

ILLINOIS POLLUTION CONTROL BOARD
March 7, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-32
)	(IEPA No. 561-01-AC)
COLORADO REAL ESTATE &)	(Administrative Citation)
INVESTMENT CO., (KINGSPARK MOBILE)	
ESTATES),)	
)	
Respondent.)	

ORDER OF THE BOARD (by R.C. Flemal):

On January 15, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Colorado Real Estate & Investment Co. (Kingspark Mobile Estates). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Colorado Real Estate & Investment Co. violated Section 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(7) (2000)). The Agency further alleges that Colorado Real Estate & Investment Co. violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter and by causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris or clean construction or demolition debris at 1821 North Lancelot Place, Peoria County.

As required, the Agency served the administrative citation on Colorado Real Estate & Investment Co. within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). On February 19, 2002, Colorado Real Estate & Investment Co. timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). Colorado Real Estate & Investment Co. denies both the allegations and alleges, among other things, that the Agency inspector came onto the property without obtaining a search warrant or other authorization, and that if there is litter or other materials on the property as alleged, they were placed there by trespassers. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

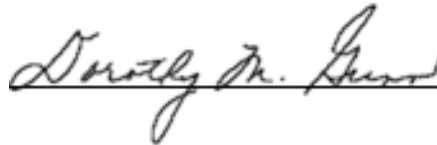
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2000). By contesting the administrative citation, Colorado Real Estate & Investment Co. may have to pay the hearing costs of the Board and Agency. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

Colorado Real Estate & Investment Co. may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Colorado Real Estate & Investment Co. chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Colorado Real Estate & Investment Co. withdraws its petition after the hearing starts, the Board will require Colorado Real Estate & Investment Co. to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2000); 35 Ill. Adm. Code 108.400. If the Board finds that Colorado Real Estate & Investment Co. violated Sections 21(p)(1) and (p)(7), the Board will impose civil penalties on Colorado Real Estate & Investment Co.. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500. However, if the Board finds that Colorado Real Estate & Investment Co. “has shown that the violation results from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 4/51.1(d)(2) (2000); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 7, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board