the inspection were: cloudy, windy with the temperature about 72°F.

According to the Jackson County Assessor's Office, the site is owned by Egon Kamarasy of 474 Egret Lake Rd, Carbondale, IL.

Upon arrival at the site I observed a pile of debris in the same general location as on my inspection visit of March 11, 2004 (**Photos #1 – #5, See sketch**). The debris pile appeared to have been reduced in volume by open burning.

Within this pile I observed landscape waste, dimensional lumber, and what appeared to be metal frames from furniture. I also observed metal fence posts, the remains of what appeared to be a window air conditioner, sections of laminate counter tops, metal cans and other materials not easily identifiable (**Photos #1 – #5, See sketch**). Most of this material was charred from burning.

My inspection ended at approximately 2:30 pm.

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Page 2  
077 812 5013  
Carbondale / Egon Kamarasy  
March 25, 2004

**Continuing Violations Observed:**

**Item #1(9)(a): Cause, threaten or allow air pollution in Illinois; Item #2(9)(c): Cause or allow open burning; Item #8(21)(p)(3): Cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site: (3) Open Burning:** During the inspection, evidence of the open burning of waste was observed.

**Item #5(21)(a): Cause or allow open dumping; Item #8(21)(p)(1&7): 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 and (7) Deposition of general construction or demolition debris; or clean construction or demolition debris:** During the inspection, the open dumping of waste resulting in litter and the deposition of general construction or demolition debris was observed.

**Item #6(21)(d)(1): Conduct any waste-storage, waste-treatment, or waste-disposal operation: Without a permit; Item #6(21)(d)(2): Conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board:** There is no record of the property owner having received a permit from the Agency to conduct a waste-storage, waste-treatment or waste-disposal operation. Also, during the inspection, violations of standards and regulations were observed.

**Item #7(21)(e): Dispose, treat, store, or abandon any waste, or transport any waste into the State at/to sites not meeting requirements of the Act:** Due the location of the site and the type and amount of debris observed, it would be reasonable to assume that the waste was transported to the site from another location for the purpose of disposal.

**Item #9(55)(a)(1): No person shall: Cause or allow open dumping of any used or waste tire; Item #10(812.101)(a): Failure to submit an application for a permit to develop and operate a landfill:** During the inspection, the open dumping of waste tires on the site was observed.

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# OPEN DUMP INSPECTION SITE SKETCH

Date Of Inspection: March 25, 2004

Inspector: Don Terry

Site Code: 077 812 5013

County: Jackson

Site Name: Carbondale / Egon Kamarasy

Time: 2:25 pm - 2:30 pm

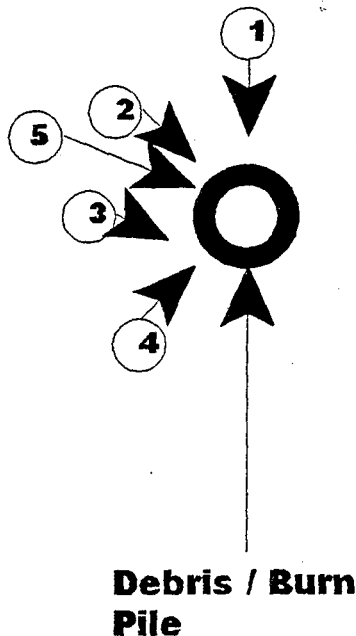
Not Drawn to Scale

All Locations Are Approximate

O → Indicates *Approximate* Location & Direction of Photos



Bear Rd



Debris / Burn  
Pile

Fence

Dirt drive

Fence

Green Ridge Rd

P45

**NARRATIVE INSPECTION REPORT DOCUMENT**  
**OPEN DUMP SITE**

**Date of Inspection:** March 11, 2004

**Inspector:** Don Terry

**Site Code:** 077 812 5013

**County:** Jackson

**Site Name:** Carbondale / Egon Kamarasy

**Time:** 11:05 am – 11:15 am

**Location:** 786 Green Ridge Rd

**Owner of Property:** Egon Kamarasy

**Volume of Waste at site:** 16 cu / yds

**GPS:** N 37°40.869 W 089°16.646

**GENERAL REMARKS**

During the stated date and time, I conducted an inspection of the site listed above. This inspection was made as a follow up to a complaint made to this office by a member of the Jackson County Health Department staff. Weather conditions at the time of the inspection were: sunny, windy with the temperature about 40°F.

According to the Jackson County Assessor's Office, the site is owned by Egon Kamarasy of 474 Egret Lake Rd, Carbondale, IL.

Upon arrival at the site I observed a large pile of debris (**Photos #1, #2, #3 & #5, See sketch**). Within this pile I observed landscape waste, two couches, two mattresses, pallets, plastic items, charred wire and other materials not readily identifiable. To the north of the debris pile I observed three waste tires that had been open dumped (**Photos #2 & #5, See sketch**).

I also observed in and around the debris pile, evidence of previous burning, including: charred dimensional lumber, wall board, metal, mattress springs and earth. I also observed ash at the bottom of the pile (**Photos #4, #5 & #6, See sketch**).

I observed an individual to my east, approximately 30 yards away who appeared to be clearing brush. I approached this individual and asked him his name. He identified himself as James Taylor. I asked if he was the owner of the property on which the debris pile was located. He told me no, the owner was Egon Kamarasy for whom he worked.

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Carbondale / Egon Kamarasy

March 11, 2004

I asked him if he knew anything about the debris pile. He said yes and explained that he was told by Mr. Kamarasy to add brush to the pile and then burn it. I explained that the burning of debris including the tires lying to the side of the pile was not permissible in Illinois.

I stated to Mr. Taylor that he was not to burn the pile and that if he did he could be held responsible for open burning and open dumping under Illinois law and that those violations carry civil penalties beginning at \$1500 per offence.

Before leaving I gave Mr. Taylor my business card and asked him to have Mr. Kamarasy call me to discuss this situation.

My inspection ended at approximately 11:15 am.

**Violations Observed:**

**Item #1(9)(a): Cause, threaten or allow air pollution in Illinois; Item #2(9)(c): Cause or allow open burning; Item #8(21)(p)(3): Cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site: (3) Open Burning:** During the inspection, evidence of the open burning of waste was observed.

**Item #5(21)(a): Cause or allow open dumping; Item #8(21)(p)(1&7): 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 and (7) Deposition of general construction or demolition debris; or clean construction or demolition debris:** During the inspection, the open dumping of waste resulting in litter and the deposition of general construction or demolition debris was observed.

**Item #6(21)(d)(1): Conduct any waste-storage, waste-treatment, or waste-disposal operation: Without a permit; Item #6(21)(d)(2): Conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board:** There is no record of the property owner having received a permit from the Agency to conduct a waste-storage, waste-treatment or waste-disposal operation. Also, during the inspection, violations of standards and regulations were observed.

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Carbondale / Egon Kamarasy

March 11, 2004

**Item #7(21)(e): Dispose, treat, store, or abandon any waste, or transport any waste into the State at/to sites not meeting requirements of the Act:** Due the location of the site and the type and amount of debris observed, it would be reasonable to assume that the waste was transported to the site from another location for the purpose of disposal.

**Item #9(55)(a)(1): No person shall: Cause or allow open dumping of any used or waste tire;**  
**Item #10(812.101)(a): Failure to submit an application for a permit to develop and operate a landfill:** During the inspection, the open dumping of waste tires on the site was observed.

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# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## Open Dump Inspection Checklist

County: Jackson                      LPC#: 077 812 5013                      Region: 7 - Marion  
 Location/Site Name: Carbondale / Egon Kamarasy  
 Date: 03/11/2004 Time: From 11:05 am To 11:15 am Previous Inspection Date: 06/24/2002  
 Inspector(s): Don Terry                      Weather: 40°F --sunny and windy  
 No. of Photos Taken: # 6    Est. Amt. of Waste: 16 yds<sup>3</sup>    Samples Taken: Yes # \_\_\_\_\_ No   
 Interviewed: James Taylor                      Complaint #: 2004-057

Responsible Party Mailing Address(es) and Phone Number(s):	Egon Kamarasy 474 Egret Lake Rd Carbondale, IL 62901	
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	SECTION	DESCRIPTION	VIOL
<b>ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS</b>			
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input checked="" type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input checked="" type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit	<input checked="" type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT	<input checked="" type="checkbox"/>
8.	21(p)	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	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input checked="" type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

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LPC # 077 812 5013

Inspection Date: 03/11/2004

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris	<input checked="" type="checkbox"/>
9.	55(a)	<b>NO PERSON SHALL:</b>	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input checked="" type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
<b>35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G</b>			
10.	812.101(a)	<b>FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL</b>	<input checked="" type="checkbox"/>
11.	722.111	<b>HAZARDOUS WASTE DETERMINATION</b>	<input type="checkbox"/>
12.	808.121	<b>SPECIAL WASTE DETERMINATION</b>	<input type="checkbox"/>
13.	809.302(a)	<b>ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST</b>	<input type="checkbox"/>
<b>OTHER REQUIREMENTS</b>			
14.		<b>APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:</b>	<input type="checkbox"/>
15.	<b>OTHER:</b>		<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

  
Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.



# Digital Inspection Photo Sheet

Date: March 11, 2004	Site #: 077 812 5013	County: Jackson
Time: 11:08 am	Site Name: Carbondale / Egon Kamarasy	

Photo taken by: Don Terry
Comments – Photo taken towards:  Northwest
Photo File Name:  0778125013-03112004-01



Date: March 11, 2004
Time: 11:08 am
Photo taken by: Don Terry
Comments – Photo taken towards:  Southwest
Photo File Name:  0778125013-03112004-02



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# Digital Inspection Photo Sheet

Date: March 11, 2004	Site #: 077 812 5013	County: Jackson
Time: 11:09 am	Site Name: Carbondale / Egon Kamarasy	

Photo taken by: Don Terry
Comments – Photo taken towards:  Southeast
Photo File Name:  0778125013-03112004-03



Date: March 11, 2004
Time: 11:09 am
Photo taken by: Don Terry
Comments – Photo taken towards:  Southeast
Photo File Name:  0778125013-03112004-04



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# Digital Inspection Photo Sheet

Date: March 11, 2004	Site #: 077 812 5013	County: Jackson
Time: 11:10 am	Site Name: Carbondale / Egon Kamarasy	

Photo taken by: Don Terry
Comments – Photo taken towards:  North
Photo File Name:  0778125013-03112004-05



Date: March 11, 2004
Time: 11:10 am
Photo taken by: Don Terry
Comments – Photo taken towards:  North
Photo File Name:  0778125013-03112004-06



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**NARRATIVE INSPECTION REPORT DOCUMENT**  
**OPEN DUMP SITE**

**Date of Inspection:** March 25, 2004

**Inspector:** Don Terry

**Site Code:** 077 812 5013

**County:** Jackson

**Site Name:** Carbondale / Egon Kamarasy

**Time:** 2:25 pm – 2:30 pm

**Location:** 786 Green Ridge Rd

**Owner of Property:** Egon Kamarasy

**Volume of Waste at site:** 10 cu / yds

**GPS:** N 37°40.869 W 089°16.646

**GENERAL REMARKS**

During the stated date and time, I conducted an inspection of the site listed above. This inspection was made as a follow up to an inspection made of this site on March 11, 2004. Weather conditions at the time of the inspection were: cloudy, windy with the temperature about 72°F.

According to the Jackson County Assessor's Office, the site is owned by Egon Kamarasy of 474 Egret Lake Rd, Carbondale, IL.

Upon arrival at the site I observed a pile of debris in the same general location as on my inspection visit of March 11, 2004 (**Photos #1 – #5, See sketch**). The debris pile appeared to have been reduced in volume by open burning.

Within this pile I observed landscape waste, dimensional lumber, and what appeared to be metal frames from furniture. I also observed metal fence posts, the remains of what appeared to be a window air conditioner, sections of laminate counter tops, metal cans and other materials not easily identifiable (**Photos #1 – #5, See sketch**). Most of this material was charred from burning.

My inspection ended at approximately 2:30 pm.

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Carbondale / Egon Kamarasy

March 25, 2004

**Continuing Violations Observed:**

**Item #1(9)(a): Cause, threaten or allow air pollution in Illinois; Item #2(9)(c): Cause or allow open burning; Item #8(21)(p)(3): Cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site: (3) Open Burning:** During the inspection, evidence of the open burning of waste was observed.

**Item #5(21)(a): Cause or allow open dumping; Item #8(21)(p)(1&7): 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 and (7) Deposition of general construction or demolition debris; or clean construction or demolition debris:** During the inspection, the open dumping of waste resulting in litter and the deposition of general construction or demolition debris was observed.

**Item #6(21)(d)(1): Conduct any waste-storage, waste-treatment, or waste-disposal operation: Without a permit; Item #6(21)(d)(2): Conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board:** There is no record of the property owner having received a permit from the Agency to conduct a waste-storage, waste-treatment or waste-disposal operation. Also, during the inspection, violations of standards and regulations were observed.

**Item #7(21)(e): Dispose, treat, store, or abandon any waste, or transport any waste into the State at/to sites not meeting requirements of the Act:** Due the location of the site and the type and amount of debris observed, it would be reasonable to assume that the waste was transported to the site from another location for the purpose of disposal.

**Item #9(55)(a)(1): No person shall: Cause or allow open dumping of any used or waste tire; Item #10(812.101)(a): Failure to submit an application for a permit to develop and operate a landfill:** During the inspection, the open dumping of waste tires on the site was observed.

# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## Open Dump Inspection Checklist

County: Jackson                      LPC#: 077 812 5013                      Region: 7 - Marion  
 Location/Site Name: Carbondale / Egon Kamarasy  
 Date: 03/25/2004    Time: From 2:25 pm    To 2:30 pm    Previous Inspection Date: 03/11/2004  
 Inspector(s): Don Terry                      Weather: 72°F -- partly cloudy with moderate winds  
 No. of Photos Taken: # 5    Est. Amt. of Waste: 10    yds<sup>3</sup>    Samples Taken: Yes # \_\_\_\_\_ No   
 Interviewed: no one at site                      Complaint #: 2004-057

Responsible Party  
Mailing Address(es)  
and Phone  
Number(s):

Egon Kamarasy  
474 Egret Lake Rd  
Carbondale, IL 62901


	SECTION	DESCRIPTION	VIOL
<b>ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS</b>			
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input checked="" type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input checked="" type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit	<input checked="" type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT	<input checked="" type="checkbox"/>
8.	21(p)	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	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input checked="" type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>



LPC # 077 809 5036

Inspection Date: 03/25/2004

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris	<input checked="" type="checkbox"/>
9.	55(a)	<b>NO PERSON SHALL:</b>	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
<b>35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G</b>			
10.	812.101(a)	<b>FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL</b>	<input checked="" type="checkbox"/>
11.	722.111	<b>HAZARDOUS WASTE DETERMINATION</b>	<input type="checkbox"/>
12.	808.121	<b>SPECIAL WASTE DETERMINATION</b>	<input type="checkbox"/>
13.	809.302(a)	<b>ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST</b>	<input type="checkbox"/>
<b>OTHER REQUIREMENTS</b>			
14.		<b>APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:</b>	<input type="checkbox"/>
15.	<b>OTHER:</b>		<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

  
\_\_\_\_\_  
Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.





# Digital Inspection Photo Sheet

Date: March 25, 2004	Site #: 077 812 5013	County: Jackson
Time: 2:26 pm	Site Name: Carbondale / Egon Kamarasy	

Photo taken by: Don Terry
Comments – Photo taken towards:  South
Photo File Name:  0778125013-03252004-01



Date: March 25, 2004
Time: 2:26 pm
Photo taken by: Don Terry
Comments – Photo taken towards:  Southeast
Photo File Name:  0778125013-03252004-02



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# Digital Inspection Photo Sheet

Date: March 25, 2004	Site #: 077 812 5013	County: Jackson
Time: 2:27 pm	Site Name: Carbondale / Egon Kamarasy	

Photo taken by: Don Terry
Comments – Photo taken towards:  Southeast
Photo File Name:  0778125013-03252004-03



Date: March 25, 2004
Time: 2:27 pm
Photo taken by:
Comments – Photo taken towards:  Northeast
Photo File Name:  0778125013-03252004-04



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# Digital Inspection Photo Sheet

Date: March 25, 2004	Site #: 077 812 5013	County: Jackson
Time: 2:27 pm	Site Name: Carbondale / Egon Kamarasy	

Photo taken by: Don Terry
Comments – Photo taken towards:  Southeast
Photo File Name:  0778125013-03252004-05



Date:
Time:
Photo taken by:
Comments – Photo taken towards:
Photo File Name:

No Photo

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**BEFORE THE ILLINOIS POLLUTION CONTROL  
BOARD**

**RECEIVED**  
CLERK'S OFFICE

NOV 29 2004

STATE OF ILLINOIS  
Pollution Control Board

COUNTY OF JACKSON,

Complainant,

vs.

EGON KAMARASY,

Respondent.

**ORIGINAL**

AC No. 2004-063

**MEMORANDUM SUPPORTING PETITION TO CONTEST  
ADMINISTRATIVE CITATION**

I

INTRODUCTION

The County of Jackson ("County") seeks to impose civil penalties for two (2) alleged violations of the Act.

Mr. Kamarasy denies that his actions violated the Pollution Control Act. He further denies that his actions gave rise to any "pollution".

II

FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 2004, an inspector for the County, Don Terry, conducted an "on-site inspection" of a site that he identified as the Makanda/Kamarasy site, located in Jackson County, Illinois. The inspection lasted approximately three (3) minutes, from 2:32 p.m. until 2:35 p.m. (See Jackson County Health Department Affidavit of Don Terry, dated March 29, 2004, attached as Exhibit "A" to the Administrative Citation ("D. Terry Aff."))

Mr. Terry's Narrative Inspection Report (hereinafter "Report"), submitted in support of the Administrative Citation filed by the County, states that the site investigation on March 25, 2004 was made "as a follow up to an inspection . . . done on December 5, 2003." (See Narrative Inspection Report Document Open Dump Site, attached to Affidavit of Don Terry, dated March 29, 2004, attached as Exhibit "A" to the Administrative Citation ("Narrative

Report”) However, the Report does not give any account of the December 5 investigation. Nor does it say whether that first inspection resulted in any action being taken against Mr. Kamarasy, such as the issuance of a warning, which might have contained its own separate terms for compliance.

Mr. Terry is careful to say in this Report “I did not enter the property and conducted this follow-up inspection from the gate.” (Narrative Report) He then alleges, from that vantage point, “I observed a debris pile in approximately the same location as I had observed on December 5, 2003,” but the pile “appeared larger” indicating, in his words, “more material has been open dumped at this location since December 5, 2003.” (Narrative Report)

The inspector estimated the size of the debris pile on March 25 as being approximately 110 cubic yards. (Narrative Report) Presumably, he also estimated the volume of the pile on December 5, 2003. But, he did not provide documentation from the December 5 inspection, to show whether that previous estimate was smaller or larger.

