ILLINOIS POLLUTION CONTROL BOARD
April 19, 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*.

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

On June 9, 2010, the County of Jackson (County) timely filed a three-count administrative citation (AC) against Frances Klink (respondent) alleging that 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 administrative citation involves respondent's property located at 81 Our Lane, Murphysboro, Jackson County (site). The property is commonly known to the County as the "Murphysboro/Frances Klink" property and is designated with Site Code Number 0778145040. For reasons discussed below, the Board finds that Respondent violated the cited Sections of the Act by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and deposition of construction or demolition debris.

In this interim opinion and order, the Board first describes the administrative citation process and the procedural history of the case. Next, the Board summarizes the County's citation, the County's inspection, the amended petition for review and respondent's testimony, and the County's brief. The Board then sets forth the pertinent provisions of the Act. Finally, the Board discusses the issues and renders its legal conclusions before addressing civil penalties.

ADMINISTRATIVE CITATION PROCESS

Section 31.1 of the Act authorizes the Illinois Environmental Protection Agency (Agency) and units of local government to enforce specified provisions of the Act through an AC (415 ILCS 5/31.1 (2010)). The Agency or unit of local government must serve the AC on a respondent within "60 days after the date of the observed violation," and must file a copy of the AC with the Board no later than ten days after serving the respondent (415 ILCS 5/31.1(b), 31.1(c) (2010)). To contest the AC, the respondent must file a petition with the Board no later than 35 days after being served with the AC. If the respondent fails to do so, the Board must find

that the respondent committed the violations alleged and impose the corresponding statutory civil penalty. *See* 415 ILCS 31.1(d)(2) (2010); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondent timely contests the AC, but the Agency or unit of local government proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty, but also for the hearing costs of the Board and the complainant (415 ILCS 5/42(b)(4-5) (2010)). Unlike other environmental enforcement proceedings in which only a maximum penalty is prescribed, Section 42 of the Act sets specific penalties for administrative citations. *Id.* Thus, in cases such as this, the Board has no authority to consider mitigating or aggravating factors in its determination of penalty amounts. *Id.* However, "if the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order that makes no finding of violation and imposes no penalty." 415 ILCS 5/31.1(d)(2) (2010)).

PROCEDURAL HISTORY

On June 9, 2010, the County timely filed an AC against respondent. On June 18, 2010, respondent filed a petition for a hearing to contest the citation. On July 1, 2010, the Board accepted respondent's petition as timely, but directed respondent to file an amended petition curing deficiencies in the original petition. On July 26, 2010, respondent filed an amended petition (Am. Pet.) to contest the citation. On August 5, 2010, the Board issued an order finding that respondent's amended petition was timely filed and stated sufficient grounds to contest the citation but directed respondent to provide documentation of service of the amended petition on the County. Respondent filed proof of service of the amended petition on the County on August 20, 2010. Accordingly, on September 2, 2010, the Board accepted respondent's amended petition to contest the AC and directed the case to proceed to hearing.

A hearing took place before Board Hearing Officer Carol Webb on November 8, 2011 and the Board received the transcript (Tr.) on November 10, 2011. Tr. at 1. Assistant State's Attorney Daniel Brenner appeared on behalf of the County. *Id.* at 3. Respondent appeared *pro se*, and both respondent and her son testified, as well as Don Terry, an inspector from the County's Health Department. *Id.* at 2. The Hearing Officer directed the County to file a post-hearing brief by January 21, 2012, and respondent to file a post-hearing brief by February 29, 2012. Tr. at 30. The County filed a timely brief on January 12, 2012 (Comp. Br.). Respondent did not file a post-hearing brief.

THE ADMINISTRATIVE CITATION

On June 9, 2010, the County filed a three-count AC against respondent. In the citation, the County alleged that on May 11, 2010, a Field Inspector for the Jackson County Health Department inspected the property and observed respondent in violation of Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2010)). The citation alleges respondent violated these Sections of the Act by causing or allowing open dumping at the Murphysboro/Frances Klink property in a manner that resulted in the following violations:

Count I: Respondent caused or allowed litter in violation of 415 ILCS 5/21(p)(1);

Count II: Respondent caused or allowed open burning in violation of 415 ILCS 5/21(p)(3); and

Count III: Respondent caused or allowed the deposition of general construction or demolition debris, or clean construction or demolition debris in violation of 415 ILCS 5/21(p)(7).

The County asked the Board to impose the statutory $1,500.00 civil penalty per violation on respondent, for a total civil penalty of $4,500.00.

