

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

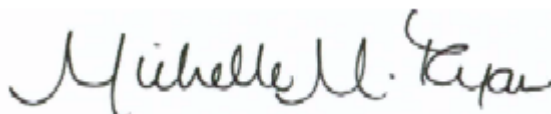
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 05-72
	)	
v.	)	(IEPA No. 144-05-AC)
	)	
GARY CLOVER d/b/a CLOVER	)	
CONCRETE,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: Gary Clover  
11704 North Route 37  
Marion, Illinois 62959

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT.

Respectfully Submitted,



e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

Dated: June 4, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
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Complainant,	)	AC 05-72
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GARY CLOVER d/b/a CLOVER	)	
CONCRETE,	)	
	)	
Respondent.	)	

**POST-HEARING BRIEF OF COMPLAINANT**

On May 19, 2005, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Gary Clover (“Respondent”). The citation alleges violations of Section 21(p)(1), 21(p)(3), and 21(p)(4) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (3) & (4) (2004)), in that Respondent caused or allowed open dumping of waste, resulting in litter, open burning, and waste in standing or flowing waters. The violations occurred at a property located at 11704 N Route 37, Marion, Williamson County.<sup>1</sup> Transcript, p.9-10.

Illinois EPA has demonstrated that Respondent caused or allowed open dumping on the site. “Open dumping” means “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 (2004). “Refuse” means “waste,” (415 ILCS 5/3.385 (2004)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2004)). The photos admitted into evidence as Exhibit 1 and the testimony at hearing show that wood, including landscape waste and other

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<sup>1</sup> The original Administrative Citation filed in this matter stated that the violations were observed on March 31, 2005. On May 9, 2007, Complainant filed a Motion to Substitute Pages in this matter, stating that the correct date of violation should have been listed as March 29, 2005. The Board has not ruled on this motion, nor has Respondent filed a response. Therefore, this brief will not address further the matters raised in that motion.

finished wood materials had been dumped in the quarry located on site. Tr. at 12-13; Exh. 1. These materials constitute “discarded material” within the meaning of the term “waste.”

Respondent’s causing or allowing the open dumping of these wastes resulted in “litter” under Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)). The Act does not define “litter,” but in similar cases, the Board has looked to the definition of “litter” in the Litter Control Act:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish...or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3(a) (2002); see *St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the wood waste constitutes “litter” under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent’s open dumping of these wastes also resulted in open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2004)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2004), as “the combustion of any matter in the open or in an open dump.” As described above, the burn piles located on the site meet the definition of “open dumping.” The wood waste was partially burned (Tr. at 13) and charred (Tr. at 14).

Respondent’s son admitted that he and Respondent were burning the wood on site. Tr. at 14. This burning constitutes “open dumping of waste in a manner that results in...open burning” under Section 21(p)(3) of the Act, and therefore Respondent violated that section.

Respondent’s open dumping of these wastes also resulted in the deposition of waste in standing or flowing water in violation of Section 21(p)(4) of the Act (415 ILCS 5/21(p)(4) (2004)). Water had collected at the bottom of the quarry, and wood waste was observed in the standing water. Tr. at 13; Exh. 1. As argued above, Respondent caused or allowed the open

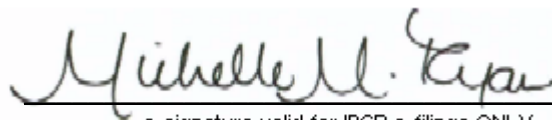
dumping of this waste. Because the open dumping resulted in the waste being in standing water, Respondent also violated Section 21(p)(4).

Neither Respondent nor any representative of Respondent appeared at hearing in this matter. Therefore, Respondent has waived his right to present testimony in his defense, and the facts as presented by Complainant are uncontested.

The Illinois EPA photographs and the testimony show that Respondent caused or allowed open dumping of waste in a manner resulting in litter, open burning, and waste in standing or flowing waters in violation of Sections 21(p)(1), (p)(3), and (p)(4) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty of \$4,500.00.<sup>2</sup>

Respectfully Submitted,

Dated: June 4, 2007



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<sup>2</sup> The original Administrative Citation filed in this matter claimed a higher statutory penalty, however, the May 9, 2007 Motion to Substitute Pages also addresses this issue in full.

**PROOF OF SERVICE**

I hereby certify that I did on the 4<sup>th</sup> day of June, 2007, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT

To: Gary Clover  
11704 North Route 37  
Marion, Illinois 62959

and an electronic copy of the same foregoing instrument on the same date via electronic filing

To: Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



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