Mr. Terry claims that the pile “appeared to consist of construction/demolition debris.” (Narrative Report) More specifically, he said that the pile contained (1) “dimensional lumber”, (2) “dark paneling”, (3) “metal siding”, and (4) “other materials not readily identifiable from my location.” (Narrative Report) He then concludes that this debris must have been generated off-site and transported to this location, given the size of the pile. (*Id.*)

To document these observations, Mr. Terry took one photograph, presumably from the gate where he was standing. (*See* Open Dump Inspection Site Sketch, attached hereto as Respondent’s Exhibit “R-2”, and attached to the Administrative Citation filed by the County in this case.) This picture shows that Mr. Terry was standing at a very substantial distance from the alleged “dump”. From that distance, as the picture clearly shows, a pile of material is visible on the site, but it is impossible to say what items were in the pile.

Mr. Terry’s Report states that, on the basis of his personal observation, he concluded the following violations occurred: (1) causing or allowing the open dumping; (2) causing or allowing the open dumping of any waste in a manner that results in (a) litter and (b) the

deposition of general construction or demolition debris or clean construction or demolition debris, in violation of the Act; (3) conducting a waste-storage, waster treatment, or waste-disposal operation without a proper permit; (4) conducting a waste-storage, waste-treatment, or waste-disposal operation in violation of “any regulations or standards adopted by the Board; (5) disposing, treating, storing or abandoning any waste or transporting any waste into the States at or to sites not meeting the requirements of the Act; (6) failing to submit an application for a permit to develop and operate a landfill; (7) failing to obtain a “Developmental Permit” to operate a solid waste management site; and (8) failing to obtain an “Operational Permit” to operate a solid waste management site. (Narrative Report)

On March 30, 2004, the County filed an Administrative Citation with the Pollution Control Board in this cause.

The Administrative Citation states a legal conclusion in its so-called “Facts” section, namely that “[t]he facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit.” This is improper because the complaint fails to allege any of the underlying facts necessary to support the legal conclusions that this was either a “facility” or an “open dump” in the sense regulated by the Pollution Control Act.

In particular, proving that the pile in question was an “open dump” is part of the County’s *prima facie* case for both of the charges against Mr. Kamarasy. Therefore, it cannot be “fact,” until this Board says it is. Nor can it be simply be asserted as a conclusory opinion by the County’s inspector. The County must *prove* the elements of its *prima facie* case, not merely recite them.

Furthermore, it is a **fact** that neither the Citation, nor any other charging instrument from the County accuses Mr. Kamarasy of operating a commercial dump site “facility” without a license. Therefore, one must presume that even the County does not believe this accusation by Mr. Terry was a “fact”.

The citation document charges that (1) “[t]he Respondent has caused or allowed litter at the facility in violation of 415 ILCS § 5/21(p)(1)”; and (2) “[t]he Respondent has caused or

allowed the deposition of general construction or demolition, or clean construction or demolition debris in violation of 415 ILCS § 5/21(p)(7).”

These charges are improperly stated for the same reason as described above. The plain language of the Pollution Control Act requires a showing that the site in question was an “open dump”, in the precise sense that “open dump” is defined in the Act, before showing that it “caused or allowed litter,” or that it “caused or allowed the deposition of general construction or demolition, or clean construction or demolition debris.”

The respondent filed a Petition to Contest Administrative Citation. In it, he denies that his conduct violated the Act as alleged.

Mr. Kamarasy will testify, first of all, that the pile in question was placed on his own property. He will explain that the pile contained the broken down parts and pieces of some mobile homes that were abandoned by others on property that he owns. He will further explain how this pile came to be located on the property in question, as set out below.

Mr. Kamarasy owns and operates a mobile home park. It is a common problem that mobile home owners sometimes abandon their mobile homes at the mobile home park when they move. The owner/operator of the property is then left with the problem of disposing of these unwanted structures.

Mr. Kamarasy will testify and documentary evidence will show that the Illinois Department of Public Health (“IDPH”), as a result of its standard inspections conducted of Mr. Kamarasy’s mobile home park, ordered him to remove certain abandoned and broken mobile homes from the mobile home park. According to the IDPH, Mr. Kamarasy was not permitted to leave the abandoned homes at the mobile home park until he managed to sell or recycle the usable parts from the homes. (*See* Respondent’s Exhibit “R-1”, a copy of which is attached hereto.)

Mr. Kamarasy attempted to comply with the IDPH directive. He had some open space on land he owned, called “Bittersweet Farm”, which is located in Makanda Township, about a half mile from his own homestead and farm located in Pomona Township.



Mr. Kamarasy will testify that he relocated the abandoned mobile home structures and materials in question to the Bittersweet Farm site. From there, workers continued the work of dismantling the structures, separating the recyclable from the non-recyclable materials, in order to sell whatever materials from the mobile homes were reusable and dispose of the rest.

Mr. Kamarasy will further testify that, at the time, he thought, and had every reason to believe that his actions were legal and not in violation of either the Litter Control Act or the Pollution Control Act. There was nothing unlawful, he believed, about moving the materials from one of his properties in the area to another. And, the act of depositing the debris on the Bittersweet Farm site did not introduce pollutants into the environment. Nor was Mr. Kamarasy operating a commercial waste dump facility on Bittersweet Farm, or allowing others to dump there.

Next, Mr. Kamarasy will testify that the debris pile was located approximately five hundred (500) feet from the gate where Mr. Terry says he was standing when he took his one and only photograph on March 25, 2004. From that distance, Mr. Terry could not possibly have identified the specific items in the debris pile, such as dark paneling and metal siding, that he reported to have personally observed on his March 25, 2004 inspection. Nor does the photograph taken by Mr. Terry make it possible to identify, with the naked eye, any such specific items.

Mr. Kamarasy can only guess that what Mr. Terry did was simply assume that all the items that he identified during his previous inspection of December 5, 2003, were still there. Underlying that assumption is the further conclusory assumption that Mr. Kamarasy had done nothing to address the problems that Mr. Terry had previously identified on December 5.

The County will present no evidence that Mr. Terry made a direct observation of the items he purported to have observed on March 25, 2004. And, the County can present no evidence to support its conclusory assumption that Mr. Kamarasy failed to do anything to alleviate the problem that Mr. Terry had previously identified on December 5, 2003.

To the contrary, Mr. Kamarasy will testify that all of the metal parts from the mobile homes (including all the metal-siding) had been removed from the debris pile and taken for recycling by the time Mr. Terry returned for his follow-up inspection on March 25, 2004. As a result, Mr. Terry's Report was demonstrably inaccurate in identifying metal siding at the site, and should be considered suspect with respect to all other specific items that Mr. Terry claimed to have identified. In addition, Mr. Kamarasy denies having made further deposits of material on this site, after he was warned, in a letter, dated January 9, 2004, that the debris pile might be unlawful. During that time, the pile clearly was diminished in size, not increased. In December 2003, Mr. Kamarasy contracted with McMurphy Excavation to remove the debris and transport it to a landfill. The evidence will show that all of the materials were removed from the site and properly disposed of by May 2004. (See Respondent's Exhibit "R-3", a copy of which is attached hereto.)

Mr. Kamarasy has no personal knowledge upon which to deny that Mr. Terry did inspect the site on December 5, 2003. Mr. Terry did not contact Mr. Kamarasy. He did not request permission from Mr. Kamarasy to enter the property to make an inspection. No prior notice was given to Mr. Kamarasy concerning the inspection. And, Mr. Terry did not give Mr. Kamarasy a citation, or even an official warning, at that time.

However, in January 2004, Mr. Kamarasy received a letter, dated January 9, 2004, signed by Bart Hagston, Coordinator Solid Waste Program, Jackson County Health Department. (See Respondent's Exhibit "R-4", a copy of which is attached hereto.) That letter stated that "a representative of the Jackson County Health Department" "completed" an investigation on December 5, 2003 and believed that he found several violations of the Act. The violations alleged were stated as follows: (1) causing or allowing the open dumping of any waste because "[e]vidence of waste was observed open dumped at this site during the inspection"; (2) conducting a waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the IEPA because "[n]o permits have been issued for this waste management facility"; (3) conducting a waste-storage, waste-treatment, or waste-disposal

operation in violation of regulations or standards adopted under the Act because “[n]o permits have been issued for this waste-management facility”; (4) disposing, treating, storing or abandoning any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility that meets the requirements of the Act and the regulations and standards thereunder because “[v]iolations of Board regulations as well as the Act were observed at the time of the inspection”; (5) causing or allowing the open dumping of any waste in a manner that results in (a) litter and (b) deposition of general construction or demolition debris or clean construction or demolition debris; (6) developing and/or operating a landfill without receiving a Developmental Permit from the IEPA “for a solid waste management site at this location”; and (7) causing or allowing the use or operation of a solid waste management site for which a Developmental Permit is required without an Operating Permit issued by the IEPA.

This letter contained “an explanation of the activities that the Illinois EPA and JCHD believe may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities” and stated that “resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties”.

The letter then stated that a written response must be submitted to the County Health Department within 45 days of Mr. Kamarasy’s receipt of the letter; the written response “must address each violation specified . . . and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity”; and, the written response “will constitute a proposed Compliance Commitment Agreement (“CCA”), which the County Health Department will review and either accept or reject within 30 days of receipt. No time period for completion of any remediation activities was given.

The letter ended by saying that failing to respond timely in writing would be considered a “waiver of the opportunity to respond and to meet” and the County Health Department

“may proceed with a referral to the prosecutorial authority”. Mr. Kamarasy was urged to call Mr. Terry with any questions regarding this matter.

In response to this Notice of Violation, Mr. Kamarasy did call Mr. Terry on January 15, and the two of them discussed the corrective actions that the County Health Department wanted done. (*See* Respondent’s Exhibit “R-5”, a copy of which is attached hereto.) Mr. Kamarasy will testify that he told Mr. Terry that (a) he (Mr. Kamarasy) was working on removing the materials comprising the pile; (b) he had already arranged for a contractor to remove it; and (c) he believed he could accomplish this objective by February 13, 2004. Mr. Kamarasy will further testify that he understood that Mr. Terry agreed to this proposal, and that Mr. Kamarasy believed Mr. Terry was acting with the authority of the County at this time.

By February 13, all of the metal from the site had been removed for recycling by Michael Mays, Archie Mays, Lucas Parrott, and Danny Morefield, individuals retained by Mr. Kamarasy to dismantle the mobile home structures and recycle the recyclable materials. Unfortunately, the weather did not cooperate with removing the rest of the debris. Mr. McMurphy had to wait for a “hard freeze” to make it possible to get his heavy equipment into the field in order to load the non-reusable materials into a truck for transportation to the county landfill. The weather was just not cold enough and the ground was too wet and muddy for such equipment to accomplish the job. Mr. McMurphy’s testimony is expected to corroborate that he was unable, or believed that he was unable, to complete the job due to the conditions of the weather and the ground upon which his heavy equipment would have to traverse in order to load and haul away the materials from the site.

When the ground finally dried enough, Mr. Kamarasy had the rest of the debris removed to the Jackson County landfill. However, this occurred after March 25, 2004 and was too late to prevent him from receiving the Citation in this case.

On March 25, 2004, Mr. Terry conducted his three-minute inspection from the gate 500 feet from the pile of materials and on March 29, 2004 the Administrative Citation was filed in this case. No attempt was made by the County to contact Mr. Kamarasy following their

communications occurring in January to determine why more of the pile had not been removed or for any other reason. Mr. Terry did not call or write Mr. Kamarasy or make any inquiry to determine why the matter had not been resolved to his satisfaction by March 25, some six (6) weeks after he believed Mr. Kamarasy had promised to complete the disposal.

Mr. Kamarasy contends that both he and the County were bound to honor this agreement, that he intended to honor it, and that he made all reasonable efforts to comply with its terms. However, he was prevented from fully complying due to circumstances outside of his reasonable control.

In addition, Mr. Kamarasy contends that the debris pile he created, while perhaps unsightly, was not an "open dump", as that term is defined in the Pollution Control Act, because the nature of the debris and the manner and location in which it was deposited did not cause the debris to enter into the environment, nor make it likely that polluting materials would be emitted or discharged, or otherwise disseminated from the site.

For similar reasons, Mr. Kamarasy contends that his debris pile did not constitute litter, as that term is defined in the Litter Control Act. In fact, a plain reading of the Litter Control Act shows that Mr. Kamarasy acted lawfully in depositing this material on his own land.

Mr. Kamarasy finally contends that it was a violation of his due process rights and a violation of the Separation of Powers principle for him to be charged with two violations for what amounts to one (allegedly) wrongful act of moving the abandoned mobile home structures to a site on Bittersweet Farm to be dismantled, recycled and disposed of from there.

The County makes no attempt to show that there was any litter, apart from the broken down parts of these mobile home structures at the Makanda/Kamarasy site. Therefore, the prosecution is effectively charging Mr. Kamarasy twice for the same demolition debris, simply by the deceit of renaming the mobile home parts "demolition debris", after first naming them "litter".

Finally, Mr. Kamarasy will argue that the Pollution Control Act should not be interpreted so as to outlaw an act that the Litter Control Act expressly permits, namely, the

dumping of a pile of non-polluting and non-littering debris on one's own property, some to be recycled and the rest disposed of. To hold otherwise would render one or the other Acts unconstitutional, since, taken together, the two statutes would then tell Illinois citizens that the same act of creating a debris pile on one's own land in such a way that it does not spread or emit or discharge onto other land is both lawful and unlawful at the same time.

### III

#### ISSUES PRESENTED

The Administrative Citation and the Petition to Contest Administrative Citation present the following issues:

A. Should the inspector's Narrative Report, based upon his March 25 inspection of the Makanda/Kamarasy site, be disregarded because the inspector could not possibly have observed what he said he observed from the location where he claimed to have observed it?

B. Did the County improperly state charges against Mr. Kamarasy and fail to acknowledge that, as part of its *prima facie* case, it must prove Mr. Kamarasy created an "open dump", according to the legal definition of that term?

C. Did Mr. Kamarasy cause or allow "open dumping" at the Makanda/Kamarasy site?

D. If "open dumping" occurred at the site, did the "open dumping" result in "litter"?

E. If "open dumping" occurred at the site, did the "open dumping" result in the deposition of general construction or demolition debris or clean construction or demolition debris?

F. Was the County bound to respect the agreement negotiated between the parties in January, 2004? If so, was Mr. Kamarasy's failure to comply with that agreement the result of circumstances that were beyond his control?

G. Did the County and its inspector abuse their discretion and exceed the intent and scope of the administrative citation process by broadening the definition of "litter" beyond the

legislature's intent, and by filing two charges against Mr. Kamarasy for the single act of creating a pile of materials by depositing on his own property the broken down parts from certain mobile homes that others had abandoned on his own property? If so, did this create a separation of powers problem under the Illinois Constitution?

H. Is the law, as applied to Mr. Kamarasy, unconstitutionally vague, in failing to give Mr. Kamarasy reasonable notice of what constitutes creating an open dump on one's own property, and what constitutes littering on one's own property?

#### IV

**THE EVIDENCE SHOWS THAT THE INSPECTOR DID NOT OBSERVE, AND COULD NOT HAVE OBSERVED, ON MARCH 25, 2004, THE SPECIFIC ITEMS THAT HE CLAIMS TO HAVE OBSERVED IN THE NARRATIVE REPORT, THEREFORE, THIS PART OF THE REPORT SHOULD BE DISREGARDED AS MERE SPECULATION BY THE INSPECTOR, LACKING IN ANY FOUNDATION**

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When a witness such as Mr. Terry attempts to testify about the "facts" of a case, he is required to testify only about those facts of which he has personal knowledge. Moreover, the legislature explicitly prescribed, when creating the Administrative Citation process, that an enforcement agent, such as Mr. Terry, must base his testimony upon his direct observations. *See* 415 ILCS § 5/31.1(b) It follows that speculative evidence should not be admitted.

By Mr. Terry's own admission, he inspected Mr. Kamarasy's pile of material, on March 25, 2004 for the sum total of three minutes. This inspection was performed as a follow-up to a December 5, 2003 inspection. Mr. Terry admits, however, that all he did was stand on the side of the road by the gate to Mr. Kamarasy's property and take a photograph of the pile. He did not enter onto the property to make a serious investigation of the pile or determine what was in it.

The evidence further shows that Mr. Terry took only one photograph of the site on March 25. That picture is completely unsatisfactory in that it does not show any of the specific items Mr. Terry alleges to have seen in the pile – namely, "dimensional lumber", "dark paneling", and "metal siding". About the only thing the photograph shows clearly is that

there was a pile of materials and it was located at a great distance from the place where Mr. Terry stopped to conduct his investigation.

That leaves Mr. Terry's personal testimony as the only evidence the County can produce to support its claim that the items claimed actually were contained in the pile, as of March 25, 2004. But the question remains "what is the foundation for Mr. Terry's testimony concerning these items". If the camera did not "see" the individual items Mr. Terry alleges, when and how did Mr. Terry see them?

It is an undisputed fact that Mr. Terry was standing very far away from the pile when he took the photograph on March 25, 2004. Mr. Kamarasy is expected to testify that the distance from the gate to the location of the pile was approximately 500 feet. How could Mr. Terry have observed dimensional lumber at this distance, or "dark paneling", or "metal siding"? The answer is that he could not have.

It is also undisputed that Mr. Terry only took a total of three minutes to make his inspection, and much of that time was presumably spent taking out his camera, lining up the photograph, and setting the proper angles on the lens. He did not have time to study the debris pile, or scan closely for signs of lumber or paneling or siding. His Report shows that no tests or samples of any materials were taken.

One might speculate that Mr. Terry entered these items on his report on March 25, based on his recollection of having observed them on December 5, 2003. Even so, Mr. Terry simply had no way of knowing for sure that the items he saw on December 5 were still present on March 25.

As a result, Mr. Terry's testimony is either untruthful, if he claims to have seen these items on March 25, or it is inadmissible if he claims to have only seen them on December 6. The violation that Mr. Kamarasy is charged with is dated March 25, 2004, not December 6, 2003, and the legal requirement is that Mr. Terry can only testify about what he directly observed regarding the alleged violation.



Even without the requirement set forth in the Administrative Citation process, the general rules of evidence make Mr. Terry's evidence so unreliable that his reference to the existence of the specific items -- the metal siding, dark paneling, and dimensional lumber -- should be excised from his report and stricken from this record. Mr. Terry merely assumed that those items were there. And, given the fact that Mr. Terry already knew Mr. Kamarasy was trying to clean the place up, Mr. Terry's assumption was unreasonable.

If Mr. Terry wanted to testify about what was in the pile, he should have taken a close up look to see what was there. He did not. And his speculation now about what was there then cannot support a reasonable, sustainable finding that Mr. Kamarasy's actions violated the Act.

