

ILLINOIS POLLUTION CONTROL BOARD

January 8, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-25
)	(IEPA No. 628-03-AC)
COLORADO REAL ESTATE and)	(Administrative Citation)
INVESTMENT COMPANY (KINGSPARK)	
MOBILE ESTATES),)	
)	
Respondent.)	

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

On December 1, 2003, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Colorado Real Estate and Investment Company (Kingspark Mobile Estates) (Kingspark). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Kingspark violated Sections 21(p)(1),(3) and (7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1),(3) and (7) (2002)). The Agency further alleges that Kingspark violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter, open burning and the deposition of construction of demolition debris at 1821 North Lancelot Place, Peoria, Peoria County.

As required, the Agency served the administrative citation on Kingspark within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). On December 22, 2003, Kingspark timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Kingspark denies that it committed any violation. *See* 35 Ill. Adm. Code 108.206. Kingspark further alleges that the administrative citation was issued based upon information gathered during an improper search in violation of the Fourth Amendment of the United States Constitution and the Illinois State Constitution. 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) (2002). By contesting the administrative citation, Kingspark may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2002); 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.

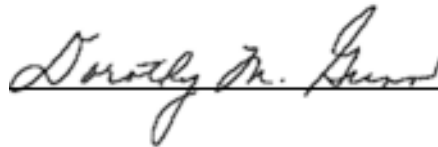
Kingspark may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If Kingspark chooses to withdraw its petition, it must

do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Kingspark withdraws its petition after the hearing starts, the Board will require Kingspark 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) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that Kingspark violated Section 21(p)(1),(3) or (7), the Board will impose civil penalties on Kingspark. 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) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that Kingspark “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2002); *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 January 8, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board