

ILLINOIS POLLUTION CONTROL BOARD  
August 5, 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 (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 July 26, 2010, Klink filed an amended petition contesting the administrative citation. For the reasons below, the Board finds that Klink’s amended petition was timely filed and states sufficient grounds to contest the citation, but the Board directs Klink to provide documentation of service of the amended petition upon the County.

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, 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 with the Board to contest the administrative citation. In an order of July 1, 2010, the Board accepted Klink’s petition as timely filed, but ordered Klink to file an amended petition to cure certain deficiencies. The Board found that, contrary to the Board’s procedural rules, Klink had failed to allege any grounds for contesting the administrative citation and also failed 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, 108.206.

The Board ordered Klink to file an amended petition stating the grounds for contesting the administrative citation, accompanied by a certificate of service documenting that Klink served a copy of the amended petition upon the County, by August 2, 2010.

On July 26, 2010, Klink timely filed an amended petition (Am. Pet.). In the amended petition, Klink alleges that the property is “not an open dumping site of waste.” Am. Pet at 1. Klink specifically identifies some items as not being waste, having been acquired for future use. *Id.* Klink adds that he does not “allow other people to dump their stuff.” *Id.* The amended petition states sufficient grounds to contest the citation. 35 Ill. Adm. Code 108.206. The Board notes that the amended petition describes Klink’s on-going cleanup efforts and inability to pay the requested penalties. Am. Pet. at 1, Attached Photos. However, cleanup is not a defense to a properly issued administrative citation, and the Board cannot consider any factors in mitigation of penalty here as 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 finds that, while the amended petition was timely filed and satisfactorily states Klink’s grounds for contesting the administrative citation, it was not accompanied by a certificate of service. The Board therefore again directs Klink to file with the Board documentation that he served a copy of the amended petition upon the County. 35 Ill. Adm. Code 101.304. This deficiency must be remedied before the case can be accepted for hearing. If Klink fails to file the certificate of service with the Board by August 26, 2010, which is 21 days following the date of this order, the Board will dismiss the amended petition and enter a default order against Klink, finding the violations alleged and imposing the corresponding \$4,500 civil 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 civil 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 August 5, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board