

ILLINOIS POLLUTION CONTROL BOARD

July 26, 2012

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 12-57
	)	(IEPA No. 134-12-AC)
GERE PROPERTIES, INC., PERRY RIDGE	)	(Administrative Citation)
LANDFILL, INC. and MIKE WHITLOCK,	)	
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by T. A. Holbrook):

On June 15, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Gere Properties, Inc. (Gere), Perry Ridge Landfill, Inc. (Perry Ridge), and Mike Whitlock (Whitlock). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns the sanitary landfill owned by Gere, for which Perry Ridge is a permitted operator and Whitlock is the certified operator, located at 6305 Sacred Heart Drive, Du Quoin, Perry County. The property is commonly known to the Agency as the “Perry Ridge Landfill, Inc.” site and is designated with Site Code No. 1450105039. For the reasons below, the Board finds that Gere, Perry Ridge, and Whitlock violated the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and orders Gere, Perry Ridge, and Whitlock to pay \$2,500 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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that, on April 18, 2012, Gere, Perry Ridge, and Whitlock violated Sections 21(o)(5), 21(o)(6) and 55(k)(1) of the Act (415 ILCS 5/21(o)(5), 21(o)(6), 55(k)(1) (2010)) by conducting a sanitary landfill in a manner which resulted in uncovered refuse remaining from the previous operating day and resulted in a failure to provide cover within the time limits, and by causing or allowing water to accumulate in used or waste tires. The Agency asks the Board to impose the statutory \$500.00 civil penalty per violation of Section 21(o) and the statutory \$1,500.00 civil penalty per violation of Section 55(k) on Gere, Perry Ridge, and Whitlock, for a total civil penalty of \$2,500.00. As required, the Agency served the administrative citation on Gere, Perry Ridge, and Whitlock within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 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) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petitions for review were due by July 18, 2012, from Whitlock and July 19, 2012, from Gere and Perry Ridge. Gere, Perry Ridge, and Whitlock each failed to timely file a petition. Accordingly, the Board finds that Gere, Perry Ridge, and Whitlock violated Sections 21(o)(5), 21(o)(6), and 55(k)(1) of the Act.

The civil penalty for violating any provision of Section 55(k) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision, and the civil penalty for violating any provision of subsection (o) of Section 21 is \$500 for each violation. *See* 415 ILCS 5/42(b)(4), (4-5) (2010); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(o), and one violation of Section 55(k), for which there is no indication in the record that this is a second or subsequent adjudicated violation, the total civil penalty is \$2,500.00. 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 finds that Gere Properties, Inc., Perry Ridge Landfill, Inc., and Mike Whitlock violated Sections 21(o)(5), 21(o)(6), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(o)(5), 21(o)(6), 55(k)(1) (2010)).
2. Gere, Perry Ridge, and Whitlock must pay a civil penalty of \$2,500.00 no later than August 27, 2012, which is the first business day following the 30th day after the date of this order. Gere, Perry Ridge, and 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 Gere's, Perry Ridge's, and Whitlock's social security numbers or federal employer identification numbers must be included on the certified check or money order.
3. Gere, Perry Ridge, and 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
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate

set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

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) (2010); *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 July 26, 2012 by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

RECEIVED  
CLERK'S OFFICE  
JUN 15 2012  
STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
GERE PROPERTIES, INC., PERRY RIDGE )  
LANDFILL, INC. and MIKE WHITLOCK, )  
 )  
 )  
Respondents. )

12-51  
AC  
(IEPA No. 134-12-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 (2010).

FACTS

1. That Gere Properties, Inc. is the permitted owner, Perry Ridge Landfill, Inc. is the permitted operator, and Mike Whitlock is the certified operator in responsible charge (collectively "Respondents") of a facility located at 6305 Sacred Heart Drive, Du Quoin, Perry County, Illinois.

2. That said facility is a sanitary landfill, operating under Illinois Environmental Protection Agency Permit No. 2000-064-LF, and is designated with Site Code No. 1450105039. The facility is commonly known to the Illinois Environmental Protection Agency as Perry Ridge Landfill, Inc.

3. That Respondents have owned/operated said facility at all times pertinent hereto.

4. That on April 18, 2012, Sheila Williams of the Illinois Environmental Protection Agency's Marion Regional Office inspected the above-referenced facility. A copy of her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 6-12-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7009 2820 0001 7496 1152  
7009 2820 0001 7496 1145  
7009 2820 <sup>0001</sup> ~~7496~~ 7496 1138

#### VIOLATIONS

Based upon direct observations made by Sheila Williams during the course of her April 18, 2012 inspection of the above-referenced facility, the Illinois Environmental Protection Agency has determined that Respondents violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents conducted a sanitary landfill in a manner which resulted in uncovered refuse remaining from the previous operating day or at the conclusion of any operating day, a violation of Section 21(o)(5) of the Act, 415 ILCS 5/21 (o)(5) (2010).
- (2) That Respondents conducted a sanitary landfill in a manner which resulted in failure to provide final cover within time limits, a violation of Section 21(o)(6) of the Act, 415 ILCS 5/21 (o)(6) (2010).
- (3) That Respondents caused or allowed water to accumulate in used or waste tires, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (2010).

### CIVIL PENALTY

Pursuant to Section 42(b)(4) of the Act, 415 ILCS 5/42(b)(4) (2010), Respondents are subject to a civil penalty of Five Hundred Dollars (\$500.00) for violations of Section 21 (0)(5) and Section 21(0)(6) and pursuant to Section 42(b)(4-5) of the Act, Respondents are subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for a violation of Section 55(k)(1), for a total of Two Thousand Five Hundred Dollars (\$2,500.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than July 1, 2012, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect 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 (2010), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents 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.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2010), if Respondents fail to petition or elect 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 a finding of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondents' 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, Respondents 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 Respondents 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 Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2010). If Respondents elect to contest this Administrative Citation, then Respondents 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 Respondents.

  
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John J. Kim, Interim Director  
Illinois Environmental Protection Agency

Date 6/11/12

Prepared by: Susan E. Konzelmann, Legal Assistant  
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P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544