COUNTY INSPECTION

On May 11, 2010, County Health Department Inspector Don Terry (Terry) inspected the property owned, occupied, and controlled by respondent located at 81 Our Lane, Murphysboro, Jackson County. AC at 1; *see id*. at 13 (citing ownership records of County Assessor), Tr. at 5, 7. Terry stated that the inspection resulted from "a complaint received by the Jackson County Health Department in which the complainant stated that the open dumping of waste was occurring at this site." AC at 12. Terry testified that the Agency had not issued a permit to store waste at this site. Tr. at 18.

During his inspection, Terry made a number of observations and took 37 photographs. AC at 12-14 (narrative), 17-37 (photographs). His inspection report also includes a sketch of the site, which indicates approximate locations of roads, structures, and other features. *Id*. at 16.

Terry first observed materials on the ground at the site including, but not limited to: "metal containers, scrap metal, plastic lawn furniture, plastic items, dimensional lumber, particle board, an abandoned riding lawn mower, a torn plastic tarpaulin and electrical wiring." AC at 12, 16-18 (photos 1-4); *see* Tr. at 8-9.

At another location on the site, Terry observed additional materials including:

> wooden furniture, metal furniture, outdoor grills, cloth cushions, plastic containers, scrap metal, dimensional lumber, plastic items, waste tires, lawn mowers, metal containers, garden hoses, electrical devices, aerosol cans, toilets, bath tubs, metal doors, metal bed springs, a suitcase, four abandoned vehicles, vehicle parts, railroad ties, metal roofing sections, metal above-ground fuel storage tanks, a demolished mobile home, carpeting, bicycles, paper, cardboard, cloth covered furniture, foam padding, gypsum board, electrical wiring, a metal barrel and a houseboat. AC at 12, 16, 19-26 (photos 5-20); *see* Tr. at 9-13.

Terry characterized some of these materials as "construction debris" and "demolition debris," noting that, "[a]t the time of the inspection, the items listed above were not in use, were not

usable in their current condition, and were not stored in such a way as to protect any future use." AC at 12; *see* Tr. at 9-12.

To the west of a shed, Terry observed three piles consisting of various materials. AC at 13, 16, 27-28 (photos 21-23). He observed that, in two of these piles, both the materials in them and the surrounding vegetation was charred, leading him to conclude that the materials had been burned at that location. AC at 13, *see* Tr. at 13. He stated that these materials included ash as well as "metal mattress springs, glass, dimensional lumber, particle board, plastic items, scrap metal, metal containers, metal wire, and landscape waste." *Id*. at 13, 27-28 (photos 21, 23). In a third pile, he observed materials including "paper, plastic and landscape waste." *Id*. at 13, 27 (photo 22). This area also included a vehicle parked that appeared to have been abandoned in the field. *Id*. at 13, 30 (photo 28).

In another section of the site, Terry observed five vehicles he characterized as "abandoned." AC at 13, 16, 28-30 (photos 24-27), *see* Tr. at 13-14. He stated that "these vehicles were not in use, were not usable in their current condition, and were not stored in such a way as to protect any future use." AC at 13. He further stated that none of these vehicles displayed a current license plate or revealed signs, such as tracks in vegetation, that may have indicated recent movement. *Id*.; *see* Tr. at 14.

To the north of a mobile home on the site, Terry observed ash and charred materials including "metal containers, broken concrete and bricks, aerosol cans, scrap metal and landscape waste." AC at 13, 16, 31 (photo 29); *see* Tr. at 14-15. He also observed a plastic barrel that had been partially melted, "indicating that it has been subjected to intense heat." *Id*. at 13, 31 (photo 29); *see* Tr. at 15. He indicates that the barrel contained materials including paper, metal cans, and liquid. *Id*. at 13.

To the north of a shed on the site, Terry observed materials including a metal tank, PVC pipe, plastic items, and two pickup truck bed caps. AC at 13, 16, 31 (photos 31, 32); *see* Tr. at 15. He observed that, "[a]t the time of the inspection, the items listed above were not in use, were not usable in their current condition, and were not stored in such a way as to protect any future use." AC at 13. Terry also noted that an abandoned bus was situated near this position. *Id*. at 13, 31-32 (photos 30-32); *see* Tr. at 15.

Near the point at which he entered the site, Terry observed materials including dimensional lumber, railroad ties, plywood, gas powered lawn equipment, plastic sheeting, wire fence, a metal table, a pickup truck bed cap, waste tires, plastic containers and a metal gas cylinder that "were not in use, were not usable in their current condition, and were not stored in such a way as to protect any future use," AC at 14, 16, 33-35 (photos 33-37); *see* Tr. at 15-16.

Terry concluded that the site included approximately 400 cubic yards of various materials. AC at 14, 16.

