

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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3 ILLINOIS ENVIRONMENTAL)
4 PROTECTION AGENCY,)
5 Complainant,)
6 vs.) AC 05-72
7 GARY CLOVER, d/b/a CLOVER) (IEPA No. 144-05-AC)
8 CONCRETE,) (Administrative
9 Respondent.) Citation)

9

10 Proceedings held on May 8, 2007, at 12:14 p.m., at the
11 City Hall Council Chambers, 1102 Tower Square, Marion,
12 Illinois, before Carol Webb, Hearing Officer.

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15 Reported By: Karen Waugh, CSR, RPR
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APPEARANCES

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: Ms. Michelle M. Ryan
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Springfield, Illinois 62794-9274
On behalf of the Illinois EPA

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PROCEEDINGS

(May 8, 2007; 12:14 p.m.)

HEARING OFFICER WEBB: Good afternoon. My name is Carol Webb. I'm a hearing officer with the Illinois Pollution Control Board. This is AC 05-72, IEPA versus Gary Clover. It is May 8. We are beginning at approximately ten minutes after noon. Mr. Clover has not arrived and it does not appear that he's going to arrive, so we are going to begin.

I'll note for the record that there are no members of the public present. Members of the public are allowed to provide public comment if they so choose. At issue in this case is the EPA's allegation that respondent violated Sections 21(p)(1), (p)(3) and (p)(4) of the Environmental Protection Act at 11704 North Route 37, Marion, Williamson County. You should know that it is the Pollution Control Board and not me that will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner so that we have a clear record of the proceedings. I will also assess the credibility of any witnesses on the record at the end of the hearing.

This hearing was noticed pursuant to the Act and the Board's rules and will be conducted pursuant to

1 Sections 101.600 through 101.632 of the Board's
2 procedural rules. At this time I'd like to ask the
3 parties to please make their appearances on the record.

4 MS. RYAN: Michelle Ryan, Special Assistant
5 Attorney General for the Illinois EPA. I filed my formal
6 appearance today.

7 HEARING OFFICER WEBB: Thank you. And I
8 will note again that Gary Clover is not here. Would you
9 like to make an opening statement?

10 MS. RYAN: Well, actually, I have two
11 preliminary issues.

12 HEARING OFFICER WEBB: Oh, okay.

13 MS. RYAN: First, I just wanted to remind
14 the Board, I know we discussed this during the status
15 calls, but the administrative citation alleges that
16 Mr. Clover had a prior adjudicated administrative
17 citation. That is not accurate. That was a different
18 Mr. Gary Clover, and so the penalty that we're seeking in
19 this matter is only \$3,000 -- or excuse me -- is only --
20 no, let me get this -- sorry -- is only \$1500 for each
21 violation, which is a total of \$4500, not the \$6,000
22 that's indicated in the pleadings.

23 And secondly, the pleadings indicate that the
24 inspection conducted at the Clover property was on

1 March 31. We have recently determined that in fact the
2 correct date was March 29. I note that Mr. Clover was
3 served on May 20, and so he was still served within 60
4 days of the actual inspection date, and I can either
5 indicate in my brief the correct date or I can file
6 something maybe amending the citation to indicate the
7 correct date.

8 HEARING OFFICER WEBB: The citation where?

9 MS. RYAN: The -- Well, just the -- the
10 administrative citation indicates --

11 HEARING OFFICER WEBB: Oh, okay. I see.

12 MS. RYAN: -- what date the inspection was,
13 and that is inaccurate. It's two days off.

14 HEARING OFFICER WEBB: Well, why don't we --
15 I'll ask the clerk's office if they would like to have an
16 amended citation.

17 MS. RYAN: Okay.

18 HEARING OFFICER WEBB: Otherwise, definitely
19 mention it in your brief.

20 MS. RYAN: I will note it in my brief in any
21 case, yeah.

22 HEARING OFFICER WEBB: Okay. Thank you for
23 those clarifications. Now would you like to make an
24 opening statement?

1 MS. RYAN: Yes. We believe the evidence
2 today will show that on March 29, 2005, opening dumping
3 resulting in litter, opening burning and the deposition
4 of waste in standing or flowing waters occurred at the
5 Clover property in violation of Section 21(p)(1),
6 21(p)(3) and 21(p)(4) of the Act.

7 HEARING OFFICER WEBB: Thank you. Ms. Ryan,
8 you may present your case.

9 MS. RYAN: We call Scott Arnold.

10 HEARING OFFICER WEBB: Okay. Mr. Arnold,
11 the court reporter will swear you in, please.

12 (Witness sworn.)

