

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 02 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Complainant,)

v.)

JOSEPH LUPARELL and TROY CURLEY,)

Respondents.)

80
AC 04-75

(IEPA No. 271-04-AC)

NOTICE OF FILING

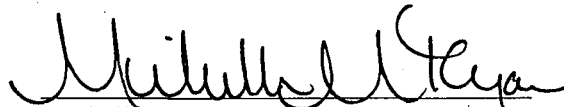
To: Joseph Luparell
999 Clear Lake Road
Dawson, IL 62560

Troy Curley
816 McCleary Avenue
Springfield, IL 62703

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled RESPONSE TO BOARD DIRECTION REGARDING SERVICE ON RESPONDENT TROY CURLEY.

Respectfully submitted,



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: July 29, 2004

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(IEPA No. 271-04-AC)

**RESPONSE TO BOARD DIRECTION REGARDING
SERVICE ON RESPONDENT TROY CURLEY**

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Special Assistant Attorney General Michelle M. Ryan, pursuant to an Order of the Pollution Control Board ("Board") dated July 8, 2004, and respectfully states as follows:

On July 8, 2004, the Board issued an Order in this case, directing Illinois EPA to address whether the signature of Respondent Troy Curley's ex-wife on the certified mail green card effectuated service on Respondent Troy Curley ("Respondent"). As indicated below, Illinois EPA submits that Respondent was properly served.

As identified in the Certificate of Service filed with this Administrative Citation on May 25, 2004, Respondent resides at 816 McCleary Avenue, Springfield. This address information was based upon Respondent's statement to the Illinois EPA inspector in December 2003 (*see* Affidavit, Exhibit A). Therefore, this was the address at which Illinois EPA attempted to serve Respondent by certified mail, as provided for in 35 Ill. Adm. Code 101.304(c).

The certified mail receipt was signed by Judith Curley, Respondent's ex-wife, who continues to reside with him at the service address (*see* Exhibit A). Because Respondent has claimed to be unable to read or write, Judith Curley has apparently performed these tasks on Respondent's behalf.

Pursuant to 735 ILCS 5/2-203(a)(2) (2002), service may be made on an individual by leaving a copy at his usual place of abode with a person residing there who is 13 years or older, and informing that person of the contents, and sending a copy by mail to the individual at his usual place of abode. This statutory provision is not directly on point when service is attempted by certified mail, as allowed by Board regulations. However, the intent of this provision has been met in this case. The Administrative Citation package was mailed to Respondent's usual place of abode, was received by an individual residing there over the age of 13 (presumed from the fact of her former marriage to Respondent). The requirement of informing the recipient of the contents cannot be met when service is made by certified mail, because Illinois EPA has no control over the mailing once it enters the U.S. Postal Service system. Further, the requirement of mailing a copy is redundant in this situation. Therefore, the purpose and intent of abode service has been met in this case.

The Board's regulations do not specifically provide for abode service. However, as the Board allows service by certified mail, it is apparent that it intends that service under its rules be less onerous than under the statutes pertaining to service for purposes of court jurisdiction. Allowing abode service by certified mail meets this intent, especially in light of the fact that the parties have no control over actual delivery in the certified mail process allowed by Board rules. If Illinois EPA were required to prove service on the named individual, that would effectively eliminate the opportunity to attempt service by certified or registered mail, as Illinois EPA could not risk the possibility that delivery would be improperly made, given the short statutory timeframe for service of Administrative Citations (415 ILCS 5/31.1(b) (2002)).

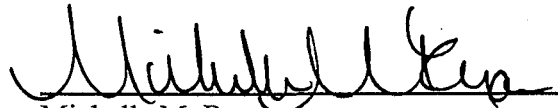
In addition, Respondent admits that he received the Administrative Citation package (*see* Exhibit A). Not only does Respondent not object to service, but he appears to have filed a timely

Petition for Review.¹ Respondent also appeared at a status call set by the Board Hearing Officer for July 29, 2004. As such, Respondent had timely actual notice of this pending action and has participated fully in the case thus far.

WHEREFORE, the Illinois Environmental Protection Agency submits that Respondent Troy Curley was properly served.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Complainant,

DATED: July 29, 2004



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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¹ The Board states in its Order that the letter contained in the Petition for Review filed by Respondent Joseph Luparell with Respondent Troy Curley's name was signed by Judith Curley. *Illinois EPA v. Luparell, et al.*, AC 04-80 (July 8, 2004, footnote 1). The Board does not indicate in its order whether it considers this letter to be a Petition for Review on behalf of Respondent Troy Curley, or whether it considers the fact that it does not appear to have been signed by him to be a fatal defect. Given Respondent's apparent inability to read or write, Illinois EPA has no objection to the Board accepting Respondent's Petition for Review as properly filed in this matter.

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(IEPA No. 271-04-AC)

AFFIDAVIT

Affiant, Jan Meir, being first duly sworn, voluntarily deposes and states as follows:

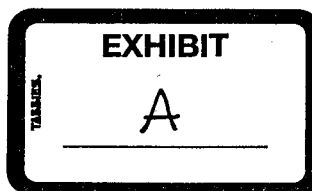
1. I am employed by the Land Pollution Control Division of the Illinois Environmental Protection Agency and have been so employed at all times pertinent hereto.
2. I am the inspector assigned to the Luparell site at 2193 J. David Jones Parkway (Frontage Road), Springfield, Illinois, which is the subject of this Administrative Citation.
3. When I initially inspected the site on December 1, 2003, I spoke to Troy Curley, who informed me that he lived at 816 S McCleary Avenue, Springfield, IL.
4. On July 28, 2004, I met with Troy Curley, who again informed me that he lived at the above address with his ex-wife.
5. On July 28, 2004, Troy Curley also informed me that he had received the Administrative Citation package sent by Illinois EPA via Certified Mail.

FURTHER AFFIANT SAYETH NOT.

Jan Meir
Jan Meir

Subscribed and sworn to before me
this 28th day of July, 2004.

Charlene K. Powell
NOTARY PUBLIC



PROOF OF SERVICE

I hereby certify that I did on the 29th day of July 2004, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled RESPONSE TO BOARD DIRECTION REGARDING SERVICE ON RESPONDENT TROY CURLEY

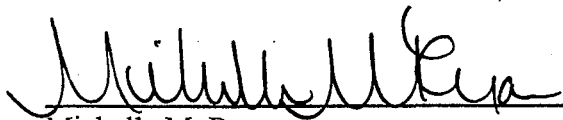
To: Joseph Luparell
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Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Troy Curley
816 McCleary Avenue
Springfield, IL 62703

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
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