It follows that the County should only be allowed to present evidence that the pile of materials from the abandoned mobile home structures still existed as of March 25, 2004, a point that Mr. Kamarasy does not dispute. The County should not be permitted to testify about what was in the pile. And then, it follows that the County cannot make a *prima facie* case that the pile violated the Pollution Control Act. As a matter of law, the mere existence of a pile of materials is not enough.

V

IT IS PART OF THE STATE'S *PRIMA FACIE* CASE TO PROVE THAT MR. KAMARASY CAUSED OR ALLOWED "OPEN DUMPING", AS THAT TERM IS DEFINED IN THE POLLUTION CONTROL ACT: BUT MR. KAMARASY DID NOT CAUSE OR ALLOW "OPEN DUMPING" AT THE MAKANDA/KAMARASY SITE

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In order to seek enforcement by Administrative Citation for violations of Section 21(p), the Agency, or local governing body, must first establish that the respondent caused or allowed open dumping. *See Montgomery County, Illinois v. Clifford Crispens, Jacqueline R. Crispens and Line Pilot Bungee, Inc.*, AC 95-43. Section 21(a) of the Act sets forth a general prohibition against open dumping as follows: "No person shall cause or allow the open dumping of any waste." 415 ILCS § 5/21(a)

Section 3.385 of the Act defines "refuse" as "waste". 415 ILCS § 5/3.385. The Act then defines "waste" to mean "any garbage, sludge from a waste treatment plant, water supply

treatment plant, or air pollution control facility or other discarded material". 415 ILCS § 5/3.535.

Section 3.300 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. (Emphasis added.)

415 ILCS § 5/3.305. Thus, in order to prove that Mr. Kamarasy committed "open dumping", the County must show that he created a "disposal site" on his land.

It cannot be true, however, that any time a landowner places any household item (for example, a broken chair) on his land, or piles up some branches and leaves, that he or she has thereby created a "disposal site" under the statute. Such an interpretation would render the Pollution Control Act so broad as to be arbitrary and unenforceable. *See Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency, 2004 WL 2359398 (Ill. Sup. Ct. 2004)*

It would mean for example that every homeowner who has ever placed a broken chair in his backyard, or an old piece of plywood has thereby created a "disposal site" under the law, and would be subject (in the case of the plywood) to charges of both littering and depositing demolition debris in violation of the Pollution Control Act. Hopefully, this Board would agree that that is not the type of problem that the Pollution Control Act was meant to address.

Of course, Mr. Kamarasy recognizes that his pile of materials was not equivalent *in scale* to merely putting out a couple of broken pieces of plywood on one's land. However, size or scale is not a relevant consideration when it comes to determining which piles of materials do or do not constitute "disposal sites" under the Pollution Control Act. As will be discussed in detail below, the relevant distinction between a mere "pile of material" and a "disposal site" has to do with the likelihood that the "pile of material" will cause "pollution." Roughly speaking, as will be discussed in more detail below, a disposal site is a place where material is disposed of in such a way that it is likely to cause pollution. So, it is not the existence of the

pile of material that is offensive to the Pollution Control Act; it is the scattering of that material, or constituents thereof, freely into the environment, which the law seeks to prevent.

In the case at bar, Mr. Kamarasy admits that he organized and consolidated the parts and material from some mobile homes that had been abandoned on his property, moving them to a single location at the Bittersweet Farm site at the direction of the IDPH. But none of these parts or materials threatened to scatter freely into the environment. Mr. Kamarasy merely intended to harvest or recycle the usable parts before disposing of the rest. In so doing, he may have created a mess; however, he did not create a disposal site, according to the Pollution Control Act.

Admittedly, the Act does not provide a single definition for the term "disposal site", but the words "disposal" and "site" are defined separately. The definition of the term "site" is self-explanatory. *See* 415 ILCS §5/3.460 However, the term "disposal" is specific enough as to shed light on which debris piles can be labeled "disposal sites" and which cannot.

According to the Act:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

415 ILCS § 5/3.185. Presumably, then, a "disposal site" under the Act would be one where such "disposal" takes place.

For purposes of analysis, there are two main parts to the above definition. First, the definition requires a showing that Mr. Kamarasy "plac[ed] . . . waste . . . on [his] land." Second it requires that Mr. Kamarasy placed waste of such a kind and in such a manner "so that such waste . . . or any constituent thereof may *enter the environment or be emitted* into the air or *discharged* into any waters, including ground waters." (Emphasis added.)

Because the County bears the burden of proving that Mr. Kamarasy committed the act of "open dumping" and because this requires a showing that the respondent created a

“disposal site”, it is clearly the County’s burden to prove that the site in question was truly a “disposal site”.

As just noted, that would ordinarily require two showings: (1) placing waste on the land; and (2) doing this in such a way that the waste would be likely to “enter the environment”, or be “emitted” into the air or “discharged” into the water. But, since Mr. Kamarasy concedes the first point, the County’s burden is to show only that the waste, was somehow placed on the land in such a way that it, or some constituent thereof was entering into the environment or emitting into the air or discharging into the waters.

Certainly, no evidence will be presented of emitting or discharging. Therefore, it would appear that the County will have to prove “entering into the environment”.

The County will present no evidence that the pile of material at the site in question was likely to cause pollution in the sense just described. Perhaps the County means to argue, in effect, that every time a person places waste on his or her land, then he or she automatically, as a matter of logical consequence, causes that waste to enter into the environment. But if that is the correct interpretation of the phrase “enter the environment”, namely that anything found outside of a building is necessarily in the environment, so that every debris pile is a disposal site, then the entire phrase “so that such waste . . . or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters” would become completely superfluous. If the prohibited act was merely placing the waste on the land, why did the legislature bother to say that it was only prohibited if it was done in such a way as to cause the materials to enter into the environment?

It is a standard principle of statutory construction that each clause in a statute should be presumed to have some meaning. Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency, *supra*, 2004 WL 2359398 Therefore, it must be presumed that the legislature meant the concepts of “entering into the environment”, as well as “emitting” and “discharging”, to place some limitation on the notion of placing waste on the land. A

landowner, like Mr. Kamarasy, does not create a disposal site every time he places waste on his land.

So how does one know which acts create a disposal site, and which do not? What is the distinction that the legislature intended to make? It seems clear that by using the words “entering into the environment”, “emitting”, and “discharging” the legislature meant to imply a certain lack of control or potential lack of control by the person who placed the waste on the land. To be a disposal site, it must be shown either that (1) the waste in its entirety (for example unprotected paper trash), or else (2) some constituent of the waste (for example oil or paint in open cans) did enter or is likely to enter (freely) into the environment, or be emitted into the air or be discharged into the waters. This is a **Pollution Control Act**. It is pollution that is being regulated, not mere messiness on the part of a landowner.

Now, it is Mr. Kamarasy’s position, as discussed above, that the County in general and Mr. Terry in particular failed to provide any credible or substantial evidence showing the nature or type of items in the pile of materials on March 25, 2004. Without such evidence, the County cannot possibly meet its burden of proving that such materials were deposited “so that such waste . . . or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters”.

Even if the Board were to allow the County to use Mr. Terry’s specific list of items as evidence, that would hardly help to prove this was a disposal site. Does anyone seriously believe that metal siding, dark paneling, and dimensional lumber are likely to scatter, like paper trash, freely into the environment, or to leak into the ground water or emit vapors into the air? And, how did Mr. Terry determine that this scattering or leaking or emitting was going on, if he only inspected the pile visually for three minutes from a distance of 500 feet?

Therefore, and for all of the reasons cited above, the County cannot and will not prove that Mr. Kamarasy’s material pile at Bittersweet Farm, as observed on March 25, 2004, was an “open dump”. Since such a finding is the necessary predicate to both of the charges against Mr. Kamarasy, both charges should be dismissed.

VI

MR. KAMARASY DID NOT CAUSE OR ALLOW OPEN  
DUMPING THAT RESULTED IN "LITTER" AS THAT TERM IS  
USED IN THE POLLUTION CONTROL ACT

Even if the Board should find that Mr. Kamarasy did commit "open dumping," each of the two charges against Mr. Kamarasy still require a further showing.

Count (1) states that the respondent caused or allowed open dumping that resulted in "litter" in violation of § 21(p)(1) of the Act. But, Mr. Kamarasy does not believe that his act of placing a pile of materials on his land, consisting of materials from abandoned mobile homes, in a location that was a substantial distance from both the road and any neighbors, and in a manner that posed no threat that the items might migrate towards someone else's property, can reasonably be characterized as "littering".

Of course, Mr. Kamarasy is well aware that the term "litter" has been interpreted expansively in prior cases before the Pollution Control Board. *See e.g. Illinois Environmental Protection Agency v. Springer, supra*, AC 02-7 at p. 6. But, again, if the legislature had merely intended that every landowner who ever placed waste on his land in such a way as to constitute "open dumping," was also and automatically guilty of littering, then the legislature would not have added the qualifying phrase "that resulted in litter." *See e.g. Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency, supra*, 2004 WL 2359398. It would have just defined the crime as "open dumping".

By adding the phrase "that resulted in litter", the legislature made it clear that it believes that not all discarded items left at a "disposal site" are litter. So the question remains what constitutes "littering" under the Pollution Control Act, and what does not. Unfortunately, the Act does not say. This failure to define littering would have the potential to pose serious enforcement problems of constitutional dimension: how can a homeowner, even one who has studied the statute in elaborate detail, possibly know if he is performing the kind of "open dumping" that results in litter, if the Act does not define "litter"? *See e.g. People v. Einoder*, 209 Ill.2d 443, 450, 283 Ill.Dec. 551, 808 N.E.2d 517 (2004)

The Pollution Control Board has attempted to answer this problem in previous cases, responding to charges that the term "litter" in the statute is too vague by adopting the definition of litter from the Litter Control Act. *See e.g. St. Clair County v. Louis Mund*, AC 90-64. This approach by the Board is both logical and reasonable. It has the virtue of relying on a legal notion of "litter" that was created by the legislature precisely for the purpose of going beyond the simplistic notion that litter is just "messy stuff left outside," and identifying with some precision which messy stuff left outside shall be treated by the law as "litter" and which shall not, so that littering can be either prevented or punished.

By adopting the meaning of "litter" as it is used in the Litter Control Act, the Board has put homeowners like Mr. Kamarasy on notice that unlawful "littering" in the Pollution Control Act *means exactly the same thing* as unlawful "littering" in the Litter Control Act.

The Litter Control Act provides.

"Litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle . . . motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS § 105/3

But this paragraph, though properly taken from the Litter Control Act, does not give a complete definition of litter. Indeed, it is transparently incomplete, if one reads it carefully. It consists of two sentences.

The first sentence is obviously definitional in syntax. "Litter means any discarded, used or unconsumed substance or waste." But this sentence, taken alone, suffers from the same vagueness problem as discussed above. In fact, based solely on this sentence the trash that one puts inside one's garbage can and takes to the curb is "litter," since it certainly consists of "discarded, used or consumed substance or waste." Likewise, a small pile of

leaves in one's own back yard would be litter, and subject to whatever enforcement measures the Litter Control Act provides. Certainly, that is not what the legislature intended.

For one thing, the second sentence is there for a reason. It appears to be intended to give some help in understanding "litter", by providing a list (though not complete) of concrete examples. But the key word in the second sentence is "**may**". For example according to this so-called definition, "grass clippings or other lawn or garden waste", **may** be considered litter under the Litter Control Act. Or, they **may not**. One simply does not know, without more guidance from the statute.

Mr. Kamarasy does not say this to be tricky, or try to win this case on a mere technicality. The question raised here is one about fundamental fairness. This so-called definition, cited frequently by the Board, completely fails to answer the basic question posed above: what kind of dumping on one's own property is the kind that results in littering, and what kind does not? Without that answer, how can a landowner ever know what is prohibited and what is not?

For example, if this one paragraph were the entire definition of litter, even such a common practice as mulching one's grass clippings back into one's lawn would be fraught with unknown and unknowable danger. The inspector might cite it as a violation. Or he might not. And, the only way for a homeowner to know in advance would be to read the inspector's mind. Therefore, in effect, the interpretation of the Litter Control Act that Jackson County is asking this Board to adopt for use in the Pollution Control Act would grant the inspector sole and absolute power to decide what is litter and what is not.

Perhaps Mr. Terry believes that he can enforce the Pollution Control Act merely by insisting that he knows litter when he sees it, but if so, this would lead to a blatant violation of the Separation of Powers Clause of the Illinois Constitution. *See e.g. People v. Izzo*, 195 Ill.2d 109, 115-6, 253 Ill.Dec. 425, 745 N.E.2d 548 (2001) It is up to the legislature to give clear guidelines about what litter is and what it is not; the inspector, and even the Pollution Control Board, should have only a very limited discretion in this matter.



Of course, the legislature knew this when it wrote the Litter Control Act. It did not give broad discretion to inspectors to define litter. Instead, in plain language, the legislature gave fairly detailed guidelines about what is litter and what is not. In the legislature's own words:

[t]his Act is, therefore, necessary to provide for *uniform prohibition* throughout the State *of any and all littering on public or private* property so as to protect the health, safety and welfare of the people of this State.

415 ILCS §105/2 (Legislative Findings and Determinations) (Emphasis added.)

Therefore, it was the legislature's intent that the notion of unlawful littering should be "uniform" in the State of Illinois, and that one has to examine the entire statute to ascertain what "any and all littering" means. Merely reading one paragraph from the statute will not suffice.

It follows that the criterion for whether a landowner has committed open dumping *that resulted in litter* in violation of the Pollution Control Act is to determine whether or not the landowner committed open dumping *that resulted in litter* in violation of the Litter Control Act.

In other words, to prove that Mr. Kamarasy's alleged "open dumping" resulted in "litter", the County must prove that his actions constituted a violation of the Litter Control Act. But, the County cannot do so, because Mr. Kamarasy did not violate the Litter Control Act.

The Litter Control Act contains four sections that describe prohibited acts. *See* 415 ILCS §§ 105/4 through 105/7 Two of these are not relevant to this hearing in that they refer to dumping from a motor vehicle or abandoning a motor vehicle. *See* 415 ILCS § 105/5 (dumping from motor vehicle) and 415 ILCS § 105/7 (abandonment of motor vehicle) That leaves Section 4 (dumping and the deposit of litter) and Section 6 (accumulation of litter)

Section 4 of the Litter Control Act provides in relevant part, as follows:

No person shall dump, deposit, . . . [or] discard . . . litter . . . unless

\* \* \* \* \*

(c) the person is the owner or tenant in lawful possession of the property . . . and **does not create a public health or safety hazard, a public nuisance, or a fire hazard.**

(Emphasis added)

Section 6 of the Litter Control Act addresses accumulation of litter. It provides in relevant part, as follows:

No person shall allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, **in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements on to the real property of another person.**

There is no evidence to support a claim that Mr. Kamarasy's so-called "open dump" created a public health or safety hazard, a public nuisance, or a fire hazard. There is also no evidence that he deposited items in the so-called "open dump" in a manner as to constitute a public nuisance or such that items may be blown or otherwise carried by the natural elements on to the real property of another person.

Therefore, Mr. Kamarasy should not be found in violation of the Act on the charge of open dumping that resulted in litter, because he did not cause or allow litter in violation of either the Pollution Control Act or the Litter Control Act.

## VII

### **THE RESPONDENT DID NOT CAUSE OR ALLOW OPEN DUMPING THAT RESULTED IN THE DEPOSITION OF GENERAL CONSTRUCTION OR DEMOLITION OR CLEAN CONSTRUCTION OR DEMOLITION DEBRIS IN VIOLATION OF THE ACT**

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Count (2) against Mr. Kamarasy (if it had been properly stated in the Citation) charges him with open dumping that "caused or allowed the deposition of general construction or demolition or clean construction or demolition debris in violation of 415 ILCS § 5/21(p)(7)."

As already explained, Mr. Kamarasy concedes that the pile of materials that Mr. Terry observed on March 25, 2004, at Mr. Kamarasy's Bittersweet Farm property contained the remaining parts from several abandoned mobile home structures, after Mr. Kamarasy had disposed of certain recyclable and reusable parts. Mr. Kamarasy denies, however, that the pile was an "open dump" and he denies, as of March 25, 2004, that the pile contained the particular

items that Mr. Terry claims to have seen. In particular, Mr. Kamarasy denies that the pile contained dimensional lumber, or metal siding.

Mr. Kamarasy does not know whether the materials that remained in the pile on March 25, formally met either of the definitions of “general construction or demolition debris” or “clean construction or demolition debris”, since he does not know if his actions constituted “demolishing” the abandoned mobile homes, or whether the materials therefrom should technically be described as “debris.” See 415 ILCS § 5/3.160(a) and 415 ILCS § 5/3.160(b). That is a matter for the Board to decide.

But, regardless of the Board’s decision on this point, and even assuming further that the Board decides Mr. Kamarasy did create an “open dump” in the sense intended by the Pollution Control Act, the Board still must dismiss this “depositing demolition debris” charge essentially for the same reason as the Board must dismiss the littering charge.

As discussed above, the littering charge must be dismissed because the Litter Control Act **expressly grants** a landowner the right to deposit on his own land the kind of “stuff”(which does not spread freely onto other people’s land) that Mr. Kamarasy deposited at Bittersweet Farm, in the manner that he deposited it (so that it did not cause a public nuisance, or health, safety, and fire hazards).

Now, the County simply wants to rename the same materials – the alleged dimensional lumber, metal siding, and dark paneling – as “demolition debris” rather than “litter”. But, Mr. Kamarasy contends that merely changing the names of those items cannot transform the reality of whether Mr. Kamarasy’s action in depositing them was lawful or unlawful.

Mr. Kamarasy’s contention on this point is two-fold. First, he cannot rightfully be *convicted of both* charges – littering *and* depositing demolition material. Second, if this Board agrees that he was not guilty of littering because the Litter Control Act expressly permits his action in depositing material from abandoned mobile homes on his own property, then the Board must also find that Mr. Kamarasy was not guilty of unlawfully depositing demolition debris for depositing these same items on the same land.

In addressing the first of these two arguments, Mr. Kamarasy wants to be very clear not to overstate it. While fundamental fairness dictates that a person not be convicted (and punished) twice for the exact same act, even if the act is given two separate names by the prosecution, Mr. Kamarasy does recognize that in some instances, the prosecution may be unsure how to characterize certain items, whether as "litter" or as "demolition debris" under the Pollution Control Act. In that event, it might make sense for the prosecution to bring forward both charges and let the Board sort it out. But this Board should still only convict on one count.

Mr. Kamarasy further recognizes that in some cases, a person could run an open dump site in which *both* litter, such as paper trash, *and* demolition debris, such as broken concrete or bricks, are present. In that case, the State, in principle, could charge the person separately with "littering" and "depositing demolition debris."

