

ILLINOIS POLLUTION CONTROL BOARD

October 6, 2016

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	AC 17-3
)	(No. 077 814 5117)
GARY CLOVER,)	(Administrative Citation)
)	
Respondent.)	

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

On August 23, 2016, Jackson County timely filed an administrative citation (AC) against Gary Clover (respondent). See 415 ILCS 5/31.1(c) (2014); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s facility located at 398 E. Industrial Park Rd, Murphysboro, in Jackson, County. The property is known to the Illinois Environmental Protection Agency (IEPA) and Jackson County as the “Murphysboro/Gary Clover (2)” site and is designated with Site Code No. 077 814 5117. Clover filed a petition for review (Pet.) of the AC on September 19, 2016. For the reasons below, the Board accepts respondents’ petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), 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 a unit of local government, if designated by the IEPA, but only for limited types of alleged violations. See 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2014); 35 Ill. Adm. Code 108.

In this case, Jackson County alleged that on July 20, 2016, respondent violated Sections 21(p)(1), 21(p)(4), and 21(p)(7) of the Act, by causing or allowing the open dumping of waste resulting in litter, the deposition of waste in standing or flowing waters, and the deposition of general or clean construction or demolition debris. 415 ILCS 5/21(p)(1), (p)(4), (p)(7) (2014). Jackson County asks the Board to impose on respondent the statutory \$1,500 civil penalty for the Section 21(p)(4) violation and \$3,000 each for the Section 21(p)(1) and (p)(7) violations, because the latter are second violations for the same offenses, for a total civil penalty of \$7,500.

As required, Jackson County served the administrative citation on respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2014); see also 35 Ill. Adm. Code 101.300(c), 108.202(b). On September 19, 2016, respondent timely filed a petition. See 415 ILCS 5/31.1(d) (2014); 35 Ill. Adm. Code 101.300(b), 108.204(b). Respondent alleges that he was not the one performing the dumping, he was told the dumping materials were approved by the IEPA, and that he will now put up signs stating what is acceptable for dumping and monitor the loads coming in. Pet.; See 35 Ill. Adm. Code 108.206.

The Board accepts the petition and 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) (2014). Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 108.300(d).

By contesting the administrative citation, respondent may have to pay the hearing costs of the Board and Jackson County. *See* 415 ILCS 5/42(b)(4-5) (2014); 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. *See* 35 Ill. Adm. Code 108.504. Respondent may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If respondent chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See id.* at 108.208. If respondent withdraws his petition after the hearing starts, the Board will require respondent to pay the hearing costs of the Board and Jackson County. *See id.* at 108.500(c).

Jackson County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2014); 35 Ill. Adm. Code 108.400. If the Board finds that respondent violated Sections 21(p)(1), 21(p)(4), and 21(p)(7) of the Act, the Board will impose civil penalties on him. 415 ILCS 5/21(p)(1), (p)(4), (p)(7) (2014). The civil penalty for violating any provision of 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* 415 ILCS 5/42(b)(4-5) (2014); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that 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) (2014); 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 6, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board