

ILLINOIS POLLUTION CONTROL BOARD
February 18, 2010

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	AC 10-5
)	(Site Code No. 0778105010)
GARY CLOVER,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

This opinion and order dismisses the December 21, 2009 petition for review filed by respondent Gary Clover for failure to file an amended petition as required in the Board's order of January 7, 2009. As the Board stated that it would in the last order if no amended petition were filed, the Board today dismisses Mr. Clover's petition for review, finds that he committed the three violations as alleged in the administrative citation issued against him, and enters a default order assessing the statutory penalty.

PROCEDURAL HISTORY

On October 21, 2009, the County of Jackson (Jackson County) timely filed an administrative citation against Gary Clover (Clover). *See* 415 ILCS 5/31.1(c) (2008)¹; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Clover's facility located in Jackson County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the "Murphysboro/Gary Clover site" and is designated with Site Code No. 0778105010.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108.

In this case, Jackson County alleges that on September 23, 2009, Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21 (p)(1), (p)(3), and (p)(7) (2008)) by allowing litter, open burning and deposition of general construction or demolition debris or clean construction or demolition debris at Clover's Jackson County site. Jackson County asks the Board to impose the

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

statutory \$7,500 civil penalty on Clover as the alleged violations of Section 21(p)(1) and (p)(7) are second or subsequent violations.

On November 16, 2009, Clover timely filed a petition. *See* 415 ILCS 5/31.1(d) (2008; 35 Ill. Adm. Code 101.300(b), 108.204(b). However, Clover failed to state in the petition the reason why the administrative citation was improperly issued and Clover does not indicate that the petition has been served on Jackson County. *See* 35 Ill. Adm. Code 108.204 and 108.206. By order of November 19, 2009, the Board accepted Clover's petition to contest the administrative citation as timely filed but directed Clover to file an amended petition by December 21, 2009.

On December 21, 2009, the Board received an amended petition from Clover dated December 17, 2009. The text of the amended petition states in its entirety as follows:

Please consider this an amended petition for review. A Copy has been sent to [Jackson County Assistant State's Attorney] Daniel Brenner. I am including copies of pictures that correlate to pictures that [Jackson County Health Department Environmental Compliance Inspector] Don Terry submitted. Along with receipts where we disposed of debris and metals (sic). I can be reached daily at [telephone number omitted here].

As stated in the Board's order of January 7, 2010:

The December 21, 2009 amended petition still fails to state any reason why Clover believes the administrative citation was improperly issued. As stated in the Board's procedural rules at 35 Ill. Adm. Code 108.206, any petition for review must list one or more of the following reasons:

- a) The [Administrative Citation] AC Recipient does not own the property;
- b) The AC Recipient did not cause or allow the alleged violations;
- c) The AC was not timely filed or properly served[footnote 2 omitted]; or
- d) The alleged violation was the result of uncontrollable circumstances.

The fact that a site has been cleaned up after an inspection may provide a reason for the issuer of an administrative citation to move to withdraw or dismiss a citation, but it does not provide a reason for the Board to find that no violation occurred. County of Jackson v. Gary Clover, slip op. at 2, AC 10-5 (Jan. 7, 2010).

The January 7, 2010 order gave respondent "one more chance to file a complete petition for review" on or before February 8, 2009, advising that if respondent "fails to do so, the Board will dismiss his petition for review and enter a default order." Mr. Clover has not filed an amended petition as required by the January 7, 2010 order. The Board accordingly dismisses the petition for review.

FINDINGS OF VIOLATION AND IMPOSITION OF PENALTY

Since there is no longer pending before the Board a timely petition for review of the October 21, 2009 administrative citation, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. As previously stated, the administrative citation alleges that Mr. Clover violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21 (p)(1), (p)(3), and (p)(7) (2008)) by allowing litter, open burning and deposition of general construction or demolition debris or clean construction or demolition debris at Clover's Jackson County site. Jackson County asks the Board to impose a statutory \$7,500 civil penalty on Clover as the alleged violations of Section 21(p)(1) and (p)(7) are second or subsequent violations at this site. *See County of Jackson v. Gary Clover*, AC 04-37 (Mar. 18, 2004).

The civil penalty for violating any provision of subsection (p) of Section 21 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* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(a). Because there three violations of Section 21(p), and the record indicates that two of them are second or subsequent adjudicated violations, the total civil penalty is \$7,500.² Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

1. The Board finds that Gary Clover has violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (415 ILCS 5/21 (p)(1), (p)(3), and (p)(7) (2008)).
2. Gary Clover must pay a civil penalty of \$7,500 no later than March 22, 2010, which is the first business day following the 30th day after the date of this order. Gary Clover must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Gary Clover's social security number or federal employer identification number must be included on the certified check or money order.

² The Board notes that at two points the January 7, 2010 order contains typographical errors that incorrectly reference a statutory penalty of \$4,500, although the order also correctly relates that the County had requested a \$7,500 penalty since two violations were subsequent violations. *County of Jackson v. Gary Clover*, slip op. at 1,2, and 3, AC 10-5 (Jan. 7, 2010). The \$7,500 penalty request is also correctly referenced in the Board's previous order. *County of Jackson v. Gary Clover*, slip op. at 1, AC 10-5 (Nov. 19, 2009). The County has justified the \$7,500 penalty, which the Board has no discretion to reduce from that asked for by the County and prescribed in the Act. *See* 415 ILCS 5/42(b)(4-5) (2008).

