

ILLINOIS POLLUTION CONTROL BOARD
January 7, 2010

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

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

This order gives respondent Gary Clover one more chance to file a complete petition for review. On or before February 8, 2010, respondent Clover must file an amended petition stating the reason(s) why he believes the administrative citation was improperly issued, showing the amended petition has been served on Jackson County. *See* 35 Ill. Adm. Code 108.204 and 108.206. If he fails to do so, the Board will dismiss his petition for review and enter a default order assessing the \$4,500 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 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, 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

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.

Board to impose the 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.

DECEMBER 21, 2009 AMENDED PETITION

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

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 served²; 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.

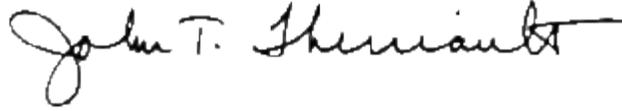
This order gives respondent Gary Clover one more chance to file a complete petition for review. On or before February 8, 2010, respondent Clover must file an amended petition stating the reason(s) why he believes the administrative citation was improperly issued, showing the amended petition has been served on Jackson County. *See* 35 Ill. Adm. Code 108.204 and

² Here, the Board's November 19, 2009 order found that the administrative was timely filed and properly served, so that reason is no longer available to respondent Clover.

108.206. If he fails to do so, the Board will dismiss his petition for review and enter a default order assessing the \$4,500 statutory penalty.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 7, 2010, by a vote of 5-0.

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

John Therriault, Assistant Clerk
Illinois Pollution Control Board