AMENDED PETITION FOR REVIEW AND RESPONDENT'S TESTIMONY

In an amended petition on July 26, 2010, respondent stated that she was in the process of removing materials from her property and requested a time extension in order to complete the clean-up. Am. Pet. at 1; *see* Tr. at 25-26. Additionally, respondent stated her property was "not an open dumping site of waste," that items noted in the citation were not waste but were being kept for future use, and that some of the open burning on the property either occurred "several years" earlier or was primarily done by a tenant. Am. Pet. at 1*; see* Tr. at 22. The amended petition also stated that "[t]he only burning done on my property is the logs & trees that we are trying to get cut up & cleaned up from the May 2009 storm." Am. Pet. at 1*; see* Tr. at 20. Attached to the amended petition were a number of photos indicating areas already cleaned up. Am. Pet.; *see* Tr. at 20-21.

COMPLAINANT'S BRIEF

In its post-hearing brief, the County argued that the evidence "clearly shows Ms. Klink caused or allowed the deposition of litter, waste and general construction demolition debris at the site." Comp. Br. at 3. The County further argued that the site shows clear evidence of open burning. *Id*. The County pointed out that Ms. Klink's ownership and control of the site is "not contested." *Id.*

The County argues that respondent's cleanup defense was not a valid affirmative defense to an AC and cannot be considered as a mitigating factor. Comp. Br. at 3; citing City of Chicago Department of Environment v. City Wide Disposal, Inc., AC 03-11 (Sept. 4, 2003). The County stresses "the Respondent does not deny she is responsible for the waste, debris and open burning on her site." Comp. Br. at 3.

STATUTORY BACKGROUND

Section 21(p) of the Act prohibits any person from causing or allowing open dumping in a manner which results in the following occurrences at the dump site:

(1) litter;
(3) open burning;
(7) deposition of general construction or demolition debris as defined in Section 3.160(a) of the Act or clean construction; or demolition debris as defined in Section 3.160(b) of the Act (415 ILCS 5/21(p)(1), (3), (7) (2010)).

Section 3.305 of the Act defines "open dumping" as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill" (415 ILCS 5/3.305 (2010)).

Section 3.385 of the Act defines "refuse" as "waste" (415 ILCS 5/3.385 (2010)).

Section 3.535 of the Act defines "waste" as:

> any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act (415 ILCS 5/3.535 (2010)).

Section 3(a) of Illinois' Litter Control Act defines "litter" as:

> any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly (415 ILCS 105/3(a) (2010)).

Section 3.300 of the Act defines "open burning" as "the combustion of any matter in the open or in an open dump" (415 ILCS 5/3.300 (2010)).

Section 3.160(a) of the Act defines "general construction or demolition debris" as:

> Non-hazardous, uncontaminated materials, resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials (415 ILCS 5/3.160 (2010)).

Section 3.160(b) of the Act defines "clean construction or demolition debris" as "uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities" (415 ILCS 5/3.160(b) (2010)).

Under Section 31.1(d)(2) of the Act, if the Board finds alleged violations occurred and were not the result of uncontrollable circumstances, the Board must enter an order finding a violation and assess the statutory penalty (415 ILCS 5/31.1.(d)(2) (2010)). Civil penalties are set by the Act at $1,500.00 for each violation of each provision, plus any hearing costs incurred by the Board and Agency (415 ILCS 5/42(b)(4-5) (2010)). The Board has no discretion to consider mitigating or aggravating factors in determining penalty amounts in an AC. *Id.*

DISCUSSION

The County alleges respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act by causing or allowing the open dumping of waste in a manner resulting in litter, the deposition of construction or demolition debris; and by open burning (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2010)). The Board first discusses whether respondent committed the alleged violations, then discusses respondent's defenses to the allegations, and finally addresses the County's counterarguments.

Alleged Open Dumping of Waste

According to the Act, "open dumping" involves "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill (415 ILCS 5/3.305 (2010)). "Refuse" is defined as "waste" under Section 3.385 of the Act (415 ILCS 5/3.385 (2010)). Waste is defined broadly to include any garbage or any discarded material. 415 ILCS 5/5.535 (2010). The Board finds that abandoned vehicles and various other items listed in the County's Inspection Report constitute garbage or discarded material under the Act. Specifically, the report describes the presence of materials at the site including, but not limited to, scrap metal, various plastics, electrical wiring, tires, bathroom fixtures, carpeting, bicycles, paper, cardboard furniture, lumber, and landscape items. AC at 12-14.