13 SCOTT A. ARNOLD, produced, sworn and examined on
14 behalf of the Complainant, testified as follows:

15 EXAMINATION

16 BY MS. RYAN:

17 Q. Can you state your name, please, for the
18 court reporter?

19 A. Scott Allan Arnold. That's A-L-L-A-N.

20 Q. Mr. Arnold, what is your job?

21 A. I am the -- or I am an Environmental
22 Protection Engineer III for the Illinois EPA in the
23 Bureau of Air, and, you know, I'm a field inspector.

24 Q. And which office are you in?

1 A. I am located in the Marion District Office
2 for air.

3 Q. How many years have you worked for Illinois
4 EPA?

5 A. Seventeen.

6 Q. What are your duties as a field inspector?

7 A. Well, as a field inspector, I'm responsible
8 to inspect facilities for compliance with their air
9 permits. I have to take citizens' complaints and either
10 refer them or investigate them or bring them to some sort
11 of resolution. I draft violation notice letters and
12 noncompliance advisory letters if a violation is found
13 during either of the above. I review excess submission
14 reports, compliant reports, and I witness stack testing
15 for the Agency. I also -- Since I'm the only one in my
16 office, I am also -- I also take and respond to any
17 questions regarding air issues, open burning, permits for
18 firefighting -- you know, firefighting reasons and -- of
19 buildings and, you know, open burning permits for
20 contractors who need a permit to, you know, open burn
21 their clearing waste, which is considered trade waste
22 since it's a commercial operation, and asbestos
23 questions.

24 Q. Approximately how many inspections do you

1 think you've done over the years you've been with the
2 Illinois EPA?

3 A. Somewhere in the neighborhood of a thousand.

4 Q. What's your educational background?

5 A. I have a bachelor's degree in environmental
6 engineering from Southern Illinois University and I have
7 a master's degree in mechanical engineering from Southern
8 Illinois University.

9 Q. Have you had additional training following
10 your education?

11 A. Yes. I've -- In the first five or six
12 years -- well, first of all, I was trained as an asbestos
13 inspector when I came on with the Agency, and for the
14 first -- from probably 1990 through 1994 I was an
15 asbestos inspector, a certified asbestos inspector. At
16 that time it was decided there would only be one per
17 office, and the guy that I worked with at the time was
18 picked to be the inspector. I've also attended I would
19 say somewhere in the neighborhood of a dozen different
20 air pollution classes offered by USEPA through the --
21 normally through the University of, you know, Illinois
22 Chicago campus. You know, that's where they're taken, or
23 else down at the USEPA building in Chicago.

24 Q. Are you familiar with the property that is

1 located at 11704 North Route 37 in Marion known as the
2 Clover Concrete property?

3 A. Yes, I am.

4 Q. And can you describe generally where that is
5 located?

6 A. I would say it's somewhere in the
7 neighborhood of about three miles north of town on the
8 right-hand side of the road. There's a large -- I guess
9 at one time was a clay quarry, and there's a pet store
10 right next door, but I don't know the exact distance.

11 Q. Okay. How many inspections have you done at
12 this property?

13 A. One.

14 Q. And did you speak to anyone while you were
15 there?

16 A. Yes, I did.

17 Q. And who did you speak to?

18 A. I spoke to Mr. Gary Clover and his son. I
19 don't remember his son's name.

20 Q. Did they indicate to you who owned that
21 piece of property with the quarry?

22 A. Yes, they did. They said it was their
23 property.

24 Q. Okay. I'm going to -- Okay. You said it

1 was a quarry. Is there anything else on the property
2 that's of interest, any buildings or any other features?

3 A. No. I didn't see anything else on the
4 property. I think I saw a tin building on the property.

5 Q. Okay. I'm going to show you what I've
6 marked as Group Exhibit 1. Can you tell me if you
7 recognize this set of documents?

8 A. Yes. These are photographs I took while I
9 was at the property of what appeared to me to be
10 violations of open dumping, the open burning of trade
11 waste and, you know, the -- you know, I guess the -- I
12 don't know exactly how to -- what terminology you use,
13 but the pollution of standing water.

14 Q. When did you take these photographs?

15 A. On March 29. I think it was March 29, is
16 the date I was out there.

17 Q. Okay. That's the date that's indicated in
18 the bottom corner of the photograph; is that correct?

19 A. Oh, yeah, you're right. Yeah. Then that
20 would be the date, yes.

21 Q. Okay. And can you describe to me what you
22 see in the first page, in the photograph on the first
23 page?

24 A. Well, in the -- the first page shows the

1 entrance to the property and -- you know, the entrance
2 road that goes to the property. It's taken -- I was
3 standing on the -- let me think for a second. I was
4 standing on the west side of the quarry and this picture
5 was taken towards the southeast, and it basically just
6 shows the entrance road and dirt, and then there's a
7 little bit of debris here and there in the picture. You
8 know, that's about it for that picture.