But that is not true of the case at bar. Neither the inspector nor the County has accused Mr. Kamarasy of depositing different kinds of "stuff" in his pile. There is only one kind, namely the parts from the abandoned mobile homes that others left upon Mr. Kamarasy's mobile home park. The County may call this "litter". Or it may call this "demolition debris". But it cannot convict Mr. Kamarasy of two counts, littering and depositing demolition debris, on the basis of a single act of depositing a single type of material.

In effect, Jackson County is asking this Board to impose two separate fines on Mr. Kamarasy for the exact same action involving the exact same materials. This Board should decline to do so.

In making the second argument -- that this Board cannot simultaneously hold that the items deposited are lawful, when called litter, but unlawful, when called demolition debris -- Mr. Kamarasy also wishes to be careful not to overstate his argument. Of course, it is possible to be acquitted under one law because it does not apply, and then be convicted under a separate law that does apply to the same act.

But the difference in the case at bar is that the stuff at Bittersweet Farm is the kind of stuff that the Litter Control Act was intended to regulate. The County already conceded that it believes this is so, when it charged Mr. Kamarasy with pollution by littering for depositing this stuff on his property.

Of course, when one checks the Litter Control Act, it is not absolutely clear on this point. As already noted, the Litter Control Act provides a long list of examples of items that are regulated under the Act. The list does not include "material from abandoned mobile homes." But the legislature was careful to say that this is not the complete or definitive list. Items like the items on the list should also be regulated.

Materials from abandoned mobile homes are the types of items that might be unlawful litter, if disposed of in a manner that violates the Litter Control Act. The list also specifies furniture, and presumably the broken down pieces of furniture, as items that may be unlawful litter, if disposed of in violation of the Litter Control Act. Mr. Kamarasy believes that any dark paneling or pieces of wood found at his site, and coming from the broken mobile homes that others abandoned in his mobile home park, are of a type that could be compared to broken down pieces of furniture. Mr. Kamarasy believes the same can be said of any pieces of wood found at the site. They likely came from items that were furniture inside the mobile homes. Mr. Kamarasy further believes that any metal siding found at the site, too, would be the type of stuff the Litter Control Act was meant to address.

In other words, the materials from the abandoned mobile homes are a subset of the stuff that is potentially considered to be litter and addressed under the Litter Control Act. That being so, sections 4 and 6 of the Litter Control Act expressly say to a landowner, such as Mr. Kamarasy, that he is lawfully entitled to deposit those things on his own land, so long as those things do not form a public nuisance, migrate to the neighbor's property, or create a health, safety, or fire hazard.

Now, the prosecution wants to argue that, nevertheless, it is unlawful to deposit these materials on one's own land, provided that one calls them "demolition debris" instead of

“litter”. This is like believing that eating too much sugar is unhealthy, but if the label on the box calls it sucrose instead, one can eat as much as one wants.

The prosecutor in this case, in effect, is asserting that the legislature has written two laws on the subject. Under one law, a landowner is expressly entitled to deposit materials from abandoned mobile homes on his own land (so long as certain conditions are met); under the other, it is always unlawful to do so (at least without obtaining a permit). The two laws therefore contradict each other and cannot both represent the nature of the law in this State.

Furthermore, and not coincidentally, the Pollution Control Act happens to have adopted the definition of litter from the Litter Control Act. In effect, that means that every landowner had a right to expect that any action of depositing stuff on his or her own land that is lawful under the Litter Control Act would also be lawful under the Pollution Control Act.

By contrast, the prosecutor wants this Board to declare that Mr. Kamarasy’s act of depositing materials from mobile homes that others abandoned in his mobile home park on his own land is both expressly unlawful under the littering section of the Pollution Control Act, and also expressly unlawful under the depositing demolition debris section of the Pollution Control Act. This position is contradictory and should be adopted by the Board.

This Board should rule that the prosecution’s theory of the case is untenable, and dismiss Count (2) of the charges against Mr. Kamarasy.

### VIII

IN JANUARY 2004, THE PARTIES REACHED AN AGREEMENT BY WHICH MR. KAMARASY PROMISED TO DISPOSE OF THE MATERIALS ON THE STARVATION ACRES SITE BY FEBRUARY 13, 2004, MR. KAMARASY ATTEMPTED TO HONOR THE AGREEMENT, BUT WAS UNABLE TO DO SO DUE TO PROBLEMS OUTSIDE HIS CONTROL, AND HE HAS SINCE COMPLETELY CLEANED UP THE SITE

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The Administration Citation procedure in the Pollution Control Act provides a defense in the case of unavoidable circumstances.

If the Board finds that the person appealing the 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)

Mr. Kamarasy will present evidence that, after receiving the January 9, 2004 letter from Mr. Hagston about his pile at the Bittersweet Farm site, he came to an agreement with Mr. Terry about cleaning up the site. The agreement was reached in January. It called for Mr. Kamarasy to clean up the site by February 13, 2004.

At the time he entered into the agreement, Mr. Kamarasy already had called Mr. McMurphy to haul away the non-recyclable materials and fully believed that he could meet the February 13 target date. And, he will present evidence to this Board that he did proceed with due diligence to attempt to comply. He succeeded in arranging to have all the recyclable materials, including the metal siding, taken to Karco Metals for recycling; and, as mentioned, he already had arranged with Mr. McMurphy to pick up the remaining materials and take them to a landfill.

Unfortunately, Mr. Kamarasy did not account for the weather. Mr. McMurphy intended to take his heavy equipment onto the property to pick up the remaining material, but the ground was too wet and muddy. Mr. McMurphy proposed to wait for a solid freeze, but such a freeze did not occur prior to March 25. Therefore, Mr. Kamarasy was forced to wait until the ground dried up later in the spring before having the remainder of the material taken to the landfill for disposal.

In Illinois Environmental Protection Agency v. Marshall Pekarsky, AC 01-37 (Feb. 27, 2002), the Pollution Control Board held that snow was a sufficient excuse for not meeting the terms of a compliance agreement. Rain and mud are just as paralyzing in circumstances such as this. Therefore, this Board should hold that Mr. Kamarasy was unable to comply with the agreement with Mr. Terry due to circumstances (weather) that were beyond his control.

Of course, the County may argue that this is not a case of uncontrollable circumstances because Mr. Kamarasy had control when he created the pile. But this is not the proper standard

for the defense as defined by the statute. See Illinois Environmental Protection Agency v. Marshall Pekarsky, *supra*. Most violations of the Act involve some willful or negligent action on the part of the alleged wrongdoer at some point in the chain of circumstances that led to the violation. If one willful or negligent act in the chain of circumstances is sufficient to negate the statutory defense of uncontrollable circumstances, then the defense itself could never be used.

Again, under the principle that the legislature does not introduce language, and certainly not whole defenses, that are superfluous, one must presume that the words “resulted from” in the phrase “the violation resulted from uncontrollable circumstances” does not subsume everything in the chain of events that led to the violation, but only refers to those events that triggered the final act of issuing a citation.

With that in mind, this Board should note that, in January 2004, the County agreed that it would not proceed with prosecutorial action if Mr. Kamarasy complied with the agreement. It is an uncontested and uncontestable fact that *no administrative citation would have been filed if Mr. Kamarasy had complied with the agreement to remove the material to the landfill by the promised target date*. But Mr. Kamarasy was diligent in trying to comply with the agreement, and the only reason he did not fully succeed in complying is due to circumstances that were truly beyond his control. Had the County’s inspector undertaken any effort to inquire of Mr. Kamarasy why some of the material had not been removed by February 13, 2004, it would have learned about the contractor’s inability to complete the job due to adverse weather conditions and could have made a determination whether to extend the target date to allow completion of the job, or take some other action.

For these reasons alone, and in accordance with the Marshall Pekarsky case, the charges in this case should be dismissed.



IX

IT IS UNFAIR, AND A VIOLATION OF MR. KAMARASY'S CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHTS, TO ACCUSE HIM OF IMPROPERLY CREATING AN OPEN DUMP SITE, LITTERING, AND/OR DUMPING DEMOLITION DEBRIS AT A SITE WHERE HE IS EXPRESSLY ENTITLED TO DEPOSIT THOSE SAME MATERIALS UNDER THE LITTER CONTROL ACT

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The same act by a landowner cannot be declared by the State to be both lawful and unlawful. Yet, as discussed above in Section VII, the County is seeking to convict Mr. Kamarasy of two counts of pollution in this case, for an act that is expressly permitted by the Litter Control Act.

The irony of this is clear. The Pollution Control Board has adopted the definition of "litter" as it is described in the Litter Control Act. That should mean that lawfulness and unlawfulness with respect to the matters covered by both Acts should be the same. Yet, Mr. Terry and the Jackson County prosecutor are asking this Board to hold, in effect, that it is much easier to convict a landowner of *pollution* (under the Pollution Control Act) *by littering* than it is to convict the landowner simply of littering (under the Litter Control Act).

But the problem goes deeper than irony. It raises serious Constitutional concerns.

A basic tenet of due process is that a citizen must be able to reasonably ascertain whether an act that he is contemplating is lawful or not. *See e.g. Granite City Div. Of Nat. Steel Co. v. Illinois Pollution Control Board*, 155 Ill.2d 149, 163, 184 Ill.Dec. 402, 613 N.E.2d 719 (1993) Where the State has two laws, one of which tells the citizen unequivocally that the act is lawful, while the other tells the citizen, in effect, that the act is not lawful, it must be true that one or both of those laws is unconstitutional. *Id.* Otherwise, there would be no possible way for a citizen to make the necessary determination about what is lawful conduct and what is not.

A landowner who wants to know whether depositing materials from abandoned mobile homes on his property is *per se* unlawful as littering has every reason to expect that reading the Litter Control Act will provide guidance. And it does. The Litter Control Act specifically states that this is lawful:

Now, the County wants to argue that, while this may be lawful under the Litter Control Act, it is not lawful under the Pollution Control Act, and Mr. Kamarasy can still be charged with unlawful "littering" under the Pollution Control Act. In other words, the County is trying to tell landowners that an act that is lawful as littering under the Litter Control Act may still be unlawful for creating an open dump that results in **littering** under the Pollution Control Act. How could a landowner, such as Mr. Kamarasy, reasonably be expected to ascertain this twisted logic? The answer is that he could not! And therefore, the charge against Mr. Kamarasy for open dumping that resulted in litter should be dismissed by this Board as an unconstitutional charge.

Although it is not quite as obvious, the same problem applies to the charge against Mr. Kamarasy for open dumping that resulted in depositing demolition debris (meaning material from the abandoned mobile homes) on his land. Given that the Litter Control Act instructs landowners in plain language that they are permitted to deposit such material on their land, as long as they do not thereby create a public nuisance, or a health, safety, or fire hazard, how could Mr. Kamarasy have reasonably anticipated that doing so would violate the Pollution Control Act? The answer is that he could not. And, therefore, the charge against Mr. Kamarasy for open dumping that resulted in depositing demolition debris should also be dismissed by this Board as an unconstitutional charge.

Every citizen of the United States and the State of Illinois must be able to reasonably ascertain what is lawful and what is not. Otherwise law enforcement becomes simply a random and unintelligible act. For the State to have two laws, one of which told Mr. Kamarasy his act was lawful, and one of which supposedly tells him that his act was unlawful is untenable. Therefore, all charges against Mr. Kamarasy in AC 04-63 should be dismissed.

X

IT WOULD BE UNFAIR, AND A VIOLATION OF MR. KAMARASY'S CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHTS, IF THIS BOARD INTERPRETED THE LEGAL MEANING OF "DISPOSAL SITE" "OPEN DUMP" AND/OR "LITTER" IN SUCH A WAY AS TO IGNORE OR RENDER *DE MINIMUS* THE NOTIONS OF SCATTERING FREELY OR EMITTING INTO THE ENVIRONMENT AND OF CAUSING SOME HARM TO OTHERS, WHICH THE LEGISLATURE INTENDED TO BE INCORPORATED INTO THE MEANING OF "POLLUTION"; AND SINCE THE COUNTY HAS NOT EVEN ATTEMPTED TO PROVE THAT SUCH HARM ACTUALLY OCCURRED AT THE MAKANDA/KAMARASY SITE, IT HAS FAILED TO MAKE A *PRIMA FACIE* CASE OF POLLUTION AGAINST MR. KAMARASY

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The problems inherent in the County's interpretation of the Pollution Control Act, as evidenced by the manner in which the prosecutor has stated and presented its case against Mr. Kamarasy, have already been discussed extensively in this memorandum. When the legislature wished to define an open dump, it did not describe it merely as a location where a landowner places some of his or her waste. The legislature said that, to be an open dump, the debris pile must also be placed in such a way that either the debris itself is free to enter into the environment, or else constituents of the debris may be emitted or discharged into the environment. One must assume that the legislature used this language for a reason, namely to distinguish the more serious crime of "pollution" from the lesser notions of litter or of mere "messiness". One must also assume that by using the word "may" the legislature meant to require the County to prove a significant likelihood, not simply an infinitesimal possibility of entering into the environment. Otherwise an overzealous prosecutor can always claim the existence of a small possibility.

Similarly, with respect to "litter", the legislature said that, if it occurs only on the alleged offender's own private property, and the accusation is unlawful "dumping," the allegedly offending stuff must be shown to "create a public health or safety hazard, a public nuisance, or a fire hazard."

Or alternatively, where the accusation is that the stuff is being unlawfully "accumulated", it must be shown that the stuff also constitutes a "public nuisance" or that it

“may be blown or otherwise carried by the natural elements on to the real property of another person.”

These additional criteria in the Pollution Control Act and the Litter Control Act are not identical but they are consistent in requiring that the County prove something more than merely that the respondent placed some waste on his land. The something more, particularly in the case of the Pollution Control Act, is that some form of pollution was actually occurring. But common sense, as well as the language of the two statutes, shows that pollution (by littering) requires a showing of some actual harm either to neighbors or the public in general.

Where was this irreducible element of harm in the case at bar? The County has never made, much less given Mr. Kamarasy the opportunity to defend against any, such allegation.

Mr. Terry did not discuss this element of harm in his Report. He did not claim to have observed a fire hazard, or other safety hazard. He did not claim to see materials being “blown or otherwise carried by the natural elements on to the real property of another person.” See e.g. County of Sangamon v. Everett Daily, AC -1-16, 17, at p. 10 Nor did he claim to see any of the materials at the site emitting or discharging into the environment.

How could he have? By his own admission, he only observed the pile for three minutes from a distance of 500 feet? And, most of that time was spent taking a photograph, which does not show any significant scattering of the pile of materials at this site.

The only possible argument that the County can make here is to exaggerate the law, since it lacks the facts. The County may try to convince this Board that merely setting waste out on the land is a sufficient recitation of fact to imply that entering into the environment has occurred. But it has already been explained above, in Section V, that if this were true, it would render the entire clause, “so as <sup>that such waste or hazardous waste or any component thereof may enter the environment</sup> . . . to be superfluous”, a result to be avoided. X

Entering into the environment is not a mere trivial point in the County’s case against Mr. Kamarasy. It is an essential point, which the County must prove. But the County has presented and can present no facts to support this claim.

Therefore, if this Board upholds the County's argument in this case, it will in effect write the requirement to show that pollution was actually occurring completely out of the Pollution Control Act. This will not encourage respect for and compliance with the environmental laws of the State.

Such an approach to the law would have the virtue of making it much easier in the future for the County to prove its case against any landowner who creates a pile of material on his or her own land. The County would no longer need to demonstrate any pollution in order to convict for "pollution" under the Pollution Control Act. But, as the respondent discussed in Section IX (immediately) above, that would also render the Pollution Control Act unconstitutionally vague, at least as applied to Mr. Kamarasy's case.

To avoid this result, this Board must interpret the Pollution Control Act in such a way that it is constitutional. That is, the Board must hold the County to its responsibility to prove, in addition to the other elements of its *prima facie* case, that some form of pollution was emanating from Mr. Kamarasy's pile of materials at the Makanda/Kamarasy site.

Since the County has not even attempted to make such a *prima facie* showing, this Board's decision should be easy. The charges against Mr. Kamarasy must be dismissed for failure to state a *prima facie* case.

## XI

**IT WOULD BE UNFAIR, AND A VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS, IF THIS BOARD WERE TO PERMIT THE INSPECTOR AND JACKSON COUNTY TO SIMPLY USE THE "I KNOW IT WHEN I SEE IT" DEFINITION OF POLLUTION (BY LITTERING) UNDER THE POLLUTION CONTROL ACT OR LITTERING UNDER THE LITTER CONTROL ACT RATHER THAN CAREFULLY APPLYING THE GUIDELINES SET FORTH BY THE LEGISLATURE IN THE TWO LAWS**

If this Board holds as unlawful acts that are explicitly lawful under the Litter Control Act (for example placing waste on one's own property in such a way that it is not likely to be carried onto a neighbor's property by the natural elements) or which are explicitly lawful under the Pollution Control Act (for example burning landscape, household, and agricultural waste on

one's own property), then this Board would be, in effect, making new legislation about what is and what is not unlawful pollution. That would be a violation of the Separation of Powers principle of the Illinois Constitution. Making law is not a proper administrative function. This Board is only authorized to enforce the law.

By the same token, if this Board permits an inspector to exercise unbridled discretion about what is litter and what is pollution, under the guise of "I know it when I see it," that would be a violation of the Separation of Powers principle. The inspector is no more authorized than the Board to make new law about what is and is not pollution.

Nor is this some minor matter in which the exercise of discretion is proper and necessary. If littering is the crime in question, it cannot be left to the executive branch of government, whether that means a county health department inspector or this Board, to decide arbitrarily and on its own what constitutes unlawful litter and what does not. There must be clear guidelines from the legislature, and those guidelines must be followed, or the enforcement itself is unconstitutional.

Of course, the legislature did give guidelines, if the two statutes are analyzed with care, as has been discussed throughout this memorandum. But Jackson County seems to believe that such care is not required, and it can make up its own guidelines. Any time it sees a pile of material on a person's land, the County claims that it can simply decide arbitrarily, or merely on the basis of its inspector's conclusory opinion, that the pile constitutes unlawful pollution.

If that is all that this Administration Citation process requires, then the inspector becomes both the lawmaker and the enforcer of the law, in violation of the Separation of Powers clause of the Illinois Constitution.

Therefore, in order to preserve the constitutionality of the Administration Citation process, this Board must hold Jackson County to its irreducible duty to prove concrete facts, and not simply state mere conclusory opinions, that some form of pollution was actually occurring at the Makanda/Kamarasy site, in violation of the specific terms of the Pollution Control Act.

XII

IT WOULD ALSO BE UNFAIR, AND SIMILARLY A VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS, IF THIS BOARD WERE TO PERMIT THE INSPECTOR AND JACKSON COUNTY TO PILE ON MULTIPLE CHARGES FOR WHAT AMOUNTED TO A SINGLE ACT OF DEPOSITING ABANDONED MOBILE HOMES AT THE STARVATION ACRE SITE

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The legislature designed the Administration Citation process in order to expedite enforcement and streamline the adjudication process for violations of the Pollution Control Act. Naturally, this streamlining creates the risk of giving too much power to the executive branch, and thereby abandoning the checks and balances upon which our constitutional system depends.