Respondent argues that some of the items noted in the citation were not waste, but were instead being kept for future use. Am. Pet. at 1. However, the inspection report and accompanying photos indicate that the waste materials accumulated throughout the property "were not in use, were not useable in their current condition, and were not stored in such a way as to protect any future use." AC. at 14, 15, 16. For example, surrounding the abandoned vehicles, no tracks were visible that indicated recent movement, and in some cases the vehicles did not have current Illinois license plates. *Id.* at 15.

The Board has previously stated that visual evidence indicating that items have been discarded "is proof of lack of intent to use materials in the future." IEPA v. Thomas and Valerie Hill, AC 09-40, slip op. at 8 (Oct. 7, 2010). Additionally, the Board has stated that "if at least some of the items consolidated at a site are waste, open dumping has occurred." *Id.*; citing IEPA v. James Stutsman, AC 05-70, slip op. at 8 (Sept. 21, 2006). Moreover, the Board has found that "respondents' intended future uses of the materials are not dispositive of whether the materials were waste or litter." County of Jackson v. Alvin Valdez and Ruben J. Valdez, AC 09-09, slip op. at 7 (April 16, 2009). Regardless of the intended future use of items, if they were discarded, they are waste under the Act. *Id.* Furthermore, it is undisputed that respondent's property does not meet requirements of a sanitary landfill.

Because materials found at the site were not being used, were not useable, were not being protected for future use, and because the site is not a sanitary landfill, the Board finds that open dumping of waste occurred.

Cause or Allow

For the Board to find respondent caused or allowed open dumping of waste, it must find respondent was "in control of the premises where the pollution occurred." Vermillion v. Village of Tilton, AC 04-22, slip op. at 11; citing People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793 (1993). If respondent owned and controlled the property when the dumping occurred, they caused or allowed open dumping. IEPA v. Thomas and Valerie Hill, AC 09-40, slip op. at 8 (Oct. 7, 2010).

Jackson County Assessor records show that respondent owns the property subject to the AC, and respondent has not denied this. Respondent also states that the items on her property are the accumulation of her father and sister's property, as well as her own. Am. Pet. at 1. The Board has found that the "current owner or operator can be found to have 'allowed' the open dumping of waste by failing to remove an accumulation of waste for which that person was not initially liable." IEPA v. Bobby G. Myers and Donald D. Meyers, AC 07-30, slip op. at 9 (May 21, 2009); citing IEPA v. William Shrum, AC 05-18, slip op. at 8 (March 16, 2006). While respondent admits that at least some of the waste on the property is hers, therefore subjecting her to liability for her own waste, she is also liable for accumulated waste allegedly belonging to her sister and father.

Open Burning

In his May 11, 2010 inspection, Terry observed piles of various materials in which the materials and surrounding vegetation was charred. AC at 13, 16, 27-28 (photos 21-23), 31 (photo 29). The materials included ash as well as other items. *Id*. Respondent argues that some of the open burning of waste done on the property was done by a former tenant on the land, and that the only burning done by respondent was of vegetation. Am. Pet. at 1. Nonetheless, respondent owned and had control of the property during the time the tenant lived on the property and so "allowed" the open burning of waste under the Act. Tr. at 22. Therefore, because respondent owns and controls the property, any burning on the site that constitutes a violation of the Act is her responsibility.

For these reasons, the Board finds that respondent caused or allowed the open dumping of waste resulting in open burning.

Litter

While the Act does not define "litter," the Board uses Section 3(a) of Illinois' Litter Control Act, which defines "litter" as "any discarded, used or unconsumed substance or waste," including "any garbage, trash, refuse, debris . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly" (415 ILCS 105/3(a) (2010)). The Inspection Report describes a variety of discarded, abandoned, and unused materials. AC at 12-14. The accompanying photographs support this observation, showing various vehicles, lawn and other furniture, lumber, electrical wiring, bathroom fixtures, and other generally unsightly and unused debris. The Board finds that the waste described and depicted in the Inspection Report falls under the Litter Control Act's broad definition of "litter,"

and respondent does not dispute these materials were among those observed by the inspector. Respondent does not deny that these items were on the property. Therefore, the Board finds that respondent's open dumping resulted in litter in violation of Section 21(p)(1) the Act.

Construction or Demolition Debris

The Act defines "general construction or demolition debris" to include wood, insulation, plumbing fixtures, roof coverings, plastics, and electrical wiring (415 ILCS 5/3.160(a) (2010)). These and other items falling under the definition of general construction or demolition debris were observed at the site. AC at 12-14. In addition, respondent does not dispute that these materials were among the materials that the inspector observed at the site. The Board accordingly finds that respondent violated Section 21(p)(7) of the Act.

