

ILLINOIS POLLUTION CONTROL BOARD  
September 16, 2008

COUNTY OF JACKSON, )  
)  
Complainant, )  
)  
v. ) AC 09-4  
) (Site Code No. 0778145021)  
LESTER JOHNSON and ARTHUR CROSS, ) (Administrative Citation)  
)  
Respondents. )

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

On July 16, 2008, the County of Jackson (County) timely filed an administrative citation against Lester Johnson (Johnson) and Arthur Cross (Cross) (collectively respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a property located at latitude 7.74701 and longitude -89.40784 in Jackson County, designated with Site Code No. 0778145021, and commonly known to the Illinois Environmental Protection Agency as the “Murphysboro/Lester Johnson” site. Today, for the reasons below, the Board accepts for hearing the amended petitions of Johnson and Cross.

The County alleges that respondents violated Sections 21(p)(1), (p)(3), (p)(4), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(4), (p)(7) (2006)) on June 5, 2008, by causing or allowing the open dumping of waste resulting in litter, open burning, the deposition of waste in standing or flowing waters, and the deposition of general or clean construction or demolition debris at the Jackson County site. According to the citation, Don Terry (Terry), a Field Inspector with the Jackson County Health Department, inspected the site on June 5, 2008. The County asks the Board to impose on respondents the statutory civil penalty of \$1,500 for each alleged violation, for a total civil penalty of \$6,000.

On August 4, 2008, respondents filed a petition requesting a hearing to dispute the administrative citation. On August 7, 2008, the Board issued an order accepting the petition as timely filed, but finding the petition deficient because it did not provide grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.204(b), 108.206. The Board directed respondents to file an amended petition remedying this deficiency by September 8, 2008, or the Board would dismiss the petition and enter a default order against respondents. *See* 35 Ill. Adm. Code 108.404, 108.500(a).

On August 27, 2008, the Board received two amended petitions filed *pro se*, one from Johnson (J. Am. Pet.) and one from Cross (C. Am. Pet.). Each amended petition maintains that the site was “cleared and clean” within a few days after Terry inspected the site. J. Am. Pet. at 1; C. Am. Pet. at 1. Both amended petitions further allege that at an August 20, 2008 re-inspection by Terry, holes were dug on-site to make sure no materials had been buried, and the inspector agreed the property was “clean.” J. Am. Pet. at 1; C. Am. Pet. at 1. The Board notes that

voluntary clean up actions performed by a respondent after a site inspection are generally neither a defense to the violations nor relevant to determining the civil penalty amount. *See IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990) (“The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site”).

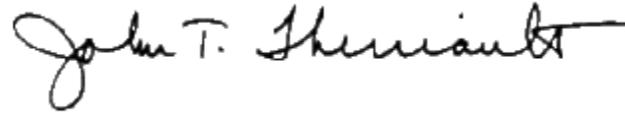
The amended petitions, however, make further assertions. Johnson states that he sold the property to Cross through a “contract for deed” and “had no part in the destruction of the mobile home.” J. Am. Pet. at 1. Cross claims that he was “trying to do what was right” as “[t]he Health Department” had suggested to him that he “get further away from the Creek.” C. Am. Pet. at 1. The Board accepts the amended petitions for hearing. The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2006).

By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the County. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs is available from the Clerk of the Board and on the Board’s Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504. Respondents may withdraw their amended petitions at any time before the Board enters its final decision. If either Johnson or Cross chooses to withdraw his amended petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondents withdraw their petitions after the hearing starts, the Board will require respondents to pay the hearing costs of the Board and the County. *See id.* at 108.500(c).

The County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that either Johnson or Cross violated Section 21(p)(1), (p)(3), (p)(4), or (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(4), (p)(7) (2006)), the Board will impose civil penalties. Because the Act specifies the civil penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts. *See, e.g., IEPA v. Stutsman*, AC 05-70, slip op. at 2 (Sept. 21, 2006). The civil penalty for violating Section 21(p) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person’s second or subsequent adjudicated violation of that provision. *See* 45 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that a respondent “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) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2008, by a vote of 4-0.

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

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board