The legislature was well aware of this concern when it created the Administrative Citation procedure. That is why the legislature made a substantial effort to limit the discretion of the executive branch, in applying this procedure. The more control exercised by the legislative branch through strict crafting of the law, the less discretion would remain in the hands of the executive branch.

Perhaps the most important element of the legislature's plan to limit discretion was to strictly limit the fines that this Board can assess for violations of the statute. A landowner is to be assessed \$1500 for a violation of the Act, no more and no less. The Board is not entitled to look at mitigating circumstances, such as the size of the debris pile, the length of time that it had been present on the land, or the intention of the landowner, unless the violation itself was somehow due to uncontrollable circumstances. Similarly the Board is not allowed to consider exacerbating circumstances such as deliberate polluting, the extent of the pollution, or the belligerence of the landowner.

Yet, Mr. Terry and Jackson County have managed to undermine this most fundamental pillar of the Administration Citation process by finding a sneaky way to bring two charges against Mr. Kamarasy for the same act.

Mr. Kamarasy admits that he deposited some material from abandoned mobile homes on his own land only after the IDPH ordered it removed from the mobile home park. As discussed above, the prosecutor may label this material "litter", and charge Mr. Kamarasy with unlawful littering under the Pollution Control Act. Or, the prosecutor may label these parts "demolition debris" and charge for the unlawful depositing of demolition debris. The prosecutor can even charge for both and let the Board decide which one is most likely to be applicable.

But, in the final analysis, this Board cannot sustain both charges where, as here, the prosecution did not even attempt to allege any different underlying facts for the two charges. They are simply the same charge, with a different name.

Under the Administrative Citation process, a single violation can only be given a single fine of \$1500. If this Board upholds more, its ruling will violate the Separation of Powers principle, and will have the effect of rendering the Pollution Control Act unconstitutional, at least as applied to Mr. Kamarasy.

The only alternative is for the Board to limit its considerations in this proceeding to one charge only, and not two. It follows that, the maximum charge against Mr. Kamarasy in this proceeding should be \$1500, not \$3000, if his conduct in this case is found to violate the Act.

What the County is proposing amounts to trying to use the law punitively, to fine Mr. Kamarasy twice where the legislature only authorized one fine. In that sense, both Mr. Terry and the prosecutor of Jackson County, as members of the executive branch, are attempting to overrule the legislature and create new law of their own. In their view, the fine for creating an open dump that resulted in the deposition of abandoned mobile home materials should be \$3000, not \$1500.

But the legislature did not write such a provision into the Pollution Control Act. Therefore, this Board should insist that, even if it finds Mr. Kamarasy guilty, the fine must be limited to \$1500. Otherwise, the Act as applied to Mr. Kamarasy would be unconstitutional, in violation of the Separation of Powers clause of the Illinois Constitution.



### XIII

#### CONCLUSION

The inspector investigated the pile at Starvation Acres on March 25, 2004 for a total of three minutes. He did so by standing at a gate on the side of the road at a distance of approximately 500 feet and taking a single photograph of the pile.

The inspector could not possibly have observed what was in the pile with any detail from the distance he was observing, in the time described. The Act requires that an administrative citation be based on the direct observation of the inspector. 415 ILCS § 5/31.1(b) Nor does the photograph itself reveal what was in the pile. Therefore, the only specific point, which the County can prove about this pile, is that it contained materials from abandoned mobile homes.

Mr. Kamarasy concedes that the pile contained materials from abandoned mobile homes and adds that, by March 25, 2004, the recyclable parts, such as the metal siding, had been removed from the pile and taken to a metal recycling center, leaving only those parts that could not readily be reused or recycled, and of which he intended to dispose, and did dispose, as soon as the weather permitted.

Mr. Kamarasy affirmatively notes that he had an agreement with Mr. Terry to clean up the site, and that he was proceeding with due diligence to abide by that agreement. He arranged for and did have all the recyclable material removed from the site, and he has provided concrete evidence of that fact. He also arranged for a contractor to dispose of the remaining items. But, the weather made it impossible to carry out this part of his agreement in the time allotted. Mr. Kamarasy believes that even if the pile was unlawful, the bad weather was an uncontrollable circumstance provided for by the law as a legitimate defense.

Furthermore, Mr. Kamarasy contends his pile was not unlawful because it did not constitute a "disposal site" or an "open dump" as those terms are defined in the Pollution Control Act. Nor has the County even attempted to present evidence that the materials were scattering freely in the environment in some way, or were emitting or discharging, as is required

to meet the definitions of both open dump and littering. If the County had attempted to present some evidence of this kind, the evidence would have been inadmissible anyway, because the County's evidence must be based on the direct observations of Mr. Terry, and Mr. Terry did not and could not have observed any such thing during his three-minute inspection on March 25.

Mr. Kamarasy notes that the stuff in the pile, being materials from abandoned mobile homes, is stuff that is explicitly regulated by the Litter Control Act. The Litter Control Act makes it lawful to deposit such stuff onto one's own land, provided that stuff is not carried by the natural elements onto the property of another, and does not cause a public nuisance, or a health, safety, or fire hazard. The County has made no allegations, nor presented any evidence that Mr. Kamarasy's pile was doing any of these unlawful things. Therefore, it was a lawful pile, and this action against Mr. Kamarasy amounts to unjustified and unjustifiable harassment by Jackson County.

Mr. Kamarasy is not sure whether materials from abandoned mobile homes constitute construction or demolition debris as intended by the Pollution Control Act. But if so, that would simply mean that materials from abandoned mobile homes are at the intersection of stuff regulated by both the ban against pollution by littering and the ban against pollution by depositing demolition debris as set forth in the Pollution Control Act.

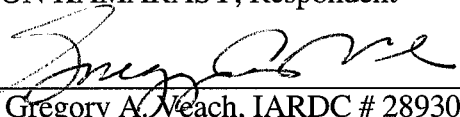
It would constitute an abuse of discretion to charge Mr. Kamarasy with two separate violations for one allegedly wrongful act, simply because the same stuff, the materials from abandoned mobile homes, can be characterized in two separate ways under the Act. The essential "crime" which Mr. Kamarasy committed, if any, was to set materials from abandoned mobile homes on his land at Starvation Acres. If it is a violation of the Act, it is only one violation, not two, and should only be fined in the amount of \$1500, not \$3000.

The only way for this Board to convict Mr. Kamarasy on either of the counts herein is to interpret the legal terms "open dump" and "litter" so expansively and arbitrarily as to violate Mr. Kamarasy's due process right to be able to reasonably anticipate what is illegal and

what is not. Such an interpretation necessarily would be so broad that it gives the executive branch of government too much discretion regarding both the decision about what is litter and about how large a penalty should be imposed in this case and this would violate the Constitutional principle of Separation of Powers.

The respondent did not violate the Act as alleged in the Administrative Citation and, for all of the foregoing reasons, the Administrative Citation should be dismissed.

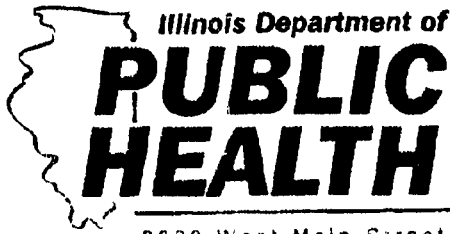
Dated this 19<sup>th</sup> day of November, 2004.

EGON KAMARASY, Respondent  
By   
Gregory A. Veach, IARDC # 2893061  
Attorney for respondent

LAW OFFICES OF GREGORY A. VEACH  
3200 Fishback Road, P. O. Box 1206  
Carbondale IL 62903-1206  
Telephone: (618) 549-3132  
Telecopier: (618) 549-0956  
e-mail : gveach@gregveachlaw.com

Attorney for respondent

# Exhibit 1



2309 West Main Street • Marion, Illinois 62959-1187 • www.idph.state.il.us

James M. Madigan, Governor  
Michael J. Garver, Director

November 19, 2003

**JACKSON COUNTY - Makanda**  
Raccoon Valley Mobile Home Park/I.D.#059-01405-0  
Annual Licensure Inspection

Egon Kamarasy  
474 Egret Lake Road  
Carbondale, IL 62901

**CERTIFIED MAIL**  
7002 2410 0002 7861 1940

Dear Mr. Kamarasy:

Ronald O. Clark, a representative of this Department, conducted an annual licensure inspection of Raccoon Valley Mobile Home Park on November 12, 2003. The purpose of this inspection was to determine compliance with the Mobile Home Park Act and Manufactured Home Community Code.

The inspection revealed that your manufactured home community is not being operated and maintained in accordance with the Mobile Home Park Act and Manufactured Home Community Code. The following actions are required to correct the violations that were found to exist:

1. **Section 860.250(c)** The electrical box behind the home at site 25 is not covered and locked. Provide a cover and lock the box to prevent accidental contact. Correct by November 26, 2003.
2. **Section 860.300(a)** Assure that community residents properly store all refuse at all times. The following were observed in your community: litter around the dumpster across from site 58 and at site 35B; an old mattress at site 34; the commode, etc. at site 8A; the bathtub, commode, etc. at site 12; the debris and rubble at site 46; the underpinning at site 47A. Correct by November 19, 2003.
3. **Section 860.300(a)(4)** Remove the plastic bags of refuse which were noted on the ground at sites 13, 25, 46, and 51. Sealed plastic bags may be used to supplement the required containers on the day of garbage collection only. At all other times, bags of garbage must be stored in rust resistant, watertight and fly-proof containers with the lids closed. Correct within 48 hours.
4. **Section 860.300(a)(6)** An apparent burn pile was observed at site 27. IMMEDIATELY cease burning of refuse and properly dispose of all ashes, metals, etc.
5. **Section 860.310(a)** Remove the household items such as the rimmed tire at site 2; the air conditioner at site 14; the dryer at site 25; the windows, etc. at site 31A; the washer at site 35B; rimmed tire at site 36; air conditioner, old desk, etc. at site 51; rimmed tires at site 58; and the air conditioner, etc. at site 59A that were stored outdoors. Household furniture and appliances, auto parts including tires and batteries, building materials, abandoned equipment, and similar items shall not be stored in the community except in sheds or garages with doors.

*Improving public health, one community at a time*

*printed on recycled paper*



- M**
6. Section 860.310(b) Remove or repair the manufactured homes at sites 9, 51A, and 59 which have the appearance of being abandoned. The homes are potentially hazardous to children and other community residents due to available access through broken windows and/or unsecured doors. The home at site 59 is a REPEAT violation. Remove and properly dispose of the rubble from homes being dismantled at sites 12 and 31. Correct by December 12, 2003.
  7. Section 860.310(d) Remove all apparently abandoned or unused vehicles. All automobiles, trailers, and similar vehicles subject to licensure by the Secretary of State shall have current licenses displayed. Remove or license the following vehicles by December 12, 2003: the yellow Pontiac station wagon at site 30; the white Volkswagen van at site 59; and the red Ford Probe at site 59A.
  8. Section 860.330(a) Remove the tires located outdoors at sites 12, 13, 14, 36, and 47A. Correct by November 26, 2003.
  9. Section 860.360(b) Remove the motorized recreational vehicle from site 7. Motorized recreational vehicles shall not be located in a manufactured home community as a residence. Correct by December 12, 2003.

The above actions to eliminate the violations of the Act and Code shall be carried out by the date(s) specified. Enclosed are copies of the inspection report and a Notification of Correction of Code Violations. Please complete the Explanation of Corrections section on the notification form, sign and date the form, and return it to this office by December 12, 2003. Upon receipt of the signed notification form, we will schedule a reinspection. If the reinspection confirms correction of the cited violations, we will recommend that your license be renewed for next year. Your current Manufactured Home Community License expires on April 30, 2004. The annual license renewal form will be sent to you prior to that date from our Springfield Central Office.

If you have any questions regarding the Mobile Home Park Act and Manufactured Home Community Code, please contact Ronald O. Clark at the Marion Regional Office, telephone 618/993-7010.

Sincerely,



Walter G. Ward  
Acting Regional Supervisor

ROC/kay

cc: Div. of Env. Health - MHC  
MRO - MHC

Exhibit 2

# OPEN DUMP INSPECTION SITE SKETCH

Date Of Inspection: March 25, 20204

Inspector: Don Terry

Site Code: 077 809 5036

County: Jackson

Site Name: Makanda / Egon Kamarasy

Time: 2:32 pm 2:35 pm

Not Drawn to Scale

All locations are approximate

O → indicates approx. location & direction of photos

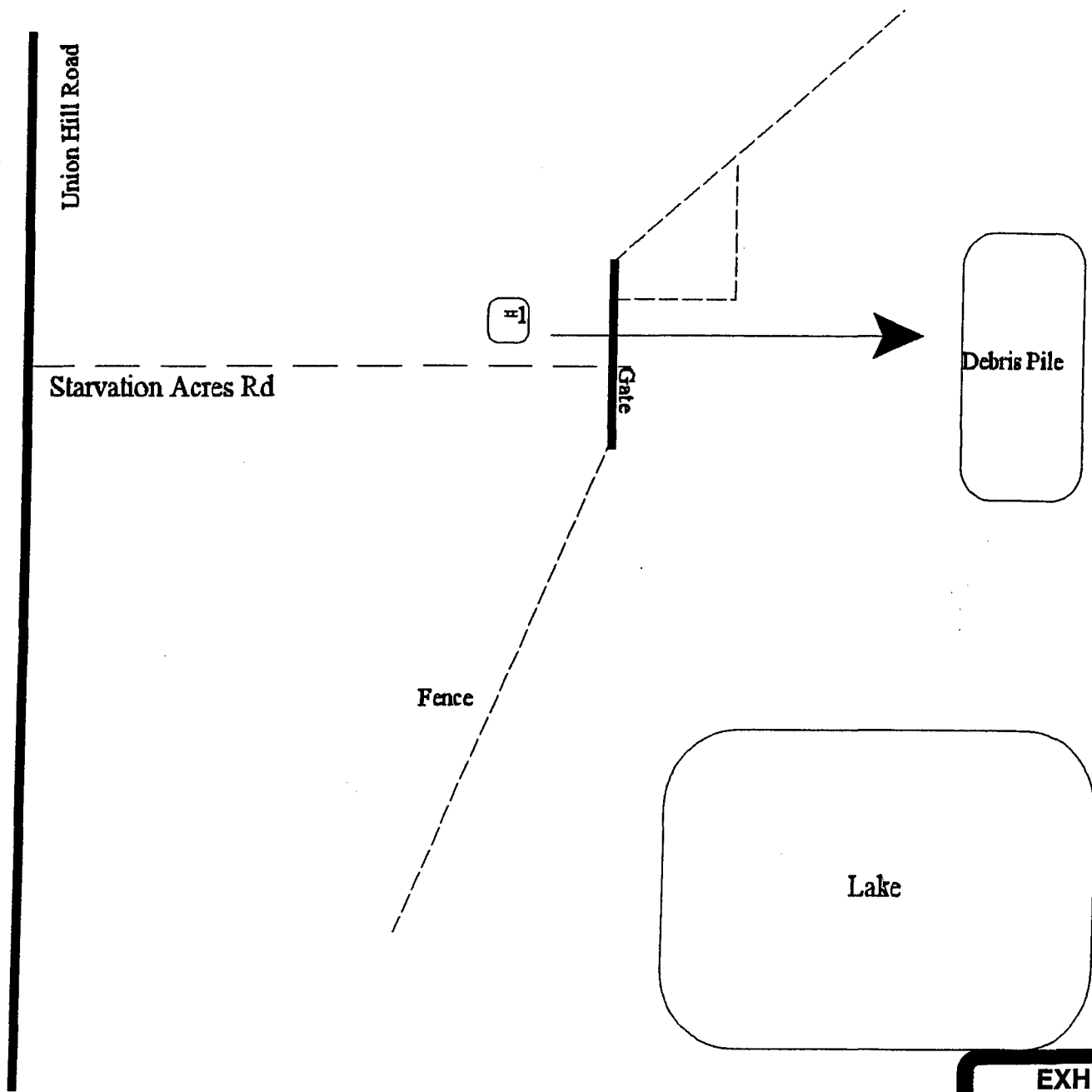


EXHIBIT  
tabbles®  
**R-2**



# Exhibit 3

CWI OF ILLINOIS . 1540 LANDFILL RD . DESOTO, IL 62924

INVOICE DATE INVOICE NO. ACCOUNT NO. FOR BILLING INQUIRIES. CALL SERVICE ADDRESS

05/03/04 184285 10 22454 3 (800) 631-1156 EGON KAMARASY  
 END OF STARVATION ACRE RD  
 CARBONDALE IL 62901

PAGE NO. 1

FOR PERIOD:

DATE	DESCRIPTION	QTY.	RATE	TOTAL
4/05/04	WORK ORDER#: 178644 30 YD DELIVERY	1.00		45.00
4/09/04	WORK ORDER#: 179038 30 YD PULL & RETURN-FLAT			355.00
4/12/04	WORK ORDER#: 179285 30 YD PULL & RETURN-FLAT			355.00
4/14/04	WORK ORDER#: 179632 30 YD PULL & RETURN-FLAT			355.00
4/14/04	TONNAGE OVER 6 TONS	6.16	30.000	4.80
4/15/04	WORK ORDER#: 179884 TONNAGE OVER 6 TONS	16.50	30.000	315.00
4/16/04	30 YD PULL & REMOVE-FLAT			355.00

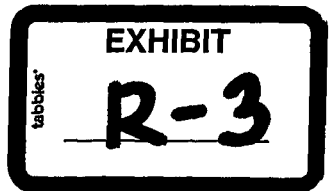
Net 10 days

*M. 4/29*

ACCOUNT STATUS

CURRENT	31 - 60 DAYS	61 - 90 DAYS	OVER 90 DAYS
1,784.80			

TOTAL THIS INVOICE 1,784.80  
 PLEASE PAY THIS AMOUNT 1,784.80



# Exhibit 4



# Jackson County Health Department

Promoting Health, Preventing Illness, and Protecting our Environment

618/684-3143, ext. 128

January 9, 2004

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Egon Kamarasy  
474 Egret Lake Rd  
Carbondale IL 62901

RE: **Violation Notice, L-2004-JC119**  
077 809 5036 -- Jackson County  
Makanda / Egon Kamarasy  
Compliance File

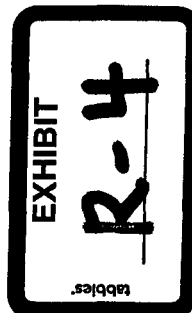
PCB # 04-63

Dear Mr. Kamarasy:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, ("the Act") 415 ILCS 5/31(a)(1), and is based upon an inspection completed on December 5, 2003 by a representative of the Jackson County Health Department ("JCHD"). The open dumping site is located in Makanda Township, Section 06, on a road known as Starvation Acres.

