

ILLINOIS POLLUTION CONTROL BOARD  
July 1, 2010

COUNTY OF JACKSON, )  
)  
Complainant, )  
)  
v. ) AC 10-30  
) (Administrative Citation)  
FRANCES KLINK, )  
)  
Respondent. )

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

On June 9, 2010, the County of Jackson (County) timely filed an administrative citation against Frances Klink. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a property located in Murphysboro, Jackson County. The property is commonly known to the County as the “Murphysboro/Frances Klink site” and is designated with Site Code No. 0778145040. On June 18, 2010, Klink filed a petition with the Board to contest the administrative citation. 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). For the reasons below, the Board accepts Klink’s petition as timely filed, but directs Klink to file an amended petition to cure certain deficiencies.

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 such as Jackson County, 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, the County alleges that on May 11, 2010, Klink violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (3), (7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the unpermitted deposition of construction or demolition debris. The County asks the Board to impose the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$4,500.

The statutory civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each first-time violation, and \$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). The administrative citation alleges that the Section 21(p)(1), (p)(3) and (p)(7) violations are respondent’s first violations of those provisions. Therefore, respondent is subject to a civil penalty of \$1,500 for each of the three violations, for a total civil penalty of \$4,500.

As required, the County served the administrative citation on Klink within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by June 17, 2010. On June 18, 2010, the Board received Klink’s petition to contest the administrative citation. The petition is considered timely filed because it was postmarked June 15, 2010, on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) (“mailbox rule”).

The Board finds, however, that there are two deficiencies with Klink’s petition that must be remedied before the Board can accept this case for hearing. First, contrary to the Board’s procedural rules, Klink fails to allege any grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.206. Acceptable grounds for contesting the administrative citation (AC) include claims that the AC was improperly issued because (1) the AC recipient does not own the property; (2) the AC recipient did not cause or allow the alleged violations; (3) the AC was not timely filed or properly served; or (4) one or more of the alleged violations were the result of uncontrollable circumstances. Second, there is no indication that Klink served a copy of the petition upon the County. Under the Board’s procedural rules, Klink was required to serve a copy of the petition upon the County and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

The Board directs Klink to file an amended petition, accompanied by a certificate of service. The amended petition must state any grounds for contesting the administrative citation. The certificate of service must document that Klink served a copy of the amended petition upon the County. If Klink fails to file these documents with the Board by August 2, 2010, which is the first business day following the 30th day after the date of this order, the Board will dismiss the petition and enter a default order against Klink imposing the \$4,500 penalty.

If Klink proceeds to contest the administrative citation but does not prevail on the merits of the case, Klink will have to pay not only the \$4,500 penalty but also any hearing costs of the Board and the County. *See* 415 ILCS 5/42(b)(4-5) (2008); 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 website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 1, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board