3. Gary Clover must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276]

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 18, 2010 by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

OCT 21 2009

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 GARY CLOVER,)
)
 Respondent.)

AC 10 - 3
Site Code: 0778105010

ORIGINAL

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.* (2009), specifically 415 ILCS 5/31.1.

FACTS

1. The Respondent, Gary Clover, is the present owner and occupant and in control and possession of a facility located in the County of Jackson, State of Illinois.

2. The facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code # 0778105010. The facility is known to the Agency as the Murphysboro/Gary Clover site.

3. The Respondent has owned, occupied, controlled and/or operated the facility at all relevant times hereto.

4. On September 23, 2009, Don Terry, Field Inspector, Jackson County Health Department, inspected the facility. A true and correct copy of the inspection report, along with Mr. Terry's affidavit, are attached and incorporated herein by reference as Exhibit A.

5. The Respondent had been previously found to have violated §21(p)(1) and (p)(7) of the Illinois Environmental Protection Act, 415 ILCS 5/21(p)(1), (7) (2009) at this site on March 18, 2004 in AC 04-37.

VIOLATIONS

On the basis of Field Inspector, Don Terry's, direct observation, he has determined that the Respondent has caused or allowed open dumping at the above described facility in a manner that resulted in the following violations:

That on September 23, 2009, an on-site inspection of the facility disclosed the following:

1. The Respondent has caused or allowed litter at the facility in violation of 415 ILCS 5/21(p)(1).

2. The Respondent has caused or allowed open burning at the facility in violation of 415 ILCS 5/21(p)(3).

2. The Respondent has caused or allowed the deposition of general construction or demolition debris; or clean construction or demolition debris in violation of 415 ILCS 5/21(p)(7).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2009), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for the §21(p)(3) violation and Three Thousand Dollars (\$3,000.00) each for the §21(p)(1) violation and the §21(p)(7) violation because the latter are second violations for the same offenses, for a total of Seven Thousand Five Hundred Dollars (\$7,500.00). If Respondent elects not to

petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than no later than December 1, 2009, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elect to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2009), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondent shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. The hearing costs shall be assessed in addition to the statutory civil penalty.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2009), if Respondent fails to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, checks shall be made payable in equal amounts (50% of total penalty each) to:

(1) County of Jackson, c/o Jackson County Treasurer, Jackson County Courthouse, Murphysboro, Illinois 62966; and

(2) Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276.

Respondent shall complete and return the enclosed Remittance Forms with payments to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondent from the date payment is due up to and including the date that payment is received. The Complainant may either initiate proceedings against Respondent in Circuit Court or other debt collection actions to collect said penalty and/or hearing costs, plus any interest accrued, as well as injunctive relief.

PROCEDURE FOR CONTESTING ADMINISTRATIVE CITATION

You have the right to contest this Citation, pursuant to 415 ILCS 5/31.1. If you elect to contest this Citation, you must file a Petition For Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition For Review shall be filed with Daniel Brenner, Assistant State's Attorney, Jackson County Courthouse, Third Floor, Murphysboro, IL 62966. **YOUR PETITION FOR REVIEW MUST BE FILED WITHIN 35 DAYS OF THE DATE OF SERVICE OF THE PRESENT CITATION ON YOU. IF YOU FAIL TO FILE YOUR PETITION, A DEFAULT ORDER AGAINST YOU WILL BE ENTERED BY THE POLLUTION CONTROL BOARD.**

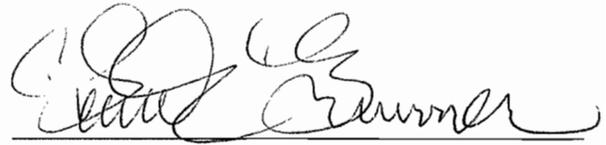
Your original Petition must be filed with the Clerk of the Board at:

Clerk
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

A copy must also be sent to:

Office of the State's Attorney
Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, 3rd Floor
Murphysboro, IL 62966

DATED: October 6, 2009

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

Daniel Brenner
Assistant State's Attorney

REMITTANCE FORM TO COUNTY OF JACKSON

RECEIVED
CLERK'S OFFICE
OCT 21 2009
STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
Complainant,)
)
v.)
)
GARY CLOVER,)
)
Respondent.)

NO. AC 10 - 5

ORIGINAL

FACILITY: Murphysboro/Gary Clover Site

COUNTY: JACKSON

DATE OF INSPECTION: September 23, 2009

SITE CODE: 0778105010

Date Remitted _____

SS/FEIN # _____

Signature _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Shirley Dillinger Booker
Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois, 62966

REMITTANCE FORM TO ILLINOIS EPA

RECEIVED
CLERK'S OFFICE
OCT 21 2009
STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 GARY CLOVER,)
)
 Respondent.)

NO. AC 10 - 5

FACILITY: Murphysboro/Gary Clover Site
COUNTY: JACKSON
DATE OF INSPECTION: September 23, 2009
SITE CODE: 0778105010

Date Remitted _____

SS/FEIN # _____

Signature _____

NOTE

Please enter the date of your remittance, social security number, if an individual, or Federal Employer Identification Number (FEIN) if a corporation, and sign the remittance form. Be sure the appropriate check is enclosed and mail, along with this remittance form, to Illinois Environmental Protection Agency, Attn: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.