The Illinois Environmental Protection Agency ("Illinois EPA") and JCHD hereby provide notice of violations of environmental statutes, regulations, or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA and JCHD believe may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representative of JCHD must be submitted via certified mail to the JCHD within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The JCHD will review the proposed CCA and will accept or reject it within 30 days of receipt.



If a timely written response to this Violation Notice is not provided, it shall be considered to be a waiver of the opportunity to respond and to meet and the Illinois EPA and JCHD may proceed with a referral to the prosecutorial authority.

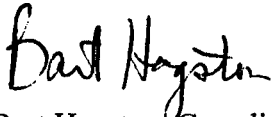
Written communication should be directed to:

Jackson County Health Department  
Attn: Don Terry  
Solid Waste Management Division  
P O Box 307  
Murphysboro, IL 62966-0307

All communications must include reference to this **VIOLATION NOTICE NUMBER, L-2004-JC119.**

Questions regarding this matter should be directed to Don Terry at 684-3143, ext. 128.

Sincerely,



Bart Hagston, Coordinator  
Solid Waste Program

BH/th

enclosure

Certified Return Receipt No. 7003 2260 0005 0889 6105

**CORRECTIVE ACTIONS REQUIRED**

**IMMEDIATELY** cease all open dumping and/or open burning. **You shall not dispose of any waste by open burning.** The following corrective actions must be completed by February 13, 2004.

- A. Remove all general refuse from this site and properly transport to a permitted landfill or transfer station.
- B. Scrap metal not disposed at a permitted landfill or transfer station may be taken to a scrap metal facility or recycling center.

**Retain and submit to the Jackson County Health Department's Solid Waste Management Section copies of receipts that document the proper disposal or recycling of the wastes by February 27, 2004.**

**ATTACHMENT A**

1. Pursuant to Section 21(a) of the Act, no person shall cause or allow the open dumping of any waste.

A violation of Section 21(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(a)) is alleged for the following reason: Evidence of waste was observed open dumped at this site during the inspection.

- 2.A. Pursuant to Section 21(d)(1) of the Act, in relevant part, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder.

A violation of Section 21(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)(1)) is alleged for the following reason: No permits have been issued for this waste management facility.

2. B. Pursuant to Section 21(d)(2) of the Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under this Act.

A violation of Section 21(d)(2) of the [Illinois] Environmental Protection Act (415 ILCS 21(d)(2)) is alleged for the following reason: No permits have been issued for this waste management facility.

3. Pursuant to Section 21(e) of the Act, no person shall dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder.

A violation of Section 21(e) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(e)) is alleged for the following reason: Violations of Board regulations as well as the Act were observed at the time of the inspection.

4. Pursuant to Section 21(p) of the [Illinois] Environmental Protection Act (415 ILCS 5/21 (p)), no person shall, in violation of subdivision (a) of this Section [21], cause or allow the open dumping of any waste in a manner which results in:

1. litter;

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

The prohibitions specified in the subsection (p) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to open dumping.

A violation of Section 21(p) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(p)) is alleged for the following reason: Items 1 and 2 above were not complied with.

5. Pursuant to Section 812.101(a), all persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021(d)) [415 ILCS 5/21 (d)] shall submit to the Agency an application for a permit to develop and operate a landfill. The application must contain the information required by this Subpart and by Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

A violation of 35 Ill. Adm. Code 812.101 (a) is alleged for the following reason: No Developmental Permit has been issued for a solid waste management site at this location.

6. Other: Pursuant to 35 Ill. Adm. Code Section 807.201 Development Permits: No person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency. Also Section 807.202 Operating Permits: No person shall cause or allow the use or operation of any solid waste management site for which a Development Permit is required under section 807.201 without an Operating Permit issued by the agency, except for such testing operation as may be authorized by the Development Permit.

You are in apparent violation of 35 Ill. Adm. Code Section 807.201 and Section 807.202: No Developmental Permits or Operating Permits have been issued for a solid waste management site at this location.



# Exhibit 5



# Jackson County Health Department

*Promoting Health, Preventing Illness, and Protecting our Environment*

January 16, 2004

Certified Mail  
Return Receipt Requested

Mr. Egon Kamarasy  
474 Egret Lake Rd.  
Carbondale, IL 62901

*M A K 2002*

Dear Mr. Kamarasy:

This letter is to act as a confirmation and summary of our phone conversation of January 15, 2004.

You called our office in reference to the Violation Notice L-2004-JC119 that was sent to you regarding the open dumping of demolition debris on property owned by you. This property is on Starvation Acres Rd and is listed in the Jackson County Assessor's Office under Parcel # 19-06-400-008.

During our phone conversation, you admitted that the debris was on the site and had originated from the demolition of mobile homes you were being required to remove by the I. D. P. H. You explained that debris was taken to the above listed site so that recyclable and non-recyclable materials could be separated. You also stated that you wanted to work with us and the date given to you in the violation notice letter to properly clean up the open dump site (February 13, 2004) was more than sufficient to be able to accomplish the task.

I explained that the process of taking demolition debris from one site to another for the purpose of salvaging was not permissible under Illinois law and that the demolition would have to take place where the mobile home had been place. I also explained that this process should take place as quickly as possible; any materials that were going to be used or recycled should be covered until moved, and all waste would have to be properly disposed of at the landfill. I also asked that you provide us copies of all landfill and recycling tickets relating to the disposal of the debris from the Starvation Acres open dump site.

EXHIBIT

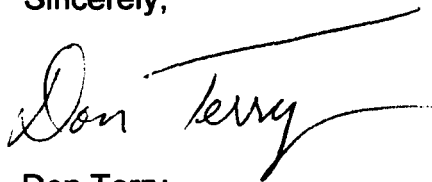
tabbles

R-5

Finally, I asked that you contact me when the site was clean so I could come do a compliance inspection. You stated that you would do this and also would be happy to accompany me on the inspection of the site.

I appreciate all of your efforts to correct this matter. If you have any questions, please do not hesitate to contact me at 618-684-3143, Ext. 128.

Sincerely,

A handwritten signature in cursive script that reads "Don Terry". The signature is written in black ink and is positioned above the typed name.

Don Terry  
Solid Waste Inspector  
Jackson County Health Department  
cc: file

Certified Return Receipt # 70032260000508895993

**BEFORE THE ILLINOIS POLLUTION CONTROL  
BOARD**

**ORIGINAL**

COUNTY OF JACKSON,

Complainant,

vs.

AC No. 2004-064

EGON KAMARASY,

Respondent.

**MEMORANDUM SUPPORTING AMENDED PETITION TO  
CONTEST ADMINISTRATIVE CITATION**

I

INTRODUCTION

The County of Jackson ("County") seeks to impose civil penalties for three (3) alleged violations of the Act.

The respondent denies that his actions violated the Act.

II

FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 2004, an inspector for the County of Jackson, Don Terry, conducted an "on-site inspection" of a site known as Carbondale/Kamarasy, located in Jackson County, Illinois. The inspection lasted five (5) minutes, from 2:25 p.m. until 2:30 p.m. (See Jackson County Health Department Affidavit of Don Terry, dated March 29, 2004, attached as Exhibit "A" to the Administrative Citation ("D. Terry Aff."))

Mr. Terry's Narrative Inspection Report (hereinafter "Report"), submitted in support of the Administrative Citation filed by the County of Jackson, states that the site investigation on March 25, 2004 was made "as a follow up to an inspection of this site [done] on March 11, 2004." (D. Terry Aff.) However, the Report does not give any account or explanation for the alleged March 11 "inspection". Nor does not it say whether that inspection resulted in any action being taken against Mr. Kamarasy, such as the issuance of a warning, prior to March 25.

The Report does not even say whether Mr. Terry discussed the March 11, 2004 inspection with Mr. Kamarasy prior to March 25.

The Report does state that, on March 25, Mr. Terry “observed a pile of debris in the same general location as on [his] inspection visit of March 11, 2004”, but that “[t]he debris pile appeared to have been reduced in volume by open burning” (D. Terry Aff.) Mr. Terry then estimated the volume of the debris to be ten (10) cubic yards. (*Id.*) Again, Mr. Terry did not state that he had warned Mr. Kamarasy that he would have to remove the material by March 25 or any other date. (*See Administrative Citation*) Mr. Terry also did not give any indication that he told Mr. Kamarasy that it would be unlawful to reduce the pile by burning the flammable material, and that Mr. Kamarasy should take those materials, including yard waste, to a public dump rather than burning them. (*Id.*)

Moreover, Mr. Terry did not state by what authority he conducted either of these investigations: first, the one on March 11, 2004 for which six photographs, but no narrative report or other documentation, have been provided; and, second, the one on March 25 that led to the Administrative Citation filed in this cause on or about March 30, 2004. Mr. Terry does not say, for example, whether he was able to observe the alleged dump site from the side of a public road, or whether he entered onto Mr. Kamarasy’s private property with the express purpose of looking for a dump site, or whether he had simply entered onto Mr. Kamarasy’s property at random and stumbled upon this dump site. Nor does Mr. Terry say whether he believed he had permission from Mr. Kamarasy to inspect his home and farm for debris piles or whether he believed he had some special statutory license for entering onto Mr. Kamarasy’s homestead without first obtaining a search warrant.

In any event, Mr. Terry claims he observed the following materials within the debris pile: (1) “landscape waste”, (2) “dimensional lumber”, (3) “what appeared to be metal frames from furniture”, (4) “metal fence posts”, (5) “the remains of what appeared to be a window air conditioner”, (6) “sections of laminate counter tops”, (7) metal cans, and (8) “other

materials not easily identifiable". He observed that most of the material "was charred from burning". (D. Terry Aff.)

To document these observations, Mr. Terry took five (5) close-up photographs of this site on March 25, 2004. Mr. Terry also took six (6) photographs on March 11, 2004. The five (5) photographs taken on March 25 might be said to show two (2) pieces of charred and half-burnt wood that, before they were burned, could have been characterized as "dimensional lumber." But, none of the pictures show a window air conditioner.

Mr. Terry's Report then states on the basis of his observations, the following violations occurred: (1) causing or allowing the open dumping of any waste in a manner that results in open burning of waste in violation of the Act; (2) causing or allowing open dumping of any waste that results in litter and the deposition of general construction or demolition debris or clean construction or demolition debris; (3) conducting a waste-storage or waste-disposal operation without a proper permit; (4) disposing, treating, storing or abandoning any waste or transporting any waste to the site from another site for the purpose of disposal; and (5) causing or allowing open dumping of any used or waste tire. (D. Terry Aff.)

Photographs taken by Mr. Terry on March 11, 2004 show two (2) or three (3) used tires. None is in the burn pile, but instead lie off to the side. Photographs taken by Mr. Terry on March 25, 2004 do not show any tires. (D. Terry Aff.) Mr. Kamarasy properly disposed of used tires from his property and has a receipt for the disposal from Davis Tire Center. (*See* Respondent's Exhibit "R-1", a copy of which is attached hereto.)

On March 30, 2004, Jackson County filed an Administrative Citation with the Pollution Control Board in which the following violations are alleged: (1) that the respondent caused or allowed open dumping that resulted in "litter" at the site in violation of § 21(p)(1) of the Act; (2) that the respondent caused or allowed open dumping that resulted in "open burning" at the site in violation of § 21(p)(3) of the Act; and (3) that the respondent caused or allowed open dumping at the site that resulted in "the deposition of general construction or demolition; or

clean construction or demolition debris” in violation of § 21(p)(7) of the Act. (Administrative Citation, p. 2)

The respondent filed an Amended Petition to Contest Administrative Citation, denying that his conduct violated the Act as alleged. (*See* Amended Petition to Contest Administrative Citation (“Am. Pet.”))

Mr. Kamarasy will testify, first of all, that the pile of material at the site in question rested entirely on his homestead, where he maintains his personal residence and a working farm. The pile is located between four (4) pastures on his farm. It cannot be seen from the road. In order to observe the pile, one would have to enter onto Mr. Kamarasy’s property, walk up a hill to a gated pasture, open the gate, and proceed for about another 500 feet. Not only is the pile not visible from the public road, it would also not be visible from the gateway that is on Mr. Kamarasy’s property. Mr. Terry could only have discovered the pile by making a determined effort to search Mr. Kamarasy’s property for possible violations. Mr. Kamarasy did not give Mr. Terry permission to enter his premises for any purpose.

Next, Mr. Kamarasy will testify that the pile of material about which Mr. Terry complains consisted primarily of landscape waste, with a small amount of household waste (being some used furniture), generated through ordinary residential and household use of the premises in question, together with a small amount of agricultural waste generated by his farming operations that were conducted on the premises. Mr. Kamarasy will further testify that there were metal fence posts in the pile. He was using the fire to burn the poison ivy off the fence posts. But there was no window air conditioner in the pile, and Mr. Kamarasy did not attempt to burn any such thing. His explanation is that he had an old Coleman water heater that he used to prevent freezing of drinking water in a water trough for the livestock that was located at about sixty (60) feet from the pile.

Mr. Kamarasy will testify that none of the materials he burned at this site were “general construction or demolition” material or “demolition debris.” Furthermore, according to the

meaning of the term "litter" as set forth in the Litter Control Act, (*see* discussion below), none of it was "litter."

Nor was Mr. Kamarasy attempting to create a waste disposal site. As he will testify, he merely collected these materials in one place, for the purpose of burning them.

Finally, Mr. Kamarasy will point out that the Pollution Control Act makes an exception for burning landscape, household, and/or agricultural waste, provided that waste is generated by farming operations conducted on the premises. Therefore, even if the waste in question could be characterized as litter or construction material, Mr. Kamarasy's act in burning this material would not be a statutory violation; whence, *a priori*, it could not be unlawful to collect the material in one place in preparation for burning.

With that in mind, Mr. Kamarasy does not know why he is being prosecuted in this matter. He had no way of knowing that he was violating any law by burning his household and farming waste in a rural area, even if he had read all the statutes in question and consulted with a lawyer in advance. Furthermore, despite the implication in Mr. Terry's Report that this was a follow-up inspection, Mr. Kamarasy was not given notice or warning of a possible violation, together with a reasonable time period in which to clean up the site.

### III

#### ISSUES PRESENTED

The Administrative Citation and the Amended Petition to Contest Administrative Citation present the following issues:

- A. Did the State violate Mr. Kamarasy's Fourth Amendment right to privacy, by entering onto his land for the purpose of inspecting for illegal debris piles without either obtaining Mr. Kamarasy's permission first, or obtaining a search warrant?
- B. Did Mr. Kamarasy cause or allow open dumping on his homestead, the so-called Carbondale/Kamarasy site?
- C. If open dumping occurred at the site, did the open dumping result in litter?



D. If open dumping occurred at the site, did the open dumping result in burning at the site? And, if so, was that open burning permitted by IEPA regulations and other environmental laws?

E. If open dumping occurred at the site, did the open dumping result in the deposition of general construction or demolition debris or clean construction or demolition debris?

F. Given that IEPA regulations and other environmental laws expressly permit the kind of burning allegedly committed by Mr. Kamarasy, how can it be unlawful for Mr. Kamarasy to first gather in one place the materials he intended to burn?

G. Did Mr. Terry and Jackson County abuse their discretion and exceed the intent and scope of the administrative citation process by broadening the definition of "litter" beyond the legislature's intent, and by filing multiple charges against Mr. Kamarasy for the single act of burning a relatively small amount of landscape, household, and agriculture waste from his farm and, therefore, violate the separation of powers under the Illinois Constitution?

H. Is the law, as applied to Mr. Kamarasy, unconstitutionally vague, in failing to give him reasonable notice of what constitutes creating an open dump on one's own property, and what constitutes littering on one's own property?

I. Were the enforcement actions taken against Mr. Kamarasy with respect to this site so overzealous as to be arbitrary and capricious and in violation of his constitutional due process rights?

#### IV

#### THE COUNTY VIOLATED THE FOURTH AMENDMENT BY ITS WARRANTLESS ENTRY ONTO PRIVATE PROPERTY TO SEARCH FOR ILLEGAL ACTIVITY

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Section 4(d) of the Act grants the IEPA "[i]n accordance with constitutional limitations, . . . authority to enter at all reasonable times upon any private or public property for the purpose of . . . [i]nspecting to ascertain possible violations of the Act or of permits or terms or conditions thereof . . .". 415 ILCS § 5/4(d)(1)

This provision has been held to authorize the IEPA to go before a court and request an administrative inspection warrant in order to carry out its duties under the Act, where the violations are not in open or plain view and require entry and a "search" to verify. *See e.g. Tippin v. Rockdale Sash & Trim Co., Inc.*, 196 Ill.App.3d 333, 336-7, 143 Ill.Dec. 22, 553 N.E.2d 729 (3d Dist. 1990); *People v. Van Tran Electric Corp.*, 152 Ill.App.3d 175, 105 Ill.Dec. 173, 503 N.E.2d 1179 (5<sup>th</sup> Dist. 1987); *Miller v. Pollution Control Board*, 276 Ill.App.3d 160, 204 Ill.Dec. 774, 642 N.E.2d 475 (4<sup>th</sup> Dist. 1994) *reh. den.*; *Village of Bridgeview v. Slominski*, 74 Ill.App.3d 1, 29 Ill.Dec. 944, 392 N.E.2d 641 (1<sup>st</sup> Dist. 1979)

Clearly, there was a search in this case. The inspector, Mr. Terry, could not observe the debris pile on Mr. Kamarasy's farm from the public road or from neighboring property. He had to leave the public road, traverse more than 200 feet across Mr. Kamarasy's property to a gate, open the gate, and then proceed another 300 feet before reaching the debris pile that is alleged to constitute a violation of the Act in this case. He did this on two (2) separate occasions, according to his Affidavit: the first time on March 11, 2004; the second time on March 25, 2004.

Following his entry and search on March 11, 2004, he did not contact Mr. Kamarasy about the existence of the debris pile or its disposition; nor, did he seek an administrative warrant to return to the site for any further inspections.

Instead, he returned to the site a second time, without notice to Mr. Kamarasy, entered again Mr. Kamarasy's private property, without warrant or consent or any exigent circumstance, and took additional photographs. The Administrative Citation then was filed only days after Mr. Terry's second, unannounced, warrantless entry onto Mr. Kamarasy's property and the search undertaken by the taking of the second photographs showing the debris pile.

Under these circumstances, it is clear that the County violated Mr. Kamarasy's Fourth Amendment right to be secure in his property from unreasonable searches and seizures. Consequently, the evidence obtained from the warrantless searches should not be allowed to

support a finding that Mr. Kamarasy violated the Act by assembling and burning the material in the pile.

