

ILLINOIS POLLUTION CONTROL BOARD
March 1, 2007

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 07-29
)	(IEPA File No. 372-06-AC)
GERE PROPERTIES, INC., PERRY RIDGE)	(Administrative Citation)
LANDFILL, INC., and MIKE WHITLOCK,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On December 26, 2006, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against three respondents: Gere Properties, Inc. (Gere Properties); Perry Ridge Landfill, Inc. (Perry Ridge); and Mike Whitlock (Whitlock). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a sanitary landfill commonly known as Perry Ridge Landfill, located at 6305 Sacred Heart Drive in DuQuoin, Perry County. For the reasons below, the Board: (1) grants the Agency’s motion to dismiss the administrative citation as to Gere Properties and Perry Ridge; and (2) finds that Whitlock violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) as alleged in the administrative citation and orders Whitlock to pay \$1,000 in civil penalties.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents violated Sections 21(o)(5) and (o)(12) of the Act (415 ILCS 5/21(o)(5), (o)(12) (2004)) by conducting a sanitary landfill in a manner which resulted in (1) uncovered refuse remaining from the previous operating day or at the conclusion of any operating day; and (2) failure to collect and contain litter by the end of each operating day. The alleged violations took place at Perry Ridge Landfill, which the Agency states is operating under Permit No. 2000-064-LF and is designated with Site Code No. 1450105039. According to the administrative citation, Gere Properties is the permitted owner, Perry Ridge is the permitted operator, and Whitlock is the certified operator in responsible charge of Perry Ridge Landfill.

On February 15, 2007, the Agency filed a motion to “dismiss the pending action as to Respondents GERE Properties, Inc. and Perry Ridge Landfill, Inc.” for failing to serve them

within 60 days of the observed violation as required by the Act (Motion at 1-2). *See* 415 ILCS 5/31.1(b) (2004); 35 Ill. Adm. Code 108.402. The Board grants the Agency's motion and dismisses the administrative citation as to Gere Properties and Perry Ridge.

As required, the Agency served the administrative citation on Whitlock within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, Whitlock failed to timely file a petition. Accordingly, the Board finds that Whitlock violated Sections 21(o)(5) and (o)(12) of the Act.

The civil penalty for violating Section 21(o) is \$500 for each violation. *See* 415 ILCS 5/42(b)(4) (2004); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(o), the total civil penalty is \$1,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

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

ORDER

1. The Board dismisses the administrative citation as to Gere Properties and Perry Ridge.
2. Whitlock must pay a civil penalty of \$1,000 no later than April 2, 2007, which is the first business day following the 30th day after the date of this order.
3. Whitlock must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Whitlock's social security number or federal employer identification number must be included on the certified check or money order.
4. Whitlock must send the certified check or money order and the remittance form to:

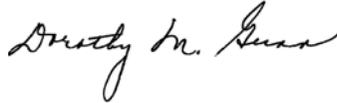
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).

6. 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) (2004); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 1, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board