

ILLINOIS POLLUTION CONTROL BOARD
January 24, 2008

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

MICHELLE M. RYAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT; and

GARY CLOVER APPEARED *PRO SE* AT STATUS CONFERENCES.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On December 6, 2007, the Board issued an interim opinion and order finding that Gary Clover (Mr. Clover), doing business as Clover Concrete, violated Sections 21(p)(1), (p)(3), and (p)(4) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(4) (2006)) at a facility located at 11704 North Route 37, Marion, Williamson County. These violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order.

In the interim opinion and order, the Board found that the respondent violated Sections 21(p)(1), (p)(3), and (p)(4) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(4) (2006)) by causing or allowing the open dumping of waste in a manner that resulted in (1) litter, (2) open burning, and (3) deposition of waste in standing or flowing waters. The allegations arose from a March 31, 2005 inspection by the Agency.

Because there are three violations of Section 21(p) of the Act (415 ILCS 5/21(p) (2006)) and these violations are first offenses, the total civil penalty is \$4,500. Further, because a hearing was held in this proceeding and respondent did not prevail, Mr. Clover is also liable for hearing costs. 35 Ill. Adm. Code 108.502, 108.504. The hearing was held on May 8, 2007 at the City Hall in Marion.

On December 19, 2007, the Agency submitted an affidavit of its hearing costs totaling \$175.62. On December 20, 2007, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$177.45. Mr. Clover did not respond to either statement of costs. *See* 35 Ill. Adm. Code 108.506(a) (setting 21-day deadline for response).

The Board finds the submitted hearing costs reasonable and orders respondent to pay those costs, totaling \$353.07, under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2006). The Board incorporates by reference the findings of fact and conclusions of law from its December 6, 2007 interim opinion. Under Section 31.1(d)(2) of the Act, the Board attaches the administrative citation and makes it part of the Board's final order.

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

ORDER

1. The Board finds that respondent Gary Clover violated Sections 21(p)(1), (p)(3), and (p)(4) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(4) (2006)) at his property located in Marion, Williamson County.
2. The Board assesses the civil penalty of \$4,500 for the violations, as well as hearing costs totaling \$353.07, for a total amount of \$4,853.07. Respondent must pay \$4,853.07 no later than Monday, March 10, 2008, which is the first business day after the 45th day from the date of this order. Respondent must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name and case number and respondent's social security number or Federal Employer Identification Number (FEIN) must appear on the certified check or money order.
3. Respondent must submit payment of the civil penalty and hearing costs to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706.

Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 24, 2008, by a vote of 4-0.

A handwritten signature in cursive script that reads "John T. Therriault". The signature is written in black ink and is positioned above a horizontal line.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 23 2005

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
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 v.)
)
 GARY CLOVER, d/b/a CLOVER)
 CONCRETE,)
)
 Respondent.)

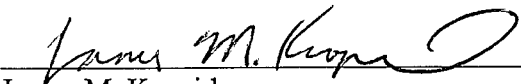
AC 05-72
 (IEPA No. 144-05-AC)

NOTICE OF FILING

To: Gary Clover, d/b/a Clover Concrete
 11704 North Route 37
 Marion, Illinois 62959

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled ADMINISTRATIVE CITATION, AFFIDAVIT; and OPEN DUMP INSPECTION CHECKLIST.

Respectfully submitted,


 James M. Kropid
 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: May 19, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 23 2005

ADMINISTRATIVE CITATION

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
v.)
))
GARY CLOVER, d/b/a CLOVER)
CONCRETE,)
))
))
Respondent.)

AC *05-72*
(IEPA No. 144-05-AC)

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2002).

FACTS

1. That Gary Clover, d/b/a Clover Concrete ("Respondent") is the present owner and operator of a facility located at 11704 N. Route 37, Marion, Williamson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Clover Concrete (Gary Clover).
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1990555132.
3. That Respondent has owned and operated said facility at all times pertinent hereto.
4. That on March 31, 2005, Scott Arnold of the Illinois Environmental Protection Agency's Marion Regional Office inspected the above-described facility. A copy of his inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

VIOLATIONS

Based upon direct observations made by Scott Arnold during the course of his March 31, 2005 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2002).
- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2002).
- (3) That Respondent caused or allowed the open dumping of waste in a manner resulting in the deposition of waste in standing or flowing waters, a violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2002).

CIVIL PENALTY

On March 18, 2004, the Board found Gary Clover in violation of Section 21(p)(1) of the Act in AC 04-37.

Because this Administrative Citation addresses a second or subsequent violation of Section 21(p)(1) of the Act, Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2002), respondent is subject to a civil penalty of Three Thousand Dollars (\$3,000.00) for the violation of Section 21(p)(1). Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2002), respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the other violations identified above, for a total of Six Thousand Dollars (\$6,000.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than June 15, 2005, unless otherwise provided by

order of the Illinois Pollution Control Board.

If Respondent elects to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2002), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondent shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2002), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondent shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondent from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2002). If Respondent elects to contest this Administrative Citation, then Respondent shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondent.



Renee Cipriano, Director
Illinois Environmental Protection Agency

Date: 5-19-05

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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CLERK'S OFFICE

MAY 23 2005

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
v.)
GARY CLOVER, d/b/a CLOVER)
CONCRETE,)
Respondent.)

AC *05-72*
(IEPA No. 144-05-AC)

FACILITY: Clover Concrete (Gary Clover) SITE CODE NO.: 1990555132
COUNTY: Williamson CIVIL PENALTY: \$6,000.00
DATE OF INSPECTION: March 31, 2005

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.