9 Q. Can you describe the type of debris that you
10 see there? Is it plastic, metal, wood or some other type
11 of material?

12 A. What I noted was rock -- you know, rocks and
13 basically wood.

14 Q. And by wood, are you referring to tree limbs
15 or processed wood that would be, like, two-by-fours or a
16 mixture of the same?

17 A. Well, actually, it -- some of the wood that
18 I did note looked like it was processed wood, but the
19 majority of it appeared to be landscape waste.

20 Q. Okay. In the middle of the photograph
21 toward the top there's sort of a pink and gray splotch.
22 Is that significant of something or is that some kind of
23 a light effect on the camera?

24 A. No, that's just a bad camera.

1 Q. Okay. Can you turn to page number 2 and --

2 A. Sure.

3 Q. -- describe to me what you see there?

4 A. In -- On page 2 I see, you know, the -- you
5 know, I swung around from the -- taking the picture to
6 the southeast, I swung around and -- at the end of the
7 entrance road and took a picture down into the pit that
8 revealed the open burning of -- or what appeared to be
9 open burning of landscape waste, and actually, some of it
10 appeared to be other wood. I mean, as you can see, I
11 mean, it doesn't all look to be landscape waste. Some of
12 it's, you know, rectangular or square in shape, you know,
13 which looks to be, like, a finished wood.

14 Q. Was there anything else in the pit that you
15 noticed besides the landscape waste that you mentioned
16 and the other wood?

17 A. Well, yeah. I noticed that -- you know,
18 that the -- that what was down there appeared to be
19 partially burned and that some of it was actually, you
20 know, in the -- in some standing water at the bottom of
21 the pit.

22 Q. Okay. Now, the entrance road you mentioned,
23 is that the lighter area off to the right side of the
24 photograph toward the top there?

1 A. Exactly. Exactly. If you stuck those two
2 pictures together, right about the -- a third of the way
3 into this picture on page number 1 is where the second
4 picture starts.

5 Q. Okay. And was -- the wood in the bottom of
6 the pit, was it actually burning at the time you went and
7 inspected it?

8 A. No, it wasn't.

9 Q. And what indicated to you that it had been
10 burned at that location?

11 A. Well, it was charred. You know, it appeared
12 to be burnt wood, and Mr. Clover's son told me that they
13 were burning the wood.

14 Q. Okay. Can you turn to page number 3 and
15 describe to me what that photograph is?

16 A. Well, I attempted to zoom in with our
17 camera, which isn't the best, but it's basically the same
18 thing as photograph number 2, just a little bit closer-up
19 picture of it.

20 Q. Okay. Do these photographs accurately
21 depict what you saw at the property on March 29, 2005?

22 A. Yes.

23 MS. RYAN: I would move Group Exhibit No. 1
24 into evidence.

1 HEARING OFFICER WEBB: Group Exhibit No. 1
2 is admitted into evidence.

3 MS. RYAN: And that's all I have.

4 HEARING OFFICER WEBB: Okay. Let's go off
5 the record for a moment to discuss a briefing schedule.

6 (Discussion held off the record.)

7 HEARING OFFICER WEBB: I'll just note that
8 respondent is still not here to present his case, and
9 complainant has completed her case, so we will discuss a
10 briefing schedule. The transcript of these proceedings
11 will be available from the court reporter by May 18 and
12 will be posted on the Board's Web site. The public
13 comment deadline is May 31. Any public comment must be
14 filed in accordance with Section 101.628 of the Board's
15 procedural rules. Complainant's brief is due by June 4,
16 2007. Respondent's brief is due by June 18. If any is
17 needed, complainant's reply is due by June 25, and the
18 mailbox rule will apply.

19 Ms. Ryan, would you like to make any closing
20 arguments?

21 MS. RYAN: No. Thank you.

22 HEARING OFFICER WEBB: Okay. And there are
23 no members of the public present to make any comments, so
24 I will proceed to make a statement as to the credibility

1 of our witness here today. Based on my legal judgment
2 and experience, I find the witness testifying to be
3 credible. At this time I will conclude the proceedings.
4 We stand adjourned and I thank you all for your
5 participation.

6 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
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2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at the
7 City Hall Council Chambers, Marion, Illinois, on May 8,
8 2007, and did record the aforesaid Hearing; that same was
9 taken down in shorthand by me and afterwards transcribed,
10 and that the above and foregoing is a true and correct
11 transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 16th day of May, 2007.

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Notary Public--CSR

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#084-003688

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