



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION**

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, ) AC 12-61  
 )  
v. )  
 )  
JOE W. MCDERMOTT, JOE W. )  
MCDERMOTT d/b/a MCDERMOTT )  
SALES AND SERVICE, and JOSEPH R. )  
MCDERMOTT d/b/a MCDERMOTT )  
TOWING AND RECOVERY, )  
 )  
Respondents.

**MOTION TO DISMISS ADMINISTRATIVE CITATION**

NOW COMES Respondents, JOE W. MCDERMOTT, JOE W. MCDERMOTT d/b/a MCDERMOTT SALES AND SERVICE, and JOSEPH R. MCDERMOTT d/b/a MCDERMOTT TOWING AND RECOVERY, by their undersigned attorneys, and as and for its Petition for Review of Administrative Citation states as follows:

1. On or about June 25, 2012, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (hereinafter the "Agency") filed an Administrative Citation against named Respondents JOE W. MCDERMOTT, JOE W. MCDERMOTT d/b/a MCDERMOTT SALES AND SERVICE, and JOSEPH R. MCDERMOTT d/b/a MCDERMOTT TOWING AND RECOVERY (hereinafter the "Respondents").

2. The Administrative Citation alleges that Respondents violated Sections 21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) of the Illinois Environmental Protection Act (hereinafter the "Act"), 415 ILCS §§ 21(p)(1), 21 (p)(5), 21(p)(6), and 55(k)(1).

3. The Administrative Citation was served upon JOSEPH R. MCDERMOTT (hereinafter "Joey"). Joey was the only person who signed the "green cards" for the alleged

violations and, thus, he was the only one of the Defendants served. Thus the Board has jurisdiction only over Joey.

4. Joey is the son of JOE W. MCDERMOTT.

5. Joey is neither the owner of the land nor is he a principal in, or have any ownership in, the businesses named as Defendants.

6. Service was not properly effectuated on any appropriate Defendants.

7. Thus, the Board lacks jurisdiction to issue a default order in this matter. See *IEPA v. RCS, Inc. v. Michael Duvall*, AC 96-12 (Dec. 7, 1995).

WHEREFORE, Respondents JOE W. MCDERMOTT, JOE W. MCDERMOTT d/b/a MCDERMOTT SALES AND SERVICE, and JOSEPH R. MCDERMOTT d/b/a MCDERMOTT TOWING AND RECOVERY respectfully request that the Illinois Pollution Control Board grant the Motion to Dismiss the Illinois Environmental Protection Agency's Administrative Citation.

Respectfully submitted,

JOE W. MCDERMOTT, JOE W. MCDERMOTT  
d/b/a MCDERMOTT SALES AND SERVICE, and  
JOSEPH R. MCDERMOTT d/b/a MCDERMOTT  
TOWING AND RECOVERY  
Respondents,

By their attorneys,  
BROWN, HAY & STEPHENS, LLP

By: /camanning  
Claire A. Manning

**BROWN, HAY & STEPHENS, LLP**

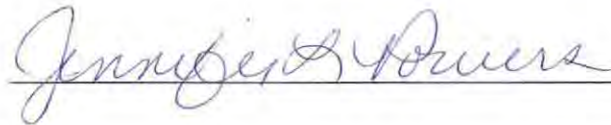
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**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that service of the foregoing **Motion to Dismiss** was made by mailing a true and correct copy thereof in a sealed envelope, postage fully prepaid and addressed to:

Michelle M. Ryan  
Illinois Environmental Protection Agency  
Assistant Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794

by placing same in the United States Mail on this 6th day of August, 2012.

  
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