Respondent's Defenses

The Board notes that respondent raised several general defenses without citation to authority. The Board finds these defenses insufficient. First, respondent argued in her petition for review and during hearing that she is in the process of cleaning the property of waste. Am. Pet at 1; Tr. at 20, 25-26. The Board has noted previously that "once the Board finds that a violation has occurred, the Board has neither the authority nor the discretion to consider clean-up efforts as grounds to dismiss an administrative citation." IEPA v. Thomas and Valerie Hill, AC 09-40, slip op. at 10 (October 7, 2010); *see also* IEPA v. Ken and Ella Cook, AC 08-11, slip op. at 3 (May 15, 2008); citing IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990) ("The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site"). The Act sets forth the mandatory civil penalties for each violation of the Act, so while respondent's clean-up efforts are commendable and may serve to avoid future violations of the Act, the Board will not take into account these efforts as a mitigating factor in assessing civil penalties, and such efforts are not a defense for violations of the Act. Therefore, respondent's clean-up efforts are irrelevant to whether a violation had occurred on May 11, 2010, or to determining a civil penalty amount for these violations.

Second, respondent argued during hearing that some of the debris was deposited from a storm in May 2009. Tr. at 19. However, respondent admitted that at least some of the debris, including vehicles, boats, and tires strewn throughout the property was not due to the storm, nor did the storm cause the open burning. Tr. at 24. In acknowledging the limited effects of the storm, respondent effectively admitted that she was responsible for the deposition of at least some of the waste. Furthermore, the Board has previously found that "weather conditions are usually not uncontrollable circumstances" and therefore do not absolve respondent of liability in an AC. County of Jackson v. Alvin Valdez and Ruben J. Valdez, AC 09-09, slip op. at 6, 9 (April 16, 2009). In addition, approximately one year passed between the May 2009 storm and the May 11, 2010 County inspection. *See* IEPA v. Ray Newingham, AC 11-13, slip op. at 6 (Feb 16, 2012) (presence of debris from collapsed building for more than fifteen months does not constitute an uncontrollable circumstance). For these reasons, the Board finds that respondents' attribution of some of the deposition of waste to uncontrollable circumstances is an insufficient defense.

Finding of Violations

The Board finds that respondent caused or allowed the open dumping of waste in a manner resulting in litter, open burning, and the deposition of construction or demolition debris. Furthermore, the Board finds that respondent did not establish a valid defense under the Act. Therefore, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2010)).

Civil Penalties and Hearing Costs

Because the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act on May 11, 2010, and because that those violations were not the result of uncontrollable circumstances, the Board now discusses civil penalties and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)).

In an AC under Section 31.1 of the Act,

> any person found to have violated any provision of subsection (p) of Section 21 of the Act shall pay a civil penalty of $1,500.00 for each such provision, plus any hearing costs incurred by the Board and the County, except that the civil penalty amount shall be $3,000.00 for each violation of any provision of subsection (p) of Section 21 that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2010).

The Board finds that the violations in the AC were respondent's first violations. Thus, the statutory penalty will be $1,500.00 for each violation of the Act. Respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act, and therefore the total civil penalty will be $4,500.00.

The Board directs the County and the Clerk of the Board to file documentation of hearing costs, to which respondent may respond within 21 days after service of the claimed costs. 35 Ill. Adm. Code 108.506(a). After the deadlines to file hearing costs and a response have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

CONCLUSION

After reviewing the record in this case and the relevant portions of the Act, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2010)). The Board finds that respondent has not persuasively argued the available statutory defenses of uncontrollable circumstances or non-occurrence of the allege violations. In the Board's final order, respondent must pay a civil penalty of $4,500.00. As set forth below, the Board directs the Clerk and the County to document hearing costs and serve them upon respondent, after which respondent may respond and the Board will issue a final order.

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

ORDER

1. The Board finds that Frances Klink violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act.

2. By Monday, May 21, 2012, the first business day after the 30th day following the date of this order, the Illinois Environmental Protection Agency must file a statement of its hearing costs, supported by affidavit and served on respondent. By the same date, the Clerk of the Illinois Pollution Control Board must also file a statement of the Board's hearing costs, supported by affidavit and served on respondent. 35 Ill. Adm. Code 108.504, 108.506(a).

3. Respondent may file objections to those statements within 21 days of service of those statements. 35 Ill. Adm. Code 108.506(a).

4. The Agency may then file a reply to respondent's response within 14 days of that response. 35 Ill. Adm. Code 108.506(b).

5. The Board will then issue a final order assessing a statutory penalty of $4,500 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 19, 2012, by a vote of 5-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board