

ILLINOIS POLLUTION CONTROL BOARD

May 6, 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.)	

OPINION AND 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). 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.

On December 22, 2003, Kingspark timely filed a petition to contest the administrative citation. The Board accepted the petition for hearing on January 8, 2004.

On April 13, 2004, the parties filed a stipulation of settlement and dismissal of respondent's petition for review. In the stipulation, the parties note that on August 8, 2002, the Board found Kingspark in violation of 21(p)(1) of the Act. *See IEPA v. Colorado Real Estate & Investment Co. (Kingspark Mobile Estates)*, AC 02-32 (Aug. 8, 2002). Pursuant to the terms of the stipulation and proposal for settlement, Kingspark admits liability for the violations alleged in the administrative citation, and agrees to pay a penalty of \$3,000 for the repeated violation of Section 21(p)(1) and \$1,500 for the first-time violation of Section 21(p)(3). 415 ILCS 5/21(p)(1), (3) (2002).

To effectuate the parties' intent that Kingspark pay a total civil penalty of \$4,500, the Board dismisses the alleged violations of Section 21(p)(7). The parties agree that the waste that was the subject of this administrative citation has been removed and properly disposed of.

The Board accepts the stipulation and proposal for settlement. Pursuant to Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2002)), the Board finds that Kingspark has violated Section 21(p)(1) and (3) of the Act. 415 ILCS 5/21(p)(1), (3) (2002). Under Section 42(b)(4-5), the statutory established penalty is \$1,500 for a first-time violation and \$3,000 for a second or

subsequent violation for a total of \$4,500. 415 ILCS 5/42(b)(4-5) (2002). The Board accordingly assesses a civil penalty of \$4,500. The Board notes that the parties' stipulation and proposal for settlement provides that Kingspark will pay the penalty in three monthly installments of \$1,500 commencing on May 1, 2004. As that is prior to the date of this order, the Board will grant Kingspark until May 14, 2003, to pay the first installment.

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

ORDER

Pursuant to the stipulated agreement, the Board finds that Colorado Real Estate and Investment Company (Kingspark Mobile Estates) (Kingspark) violated Section 21(p) (1) and (3) of the Act. 415 ILCS 5/21(p)(1), (3) (2002).

1. Kingspark must pay a civil penalty of \$4,500 pursuant to 415 ILCS 5/42(b)(4-5) (2002).
2. Kingspark must pay the civil penalty in three monthly installments of \$1,500, the first being due on May 14, 2004; the second on June 14, 2004; and the final on July 14, 2004. Each installment must be made by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Kingspark's federal employer identification number must be included on the certified check or money order.
3. Kingspark must send the certified check or money order and the remittance form to:

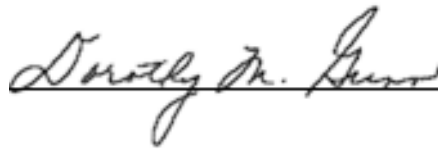
Illinois Environmental Protection Agency Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. The Board dismisses the alleged violation of Sections 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2002).
6. Kingspark's petition for review filed on December 22, 2003, is dismissed.
7. Kingspark must diligently comply with, and cease and desist from further violations of, the Act (415 ILCS 5/1 et seq. (2002)), and the Board's rules and regulations. 35 Ill. Adm. Code Subtitles A through H.

8. The Agency will not refer the violations that are the subject of this administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority for the initiation of a criminal or civil action.

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) (2002); *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, hereby certify that the Board adopted the above opinion and order on May 6, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board