

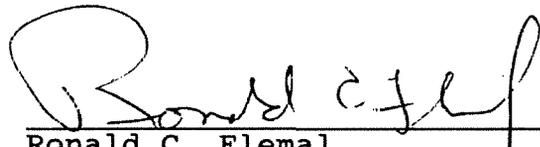
ILLINOIS POLLUTION CONTROL BOARD
July 11, 1991

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 89-157
) (Enforcement)
 CLYBOURN METAL FINISHING COMPANY,)
)
 Respondent.)

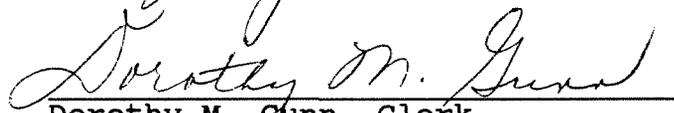
CONCURRING OPINION (by R.C. Flemal):

I agree with the finding that Clybourn has violated Section 9(b) of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 201.144. I also agree with the finding regarding the penalty. However, I do not believe that the majority has set a proper foundation for the assessment of costs and fees.

The majority today breaks its long-standing practice of not assessing costs and fees on top of the assessed penalty. There perhaps is reason for the Board to abandon its prior practice. But if that reason does exist, it is nowhere to be found in either the record of this case or in the Opinion of the majority. Is there anything about this case which so distinguishes it from similar actions adjudicated before the Board? I don't find anything. Is there anything which sets Clybourn apart from prior respondents, so as to provide that Clybourn pay costs and fees not required of the others? I don't see anything. It is indeed interestingly ironic that in a proceeding which turns on the value of established custom and practice, the majority should without word reverse one of its own most well-established practices.


Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 11th day of July, 1991.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board