V

THE RESPONDENT DID NOT CAUSE OR ALLOW OPEN  
DUMPING AT THE CARBONDALE/KAMARASY SITE

In order to seek enforcement by Administrative Citation for violations of Section 21(p), the Agency, or local governing body, must establish that the respondent caused or allowed open dumping. *See Montgomery County, Illinois v. Clifford Crispens, Jacqueline R. Crispens and Line Pilot Bungee, Inc.*, AC 95-43. Section 21(a) of the Act sets forth a general prohibition against open dumping as follows: “No person shall cause or allow the open dumping of any waste.” 415 ILCS § 5/21(a)

Section 3.385 of the Act defines “refuse” as “waste”. 415 ILCS § 5/3.385. The Act then defines “waste” to mean “any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material”. 415 ILCS § 5/3.535.

None of the “stuff” in the pile on the site in question was “garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility.” Therefore, the State must mean to incorporate all the items in question under the catch-all phrase “discarded material.” While that term can be stretched to mean most anything, it is hard to believe that the Illinois legislature intended the Pollution Control Board to consider vegetative matter, such as tree branches, set out in a pile to burn, as the kind of “discarded material” that creates an “open dump”. *See Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 2004 WL 2359398 (Ill. Sup. Ct. 2004)

Section 3.300 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.  
(Emphasis added.)

415 ILCS § 5/3.300. Thus, in order to prove that Mr. Kamarasy committed “open dumping”, the County must first show that he created a “disposal site” on his land.

It cannot be true, however, that any time a homeowner and/or farmer places any household item (for example, a broken piece of furniture) outside his or her home or on his or her farm, or piles up some branches and leaves outside his or her house, that he or she thereby has created a “disposal site” under the statute. Such an interpretation would render the Pollution Control Act so broad as to be arbitrary and unenforceable. *See Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency, supra, 2004 WL 2359398*

It would mean, for example, that every homeowner who ever burned a pile of leaves or branches in the backyard thereby created a “disposal site”. Consequently, any such homeowner would be guilty of open dumping, which would then make him or her strictly liable for at least two counts of “littering” and “burning”, and a fine of at least \$3000 under the Pollution Control Act. Hopefully, this Board would agree that that is not the type of problem that the Pollution Control Act was meant to address.

The case at bar is not really all that different. The respondent organized and consolidated some old household items that he no longer wanted, some landscape waste, and some waste from his farming operations, and placed them at a site on the farm, far from the road. He then proceeded to burn the material in the pile.

Of course, Mr. Kamarasy concedes that the items in question were “waste”. In fact, almost all of it was vegetative waste, as the County’s inspector’s photographs plainly show. He further concedes that he attempted to destroy this waste by burning it. However, he denies the rest of the allegations contained in the Administrative Citation.

In the first place, the words “allowed or caused open dumping” sound so grandiose that they make Mr. Kamarasy seem like some kind of willful and repeat offender. He is not. This was not a repeat offense. Mr. Kamarasy was not “allowing” others to dump their waste items on his land.

In fact, by Mr. Terry's own admission, the total amount of waste at this site was only about ten (10) cubic yards. (D. Terry Aff.) Yet, in Mr. Terry's Report, he manages to accuse Mr. Kamarasy of "conducting a waste-storage or waste-disposal operation without a proper permit." Common sense says that an inspector, acting in good faith, could not accuse a person of conducting a waste-disposal operation without a license on the basis of discovering a mere ten (10) cubic yards of household, agricultural and landscape waste in a pile on his or her own farm property!

It is true, and Mr. Kamarasy understands, that the commercial dump site charge was later dropped by the Jackson County prosecutor – presumably because it was too preposterous to be believed – but the fact that Mr. Terry could have made such an allegation after observing this site suggests his prejudice or animus against Mr. Kamarasy.

To set the record straight, Mr. Kamarasy merely set out some landscape waste on his farmland, together with some household and agriculture waste, for the purpose of disposing of the waste by burning it. At the time, Mr. Kamarasy had no way of knowing, or even suspecting, that this act of burning one's own refuse, in such a rural setting, was illegal.

In the second place, the Mr. Kamarasy had no intention of creating a "disposal site" on his land. Of course, the respondent understands that his lack of intent is not, by itself, a sufficient defense. Mr. Kamarasy duly acknowledges that the charges in section 21(p) of the Act were meant to be enforced strictly and with little discretion on the part of the inspectors or the IEPA and its designated agents, such as Jackson County. *See e.g. IEPA v. Springer*, Illinois Pollution Control Board Case No. AC 02-7. However, if one reads the definitions as set forth in the Act, it appears that Mr. Kamarasy cannot be said to have *unintentionally* created a "disposal site" either.

While there is no single definition for the term "disposal site", the words "disposal" and "site" are defined separately in the Act. The definition of the term "site" is self-explanatory. *See* 415 ILCS §5/3.460. However, the term "disposal" is specific enough as to shed light on which debris piles can be labeled "disposal sites" and which cannot.

According to the Act.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

415 ILCS § 5/3.185 Presumably, then, a “disposal site” under the Act would be one where such “disposal” takes place.

This definition of “disposal” involves two parts. First, the definition requires a showing that Mr. Kamarasy “plac[ed] . . . waste . . . on [his] land.” Second it requires showing that Mr. Kamarasy placed waste of such a kind and in such a manner “so that such waste . . . or any constituent thereof may *enter the environment or be emitted* into the air or *discharged* into any waters, including ground waters.” (Emphasis added.)

Because the County bears the burden of proving that a respondent committed the act of “open dumping” and because open dumping requires a showing that the respondent created a “disposal site”, it is clearly the County’s burden to prove that the site in question was truly a “disposal site”. As just noted, that would ordinarily require two showings – (1) placing waste on the land; and (2) doing this in such a way that the waste would be likely to “enter the environment”, or be “emitted” or “discharged” into the environment. Since the respondent concedes the first point, the County’s burden in the case at bar is to show that the waste, which Mr. Kamarasy had burned incompletely, was somehow placed on the land in such a way that it, or any constituent thereof, was entering into the environment or emitting into the air or discharging into the waters.

Certainly, no evidence has been or will be presented of emitting or discharging, unless the County seeks to claim that the burning itself is *per se* unlawful, which it is not. As will be discussed in detail below, the burning was lawful in this setting and, in any event, the charge under consideration is whether the respondent caused or allowed “open dumping” at the site in

question, not whether there was open burning. Therefore, the County must prove “entering into the environment”.

Of course, the County might argue that every time a person places waste on his or her land, then he or she has automatically, as a matter of logical consequence, causes that waste to enter into the environment. But if that is the correct interpretation of the phrase “enter the environment”, namely that anything found outside of a building or enclosure necessarily enters or is emitted into the environment, so that there is nothing which needs to be proved, then the whole phrase “so that such waste . . . or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters” becomes completely superfluous. Merely placing waste on the land, without more, would automatically imply that one had caused it to enter into the environment.

It is a standard principle of statutory construction that each clause in a statute should be presumed to have some meaning. Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency, *supra*, 2004 WL 2359398 Therefore, it must be presumed that the legislature meant the concepts of “entering into the environment”, as well as “emitting” and “discharging”, to place some limitation on the notion of placing waste on the land. A homeowner, like Mr. Kamarasy, does not create a disposal site every time he places waste on his land.

So how does one know which acts create a disposal site, and which do not? What is the distinction that the legislature intended to make? It seems clear that by using the words “entering into the environment”, “emitting”, and “discharging” the legislature meant to imply a certain lack of control or potential lack of control by the person who placed the waste on the land. To be a disposal site, the County must show either the waste in its entirety (for example unprotected paper trash), or else some constituent of the waste (for example oil or paint in open cans) did enter or has the potential to enter (freely) into the environment, or be emitted into the air or be discharged into the waters. This is a **Pollution** Control Act. It is pollution that is being regulated, not mere messiness on the part of a landowner.

But, the specific items observed at this site, and listed in the fact section above, are not items likely to blow, scatter, or spread freely, escape, leech, or be emitted into the environment. Nor are they items likely to emit or discharge. A fence post, for example, lying on the ground, is not going to scatter into the environment, nor is it going to emit or discharge anything into the environment. Neither is the metal frame from some piece of furniture that burned incompletely.

It is not even possible for Mr. Terry to claim that these items were abandoned on the land or forgotten by Mr. Kamarasy. By Mr. Terry's own admission, Mr. Kamarasy must have conducted a burning of some of the materials at some time between March 11 and March 25, 2004, when the citation was issued. Therefore, Mr. Kamarasy had not forgotten or ignored this pile of material. He was trying to get rid of it!

It follows that the County has failed to prove an essential element of its charge – that Mr. Kamarasy committed the act of “open dumping” at the site in question. For that reason alone, the charge of causing or allowing “open dumping” against Mr. Kamarasy in this case should be dismissed.

## VI

### THE RESPONDENT DID NOT CAUSE OR ALLOW OPEN DUMPING THAT RESULTED IN “LITTER” AS THAT TERM IS USED IN THE ACT

Even if this Board should find that Mr. Kamarasy did commit “open dumping,” this would not in itself be an actionable offense under the Act. Each of the three specific charges against Mr. Kamarasy requires further showings.

The County's first claim is that Mr. Kamarasy caused or allowed open dumping that resulted in “litter” in violation of § 21(p)(1) of the Act. But, Mr. Kamarasy does not believe that his act of burning some stuff at a site on his own homestead, in a location not visible from the public road, and in a manner that did not cause a public nuisance, can reasonably be characterized as causing litter.

Mr. Kamarasy is well aware that the term “litter” has been interpreted expansively in prior cases before the Pollution Control Board. *See e.g. Illinois Environmental Protection*



Agency v. Springer, *supra*, AC 02-7 at p. 6 But, again, if the legislature had intended that every homeowner who ever placed waste on his land in such a way as to constitute “open dumping,” was also and automatically guilty of littering, then the legislature would not have bothered to add the qualifying phrase “that resulted in litter.” *See e.g. Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, *supra*, 2004 WL 2359398 It would have just defined the crime as “open dumping”. By adding the phrase “that resulted in litter” the legislature made it clear that it believes that not all items left at a “disposal site” constitute litter.

So the question remains, what constitutes “littering” under the Pollution Control Act, and what does not? Unfortunately, the Act does not say. The failure to define littering poses a serious enforcement problem of constitutional dimension: how can a homeowner, even one who has studied the statute in elaborate detail, possibly know if an act constitutes “open dumping” that results in “litter”, given that the Act does not define “litter”? *See e.g. People v. Einoder*, 209 Ill.2d 443, 450, 283 Ill.Dec. 551, 808 N.E.2d 517 (2004)

The Pollution Control Board attempted to answer this problem in previous cases, responding to charges that the term “litter” in the statute is too vague by adopting the definition of litter from the Litter Control Act. *See e.g. St. Clair County v. Louis Mund*, AC 90-64. This approach by the Board is both logical and reasonable. It has the virtue of relying on a legal notion of “litter” that was created by the legislature precisely for the purpose of going beyond the simplistic notion that litter is just “messy stuff left outside,” and identifying with some precision which messy stuff left outside shall be treated by the law as “litter” and which shall not, so that littering can be either prevented or punished.

By adopting the meaning of “litter” as it is used in the Litter Control Act, the Board put homeowners, like Mr. Kamarasy, on notice that unlawful “littering” in the Pollution Control Act *means exactly the same thing* as unlawful “littering” in the Litter Control Act.

The Litter Control Act starts out by providing as follows:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, debris, rubbish, grass clippings or other lawn or garden waste,

newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle . . . motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS § 105/3

But this paragraph, though properly taken from the Litter Control Act, does not give a complete definition of “litter”, in the sense of telling a homeowner what is unlawful. Indeed, it is transparently incomplete, if one reads it carefully. It consists of two sentences.

The first sentence is obviously definitional in syntax. “Litter means any discarded, used or unconsumed substance or waste.” But this sentence, taken alone, suffers from the same vagueness problem as discussed above. In fact, based solely on this sentence the trash that one puts inside a garbage can and takes to the curb is “litter,” since it certainly consists of “discarded, used or consumed substance or waste.” Likewise, a small pile of leaves in one’s own back yard would probably be “litter”, and subject to whatever enforcement measures the Litter Control Act provides. Certainly, that is not what the legislature intended,

For one thing, the second sentence is there for a reason. It appears to be intended to give some help in understanding “litter”, by providing a list (though not complete) of concrete examples. But the key word in the second sentence is “**may**”. For example, according to this so-called definition, “grass clippings or other lawn or garden waste”, **may** be considered litter under the Litter Control Act. Or, they **may not**. One simply does not know, without reading the entire statute to get more guidance.

The respondent does not say this to be tricky, or try to win this case on a mere technicality. The question raised here is one about fundamental fairness. This so-called definition, cited frequently by the Board, completely fails to answer the basic question posed above: what kind of dumping on one’s own property is the kind that results in litter, and what

kind is not? Without that answer, how can a homeowner ever know what is prohibited and what is not?

For example, if this one paragraph were the entire definition of litter, even such a common practice as mulching one's grass clippings back into one's lawn would be fraught with unknown and unknowable danger. The Inspector might cite it as a violation. Or he might not. And, the only way for a homeowner to know in advance would be to read the Inspector's mind. Therefore, in effect, the interpretation of the Litter Control Act that Jackson County is asking this Board to adopt for use in the case at bar would grant the Inspector sole and absolute power to decide what is litter and what is not.

Perhaps Mr. Terry believes that he can enforce the Pollution Control Act merely by insisting that he knows litter when he sees it, but if so, this would lead to a blatant violation of the Separation of Powers Clause of the Illinois Constitution because the inspector would then have the authority to determine if and when individuals should be prosecuted for "littering". See e.g. People v. Izzo, 195 Il.2d 109, 115-6, 253 Ill.Dec. 425, 745 N.E.2d 548 (2001) It is up to the legislature to give clear guidelines about what litter is and what it is not; the inspector, and even the Pollution Control Board, should have only a very limited discretion in this determination.

Of course, the legislature knew this when it wrote the Litter Control Act. It did not give broad discretion to inspectors to define litter. Instead, in plain language, the legislature gave fairly detailed guidelines about what is litter and what is not. In the legislature's own words:

[T]his Act is, therefore, necessary to provide for *uniform prohibition* throughout the State *of any and all littering on public or private* property so as to protect the health, safety and welfare of the people of this State.

415 ILCS § 105/2 (Legislative Findings and Determinations) (emphasis added).

Therefore, it was the legislature's intent that the notion of unlawful littering should be "uniform" in the State of Illinois, and that one has to examine the entire statute to know what "any and all littering" means. Merely reading one paragraph from the statute will not suffice.

It follows that the criterion for whether a landowner has committed open dumping *that resulted in litter* in violation of the Pollution Control Act is to determine whether or not the landowner committed open dumping *that resulted in litter* in violation of the Litter Control Act.

In other words, to prove that Mr. Kamarasy's alleged "open dumping" resulted in "litter", the State will have to prove that Mr. Kamarasy's actions constituted a violation of the Litter Control Act. But, the County cannot do so, because Mr. Kamarasy did not violate the Litter Control Act.

The Litter Control Act contains four sections that describe prohibited acts. *See* 415 ILCS §§ 105/4 through 105/7 Two of these are not relevant to this hearing in that they refer to dumping from a motor vehicle or abandoning a motor vehicle. *See* 415 ILCS § 105/5 (dumping from motor vehicle) and 415 ILCS § 105/7 (abandonment of motor vehicle) That leaves Section 4 (dumping and the deposit of litter) and Section 6 (accumulation of litter).

Section 4 of the Litter Control Act provides in relevant part, as follows:

No person shall dump, deposit, . . . [or] discard . . . litter . . . unless

\* \* \* \* \*

(c) the person is the owner or tenant in lawful possession of the property . . . and **does not create a public health or safety hazard, a public nuisance, or a fire hazard.**

(Emphasis added)

Section 6 of the Litter Control Act addresses accumulation of litter. It provides in relevant part, as follows:

No person shall allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, **in such a manner as to constitute a public nuisance or in such a manner that the litter may be blown or otherwise carried by the natural elements on to the real property of another person.**

There is no evidence to support a claim that Mr. Kamarasy's so-called "open dump" created a public health or safety hazard, a public nuisance, or a fire hazard. There is also no evidence that he deposited items in the so-called "open dump" in a manner as to constitute a

public nuisance or such that items may be blown or otherwise carried by the natural elements on to the real property of another person.

Therefore, Mr. Kamarasy should not be found in violation of the Act on the charge of open dumping that resulted in litter, because he did not cause or allow litter in violation of either the Pollution Control Act or the Litter Control Act.

## VII

### THE RESPONDENT DID NOT CAUSE OR ALLOW OPEN DUMPING AT HIS HOMESTEAD THAT RESULTED IN OPEN BURNING IN VIOLATION OF THE ACT

IEPA regulations exempt several activities from the general prohibition against open burning under the Act.

For example, open burning of "agricultural waste" is not a violation of the Act, provided the burning occurs on the premises on which such waste is generated, the area of the burn is not a restricted area, atmospheric conditions will dissipate readily the contaminants, no visibility hazard is created on roadways, railroad tracks or air fields, residential or other populated areas are not closer than 1,000 feet, and it can be demonstrated that no economically reasonable alternative method of disposal is available. 35 Illinois Administrative Code § 237.120(a)

"Agricultural waste" is defined as "[a]ny refuse, except garbage and dead animals, generated on a farm or ranch by crop and livestock production practices including such items as bags, cartons, dry bedding, structural materials and crop residues but excluding landscape wastes". 35 Illinois Administrative Code § 237.101

Open burning of "domicile waste" is not a violation of the Act, provided the burning occurs on the premises on which such waste is generated, the burn area is not a restricted area, atmospheric conditions will dissipate readily the contaminants, and no visibility hazard is created on roadways, railroad tracks or air fields. 35 Illinois Administrative Code § 237.120(a)

"Domicile waste" is defined as "[a]ny refuse generated on single-family domiciliary property as a result of domiciliary activities". 35 Illinois Administrative Code § 237.101

Open burning of "landscape waste" is not a violation of the Act, provided the burning occurs on the premises on which such waste is generated, atmospheric conditions will dissipate readily the contaminants, and no visibility hazard is created on roadways, railroad tracks or air fields". 35 Illinois Administrative Code § 237.120(a)

"Landscape waste" is defined as "[a]ny vegetable or plant refuse, except garbage and agricultural waste", including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings. 35 Illinois Administrative Code § 237.101

In the case at bar, Mr. Kamarasy consolidated items from his household, which is located on the farm where the Carbondale/Kamarasy site is situated, and burned them. He also consolidated items of landscape waste, such as branches, vines, leaves and brush, which were generated on his farm, and burned them. Also in the burn, were items of agricultural waste, such as fence posts (formerly contaminated with poison ivy), boxes, cartons, structural items and crop residues:

These activities by the respondent did not violate the Act's ban on "open burning". Therefore, this claim should be dismissed.

