

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2012

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 10-30
) (Site Code # 0778145040)
FRANCES KLINK,) (Administrative Citation)
)
Respondent.)

DANIEL W. BRENNER, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF COMPLAINANT; and

FRANCES KLINK APPEARED *PRO SE*.

OPINION AND ORDER OF THE BOARD (by T. A. Holbrook):

On April 19, 2012, the Board issued an interim opinion and order finding that Frances Klink (Klink or respondent) violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21 (p)(1), 21 (p)(3), 21(p)(7) (2010)). The case concerns a site located at 81 Our Lane, Murphysboro, Jackson County. The site is known to the County as the "Murphysboro/Frances Klink" property and is designated with Site Code No. 0778145040.

In the April 19, 2012 decision, after the Board found the violations, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)), Klink was subject to the statutory civil penalty of \$1,500.00 per violation, for a total civil penalty of \$4,500.00. In addition, the Board held that Klink, by unsuccessfully contesting the administrative citation hearing, also must pay the hearing costs of the County and the Board. The hearing in this case was held on November 8, 2011, at the Jackson County Courthouse in Murphysboro.

Because no information on hearing costs was then in the record, the Board directed the County and the Clerk of the Board each to file documentation of the respective hearing costs, supported by affidavit, and to serve the filings on Klink. The Board also gave Klink an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs. On June 11, 2012, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$320.25, all of which reflects the costs of court reporting services.

In an order dated June 21, 2012, the Board noted that it had reviewed its records but did not have proof of certified mail service of its April 19, 2012 interim opinion and order on the parties. The Board directed the Clerk to serve the June 12, 2012 order on the parties, and it

extended the filing deadlines to file the statements of cost, any response to it, and any reply. Specifically, the Board set a deadline of July 23, 2012, for the County to file a statement of its hearing costs. The Board directed Respondent to file objections to those statements within 21 days of service of those statements. 35 Ill. Adm. Code 108.506(a). The Agency then had 14 days to file a reply to respondent's response. 35 Ill. Adm. Code 108.506(b).

On June 29, 2012, the Board received the County's statement that it does not have any costs or fees involved in the prosecution of this matter. As such, the County did not include a supporting affidavit or serve any documentation on Klink.

The Board finds the hearing costs of the Board reasonable and below orders Klink to pay those costs under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)). The Board incorporates by reference the findings of fact and conclusions of law from its April 9, 2012 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2010)), the Board attaches the administrative citation and make its part of the Board's final order.

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

ORDER

1. The Board finds that Frances Klink (Klink) violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(3) and 21(p)(7) (2010)).
2. The Board assesses the statutory civil penalty of \$4,500.00 for the violations, as well as hearing costs totaling \$320.25, for a total amount due of \$4,820.25. Klink must pay \$4,820.25 no later than September 10, 2012, which is the first business day following the 45th day after the date of this order. Klink must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Klink's social security number must be included on the certified check or money order.
3. Klink must send one certified check or money order for half of the amount of the penalty, or \$2,250.00 (415 ILCS 5/42(b)(4-5) (2010)) to:

County of Jackson
c/o Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois 62966

and a second certified check or money order for half of the amount of the penalty and hearing costs, or \$2,570.25, 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
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) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 355 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 26, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

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CLERK'S OFFICE
JUN 09 2010
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.) AC10 - 30
) Site Code: 0778145040
 FRANCES KLINK,)
)
 Respondent.)

JURISDICTION

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

FACTS

1. The Respondent, Frances Klink, 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 # 0778145040. The facility is known to the Agency as the Murphysboro/Frances Klink site.

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

4. On May 11, 2010, 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.

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 May 11, 2010, 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).
3. The Respondent has caused or allowed the deposition of general construction or demolition debris; or clean construction or demolition debris at the facility 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), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Four Thousand Five Hundred Dollars (\$4,500.00). 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 August 1, 2010, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects 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 (2006), 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. Those hearing costs shall be assessed in addition to the Fifteen Hundred Dollars (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1), 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.

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 also 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. YOUR PETITION MUST STATE THE REASON(S) YOU BELIEVE THE PRESENT MATTER SHOULD NOT BE ISSUED. IF YOU FAIL TO FILE YOUR PETITION AND STATE THE REASONS THE PRESENT MATER SHOULD NOT BE ISSUED, 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: JUNE 4, 2010

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

Daniel Brenner
Assistant State's Attorney

REMITTANCE FORM TO COUNTY OF JACKSON

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 FRANCES KLINK,)
)
 Respondent.)

AC10 -
Site Code: 0778145040

FACILITY: Murphysboro/Frances Klink Site
COUNTY: JACKSON
DATE OF INSPECTION: May 11, 2010
SITE CODE: 0778145040

Date Remitted: _____, 2010

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

COUNTY OF JACKSON,)
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 Complainant,)
)
 v.)
)
 FRANCES KLINK,)
)
 Respondent.)

AC10 -
Site Code: 0778145040

FACILITY: Murphysboro/Frances Klink Site
COUNTY: JACKSON
DATE OF INSPECTION: May 11, 2010
SITE CODE: 0778145040

Date Remitted: _____, 2010

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.