

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2010

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

ORDER OF THE BOARD (by A.S. Moore):

On June 9, 2010, the County of Jackson (County) timely filed an administrative citation against Frances Klink (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 Illinois Environmental Protection Agency (Agency) as the “Murphysboro/Frances Klink site” and is designated with Site Code No. 0778145040. On August 20, 2010, Klink filed proof of service of the amended petition upon the County. For the reasons below, the Board accepts Klink’s petition to contest the administrative citation.

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), 55(k), 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), (p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean 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.

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 July 13, 2010. On June 18, 2010, Klink timely filed a petition to contest the administrative citation. On July 1, 2010, the Board accepted Klink’s petition as timely filed, but ordered that Klink file an amended petition to cure certain deficiencies. Specifically, the Board found that Klink had failed to argue any grounds for contesting the administrative citation, failed to serve a copy of the petition upon the County, and failed to file proof of service with the Board. *See* 35 Ill. Adm. Code 101.304, 108.206. On July 26, 2010, Klink timely filed an amended petition (Am. Pet.). *See* 35 Ill. Adm. Code 108.206. On August 5, 2010, the Board accepted the amended petition,

but directed Klink to cure the remaining deficiencies by August 26, 2010. On August 20, 2010, Klink timely filed proof of service on the County with the Board.

In his amended petition, Klink argues that the property is “not an open dumping site of waste.” Am. Pet at 1. Specifically, Klink argues that some of the items that the County found are not waste because Klink acquired these items for future use. *Id.* Additionally, Klink describes that he does not “allow other people to dump their stuff” and that he is unable to pay the requested penalties. *Id.* Further, although the amended petition describes Klink’s on-going cleanup efforts (Am. Pet. at 1, Attached Photos), the Board notes that cleanup is not a defense to a properly issued administrative citation, and the Board cannot consider that cleanup efforts are factors in mitigation of penalty here because the civil penalties for administrative citations are set by the Act. IEPA v. Stutsman, AC 05-70, slip op. at 2 (Sept. 21, 2006); IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990).

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) (2008). By contesting the administrative citation, Klink may have to pay the 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 Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

Klink may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Klink chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Klink withdraws his petition after the hearing starts, the Board will require Klink to pay the hearing costs of the Board and County. *See id.* at 108.500(c).

The County has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that Klink violated Sections 21(p)(1), (p)(3) and (p)(7) of the Act, the Board will impose civil penalties on Klink. 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). However, if the Board finds that Klink “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) (2008); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 2, 2010, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board