### VIII

**THE RESPONDENT DID NOT CAUSE OR ALLOW OPEN DUMPING  
ON HIS HOMESTEAD THAT RESULTED IN THE DEPOSITION OF  
GENERAL CONSTRUCTION OR DEMOLITION OR CLEAN  
CONSTRUCTION DEBRIS IN VIOLATION OF THE ACT**

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The Act defines "general construction or demolition debris". The term means "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)

The Act defines “clean construction or demolition debris”. The term means “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).

Nothing in the debris pile discovered by Mr. Terry was construction material or demolition debris. Mr. Kamarasy or his farm employees placed all of the materials contained in the debris pile. Mr. Kamarasy was not constructing a structure, nor was he demolishing one, and so the “stuff” in his burn pile could not have been the waste generated by such an activity. For the words “construction” and “demolition”, which modify “debris” in this charge against Mr. Kamarasy, to have any meaning, there must be at least some circumstantial evidence that some construction and/or demolition of structures was taking place. The County has presented and can present none.

The photographs that Mr. Terry took do not show *piles* of lumber of the type that might lead to a reasonable inference that construction activity had taken place resulting in the deposition of materials therefrom. Nor do they show debris from the demolition of a non-farm structure. Rather, they appear to show a few pieces of debris from some old household furniture and the like.

Even if the inspector did observe a few damaged pieces of “dimensional lumber” in the debris pile, this analysis is not changed. Obviously, no farm can be run without generating some scrap pieces of wood. And it is simply not reasonable to say that if the inspector finds one or two scrap pieces of wood, or even a couple of “2 x 4’s” in a debris pile, that he or she can reasonably conclude that the debris pile consists of construction materials or demolition materials. Otherwise, any time any homeowner puts a couple of pieces of scrap wood out in his or her backyard, or a farmer puts a couple of scrap pieces of wood on the burn pile, he or she will stand accused of having committed open dumping that resulted in the deposition of

construction or demolition debris in violation of the Pollution Control Act. It should be obvious that true construction and demolition activity would generate substantially more than one or two pieces of wood that a homeowner might scrap or that a farmer might discard and seek to burn.

The respondent wishes to emphasize that the burden of proof lies with the County to show that the materials comprising the burn pile on the Carbondale/Kamarasy site constituted "general construction or demolition debris" or "clean construction or demolition debris". The respondent contends that they did not, and the visual evidence, in the form of the photographs taken by Mr. Terry during his warrantless, unannounced entry and search of the premises, seems rather clear on this point. However, it is not the respondent's burden to make out his defense to this charge, until the State first shows that there was **construction** or **demolition** debris in this burn pile.

The State has made no showing of fact on this point, only Mr. Terry's conclusory allegation. Consequently, no finding is warranted that the respondent allowed or caused open dumping that resulted in the deposition of general construction or demolition or clean construction or demolition debris on the Carbondale/Kamarasy site.

Moreover, even if this Board should find as a matter of fact that Mr. Kamarasy did stack some "dimensional lumber" in this debris pile and burn it, Mr. Kamarasy finds it hard to believe that this Board would describe that act as depositing the lumber, rather than attempting to burn it. And, as already discussed, even if it might be unlawful to abandon a pile of wood in a scrap heap, it is not unlawful to burn it in an unrestricted area, such as where Mr. Kamarasy burned it.

Therefore, this Board should dismiss the charge of open dumping that resulted in the deposition of general construction or demolition or clean construction or demolition debris on the Carbondale/Kamarasy site.



IX

IT IS UNFAIR, AND A VIOLATION OF MR. KAMARASY'S  
CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHTS, TO  
ACCUSE HIM OF IMPROPERLY CREATING AN OPEN DUMP SITE,  
LITTERING, OR DUMPING CONSTRUCTION DEBRIS AT A SITE  
WHERE HE IS LAWFULLY ENTITLED TO DEPOSIT THOSE SAME  
MATERIALS FOR THE PURPOSE OF BURNING THEM

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By claiming that Mr. Kamarasy created an open dump, the County appears to suggest that it was unlawful for Mr. Kamarasy to collect landscape, household, and agricultural waste and deposit it in a single site on his farm in preparation for burning it.

It was shown in Section VII of this Memorandum that IEPA regulations expressly permit the burning of such materials if they result from domiciliary waste, landscape waste, or farm waste generated on the premises. Thus, unless the County can prove that this waste was somehow generated by activities outside Mr. Kamarasy's house or farm, he was entitled by law to burn the materials.

But there is no way to burn the materials without first gathering them. So, if this Board were to uphold the County's interpretation of the Pollution Control Act, it would be holding that the laws in the State of Illinois contradict themselves. On the one hand, it is lawful to burn materials in the manner that Mr. Kamarasy did, but, on the other hand, it is unlawful to gather them for burning.

One of the most basic notions of due process is that a citizen must be able to reasonably ascertain whether an act that he is contemplating is lawful or not. *See e.g. Granite City Div. Of Nat. Steel Co. v Illinois Pollution Control Board*, 155 Ill.2d 149, 163, 184 Ill.Dec. 402, 613 N.E.2d 719 (1993) Where the State has two laws, one of which tells the citizen unequivocally that the act is lawful, while the other tells the citizen, in effect, that the act is not lawful, it must be true that one or both of those laws is unconstitutional. Otherwise, there would be no possible way for a citizen to make the necessary determination about lawful versus unlawful behavior.

Of course, the respondent does not say this by way of arguing that this Board should find that the Pollution Control Act is unconstitutional on its face. Rather, the respondent says this by way of arguing that this Board must interpret the Pollution Control Act so as to keep it within constitutional bounds. That is, this Board must find that the Pollution Control Act permits the gathering of "discarded" materials or "waste" in one place, even if that might be described as creating an open dump site, so long as the materials consisted only of domiciliary waste, landscape waste, and/or agricultural waste generated on the premises and the purpose of gathering the materials was to burn them or otherwise dispose of them in a lawful manner.

Assuming that the above is the correct interpretation of the law, Mr. Kamarasy cannot be found to have committed the violations described in the Administrative Citation. Mr. Kamarasy's only demonstrable intention was to burn the materials in question.

Mr. Terry effectively conceded as much in his original Report. According to that Report, Mr. Terry first observed the debris pile on March 11, and it had not yet been burned. Mr. Terry then observed the debris pile on March 25, and he noted that it had been charred by burning, and that the pile had been reduced in size since March 11. The only reasonable inference is that Mr. Kamarasy collected the materials at some time prior to March 11 for the purpose of burning them at some time prior to March 25.

Because the collecting of the materials for burning in this case, and the burning of the materials was really a single continuous act, the Board should find that the collecting of the materials (1) was not an act of open dumping; (2) was not an act of littering; and (3) was not an act of depositing construction or demolition debris in the sense intended by the legislature when it passed the Pollution Control Act.

IT WOULD BE UNFAIR, AND A VIOLATION OF DUE PROCESS, IF THIS BOARD WERE TO INTERPRET THE LEGAL MEANING OF "DISPOSAL SITE", "OPEN DUMP" AND/OR "LITTER" IN SUCH A WAY AS TO IGNORE OR RENDER *DE MINIMUS* THE NOTIONS OF SCATTERING FREELY INTO THE ENVIRONMENT AND OF CAUSING SOME HARM TO OTHERS, WHICH THE LEGISLATURE CLEARLY INTENDED TO BE INCORPORATED INTO THE MEANING OF "POLLUTION"

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The problems inherent in the County's interpretation of the Pollution Control Act, as evidenced by the manner in which the prosecution has stated and presented its case against Mr. Kamarasy, have already been discussed extensively in this memorandum. When the legislature wished to describe an open dump, it did not describe it merely as a location where a landowner places some of his or her waste. Even if the placing of one or more items in a pile seems unsightly, that does not make the pile an open dump, especially if the site is discrete and limited. The legislature said in plain language that, to be an open dump, a pile of material must also be placed in such a way that either the material itself is free to enter into the environment, or else constituents of the material may be emitted or discharged into the environment.

One must assume that the legislature used this language for a reason, namely to distinguish the more serious crime of "pollution" from the relatively insignificant and not unlawful case of mere "messiness". One must also assume that by using the word "may" the legislature meant to require the State to prove a significant likelihood, not a remote possibility, of entering into the environment. Otherwise, an overzealous prosecutor could always claim the existence of an infinitesimal possibility.

Similarly, with respect to "litter", the legislature said, if it occurs only on the alleged offender's own private property, and the accusation is unlawful "dumping," the allegedly offending stuff must be shown to "create a public health or safety hazard, a public nuisance, or a fire hazard." Or alternatively, where the accusation is that the stuff is being unlawfully "accumulated", it must be shown that the stuff is a "public nuisance" or that it "may be blown or otherwise carried by the natural elements on to the real property of another person."

Any homeowner who reads these provisions would have to believe that it is lawful, say, to make a modest leaf pile in his or her backyard, or to stack a few branches from a fallen tree, or to set out a wood pile for aging first before burning it in a fireplace or wood stove. More particularly, if Mr. Kamarasy had read the statutes with a fine-toothed comb, before creating his burn site, he would have had no way of anticipating that an overzealous inspector might enter onto his property without a warrant, discover his pile of material, and then cite him, not just once but three times, for "polluting", merely because the pile looked messy to the inspector and not because it was actually scattering or threatening to be carried off by the natural elements onto someone else's property.

That means it would be a violation of Mr. Kamarasy's due process rights to convict him of these charges. A citizen of the United States and the State of Illinois must be able to reasonably ascertain what is lawful and what is not. Otherwise law enforcement becomes simply a random and unintelligible act.

Furthermore, if Mr. Kamarasy had read the Litter Control Act carefully before creating the pile, he would have rightfully determined not only that he was not violating that Act, but also that he was explicitly permitted by the Act to gather the materials that he did in the pile and burn them. That brings us back to the same dilemma described above. The legislature cannot reasonably declare to its citizens that it is lawful to place some debris in your backyard (if it meets the requisite standards), but then in a separate law declare that it is unlawful, even if it does meet those same standards.

Consequently, the Board must conclude either (a) that the Pollution Control Act as applied to Mr. Kamarasy is unconstitutional; or (b) that the Pollution Control Act was never intended to apply, and in fact does not apply, to items that one can lawfully dispose of in one's backyard according to the Litter Control Act. It was only meant to apply to such items as pose a real threat to be carried onto the property of others by the natural elements. None of the materials deposited by Mr. Kamarasy posed that threat.

XI

IT WOULD BE UNFAIR, AND A VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS, IF THIS BOARD WERE TO PERMIT THE INSPECTOR AND JACKSON COUNTY SIMPLY TO USE THE "I KNOW IT WHEN I SEE IT" DEFINITION OF LITTER RATHER THAN CAREFULLY APPLYING THE GUIDELINES SET FORTH IN THE LITTER CONTROL ACT

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If this Board holds that acts which are explicitly lawful under the Litter Control Act (for example placing waste on one's own property in such a way that it is not likely to be carried onto a neighbor's property by the natural elements) or which are explicitly lawful under the IEPA regulations accompanying the Pollution Control Act (for example burning landscape, household, and agricultural waste on one's own property) violate the Pollution Control Act, then this Board, in effect, would be making new legislation about what is and what is not pollution. That would be a violation of the Separation of Powers principle of the Illinois Constitution. Making law is not a proper administrative function. This Board is only authorized to enforce the law.

By the same token, if this Board permits an inspector to exercise unbridled discretion under the guise of "I can't define litter, but I know it when I see it," that would be a violation of the Separation of Powers principle. The inspector is no more authorized than the Board to make new law about what is and is not pollution.

Nor is this some minor matter in which the exercise of discretion is proper and necessary. If littering is the crime in question, it cannot be left to the executive branch of government, whether that means an Inspector or this Board, to decide arbitrarily and on its own what constitutes "litter". There must be clear guidelines from the legislature, and those guidelines must be followed, or the enforcement itself is unconstitutional.

As stated previously in this memorandum, the legislature has set forth some guidelines for this case, the County and its inspector have not followed them, and this Board should implement those guidelines by exonerating Mr. Kamarasy of the charges in this case.

## XII

IT WOULD ALSO BE UNFAIR, AND SIMILARLY A VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS, IF THIS BOARD WERE TO PERMIT THE INSPECTOR AND JACKSON COUNTY TO PILE ON MULTIPLE CHARGES FOR WHAT REASONABLY SHOULD AMOUNT TO A SINGLE ACT OF COLLECTING MATERIALS IN ONE SITE AND BURNING THEM

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The legislature only intended one fine for one violation of the Act. It surely did not intend the legal trickery by which the prosecution has managed to subdivide that same act into three aspects, each of which is alleged to constitute a separate violation.

By the prosecution's reasoning, if a homeowner were to take a collection of dead branches and place them in a fire pit in his backyard, and if he were then to strip off a damaged piece of plywood from an old door and throw it on the debris pile, and if he then burned the pile, he could be charged with not just one but three violations of the Pollution Control Act. One count could be for littering, one count could be for burning, and one count could be for demolition debris as a result of having demolished the old door. Or, the prosecutor might charge only for one count. This decision would be purely discretionary.

In the case at bar, Mr. Terry and the Jackson County prosecutor used their apparently unbridled discretion to file three complaints for what was really a single act of burning some debris, the extent of which was to create only ten cubic yards of waste. The prosecution exercised this discretion to pile on the charges, even though by its own admission, Mr. Kamarasy created less than ten cubic yards of waste, whereas the typical case before this Board involves hundreds of cubic yards of waste. That alone makes the charges against Mr. Kamarasy in this action arbitrary and unreasonable, and an abuse of discretion.

The essence of the legislature's thinking in creating the Administrative Citation process was to reduce the discretion of the executive branch in enforcing the law. For example, by imposition of fixed penalties – neither prosecutors nor this Board are allowed to say: this is a \$1500 litter pile, this is a \$1000 pile, and this one only seems like a \$500 one, either on account of its size or the degree to which it presents problems to others. This lack of discretion is a

significant part of legislature's intent under the Act. Yet the prosecutor, in this case, has managed to introduce a much larger degree of discretion in a back-door manner. Whether it is 10 cubic yards or 10,000, the fine for littering if the prosecution chooses to use the Administrative Citation process must always be \$1,500. Yet, in this case against Mr. Kamarasy, the prosecution has figured out a way to charge Mr. Kamarasy with \$4500 in fines for one tiny alleged dump site.

Furthermore, and as previously discussed, before one can commit the alleged crime of "open burning" under the Pollution Control Act, it is a logically necessary antecedent that one first must have gathered the materials in a debris pile. For the prosecution to *automatically* charge separate fines, and in Mr. Kamarasy's case two separate fines, for this logically necessary antecedent step, before charging for the "burning" amounts to setting a minimum fine of \$3000 for all open burning cases. Alternatively, for the prosecution to decide at its own discretion whether to charge a separate crime for the antecedent steps, violates the legislature's intent in creating the Administrative Citation process, because the legislature intended the fines to be enforced without discretion.

The purpose of eliminating discretion in the matter of fines was to avoid giving the executive branch too much power in these cases. If this Board were to decide to grant the prosecutor discretion to charge Mr. Kamarasy with three separate counts for what was in essence a single act of open burning, it would be endorsing a violation of the Separation of Powers Clause of the Illinois Constitution.

If the legislature had intended for the single act of burning some debris on one's property to carry a \$3000 fine, it would have said so in the Act. It did not.

Therefore, the piling on of multiple charges in this case, even if a violation of the Act is found to have occurred when Mr. Kamarasy gathered the materials for the purpose of burning them, should not be countenanced and Mr. Kamarasy found liable for no more than one (1) violation of the Act, if any is found to have occurred.

XIII

CONCLUSION

The inspector discovered the pile at the site in question only by conducting an illegal search of Mr. Kamarasy's property. Therefore, all evidence of the existence of this pile should be suppressed and disregarded.

The pile of material in question did not constitute a "disposal site" or an "open dump", as those terms are defined in the Pollution Control Act.

There was no general construction or demolition debris within the pile.

The pile itself would not be considered "litter" in violation of the Litter Control Act. Therefore, it cannot be considered "litter" in violation of the Pollution Control Act.

It was an abuse of discretion to charge Mr. Kamarasy with three separate violations for one allegedly wrongful act. The essential "crime", which Mr. Kamarasy committed, if any, was to create a burn site on his farm to dispose of household, landscape, and agricultural waste generated on the farm by his farming activities. At most, he should have been issued one citation for open burning.

But that open burning charge must be dismissed because the IEPA regulations expressly permit this kind of burning activity, provided certain conditions are met, which Mr. Kamarasy obviously did meet.

The only way for this Board to convict Mr. Kamarasy on any of these three counts would be to interpret the legal terms "open dump" and "litter" so expansively and arbitrarily as to violate Mr. Kamarasy's due process right to be able to reasonably anticipate what is illegal and what is not. In addition, the interpretation would have to be so broad as to give the administrative branch of the government too much discretion regarding both the decision about what is litter and the amount of penalties to be imposed for a particular act. This would be a violation of the Constitutional principle of Separation of Powers.

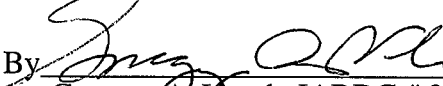
The respondent did not violate the Act as alleged in the Administrative Citation.



Therefore, and for all of the foregoing reasons, the Administrative Citation should be dismissed.

Dated this 19th day of November, 2004.

EGON KAMARASY, Respondent

By   
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Exhibit 1

**Davis Auto Center**  
 356 Cedar Creek Rd.  
 Makanda IL 62958  
 (618)549-3675  
 Thank you for your business.

Repair Order #4582

Egon Kamarasy  
 474 Egret Lake Rd.  
 Carbondale IL 62903

Day Phone : 618-457-6167

Vehicle : 1986 BMW 325e 2693CC 2.7Liter L6  
 VIN : WBAAB5404G9681384  
 Created : 06/02/04 5:22:00 PM

Tag/State : RWC194 / IL  
 Color : White  
 Odometer In : 0  
 Odometer Out : 0

Qty	Code/Tech*	Reference	Description	Condition	Unit Price	Price
3	-	DISPOSAL FEE	DISPOSAL OF OLD TIRE		\$1.25	\$3.75
			Labor			\$0.00
			Parts			\$0.00
			Sublet/Misc.			\$0.00
			Shop Supplies			\$0.00
			Charges			\$3.75
			Sales Tax	Tax @ \$0.00 * 6.2500%		\$0.00
				Repair Total		\$3.75

I hereby authorize the repair work herein set forth to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control. I hereby grant you and/or your employees permission to operate the vehicle herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express garagekeeper's lien is hereby acknowledged on above vehicle to secure the amount or repairs thereto. All Vehicles left over 48 hrs. after repairs are completed WILL INCUR A \$5.00 PER DAY STORAGE FEE.

Customer Signature \_\_\_\_\_

