

ILLINOIS POLLUTION CONTROL BOARD

January 10, 2002

PEOPLE OF THE STATE OF ILLINOIS,        )  
    )  
    )  
Complainant,                              )  
    )  
    )  
v.    ) PCB 02-21  
    ) (RCRA Enforcement)  
J & F HAULING, INC.,                    )  
    )  
    )  
Respondent.                                )

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

On August 17, 2001, the People of the State of Illinois (complainant) filed a seven count complaint against J & F Hauling, Inc. (J&F). The complaint alleges, *inter alia*, that J&F caused or allowed open dumping of litter and waste tires, conducted a waste disposal operation at an improper site without a permit, and failed to make special waste and hazardous waste determinations. These activities were alleged to have occurred at 7752 West 47th Street, McCook, Cook County.

On November 9, 2001, the complainant filed a motion to deem facts admitted and for summary judgment. To date, J&F has not filed a response to the motion. In the motion, the complainant asserts that the complaint in this matter was served on J&F's attorney by first class mail on August 17, 2001. The complainant notes that J&F's attorney agreed to accept service on J&F's behalf. The complainant asserts that because J&F did not timely file an answer or otherwise plead, all material allegations of the complaint are deemed admitted pursuant to Section 103.204 of the Board's rules. 35 Ill. Adm. Code 103.204. The complainant concludes that it is entitled to summary judgment pursuant to 35 Ill. Adm. Code 101.516, and requests that the Board issue an order in favor of the complainant and against J&F.

Before considering the merits of the motion for summary judgment, the Board first must address the motion to deem facts admitted. Complainant is correct in stating that material allegations in the complaint will be taken as admitted if no answer is filed. See 35 Ill. Adm. Code 103.204(d). However, before this section can be effective, the action in question must be properly commenced pursuant to the Board's rules.

Section 103.204(a) of the Board's rules provides in part:

An enforcement proceeding will be commenced by the service of a notice and complaint by registered certified mail, messenger service, or personal service upon all respondents . . . 35 Ill. Adm. Code 103.204(a).

In its motion, the complainant states that the complaint was served upon respondent's attorney by first class mail. As noted, the Board's enforcement regulations do not provide for

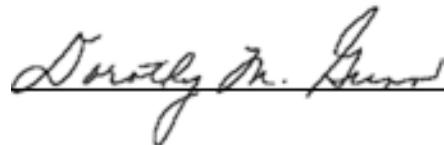
service of the complaint in this manner. 35 Ill. Adm. Code 103.204(a). Additionally, the Board has previously held that service of an enforcement complaint by first class mail is not sufficient under the Board's rules. *See Kamholz v. Sporleder*, PCB 02-41 (Nov. 1, 2001).

The basis for complainant's motion for summary judgment is J&F's failure to file an answer within 60 days of receiving the complaint. The complainant did not effectuate service in accordance with Section 103.204(a). While a party can waive a service deficiency, no such waiver by the respondent is evidenced within the record. The only reference to such a waiver is complainant's indication in its motion for summary judgment that J&F's attorney agreed to accept service. To date, no attorney has filed an appearance for J&F before the Board in this matter, and the Board has no confirmation that the attorney referenced by the complainant is even the attorney representing J&F.

At this point, it is unclear whether or not the Board has jurisdiction over the respondent. Until the service issue is resolved, the Board will not grant the motion for summary judgment. Accordingly, the complainant is given 30 days from the date of this order to address this jurisdictional question, and the Board is reserving ruling on the complainant's motion.

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 10, 2002, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board