

ILLINOIS POLLUTION CONTROL BOARD  
February 15, 2001

STUART C. NUSS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 01-30  
 ) (Enforcement – Citizens, Water)  
 VILLAGE OF DURAND, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by C.A. Manning):

On August 14, 2000, Stuart C. Nuss (Nuss) filed a complaint against the Illinois Environmental Protection Agency (Agency) and the Village of Durand (Durand). On October 19, 2000, the Board dismissed the Agency and granted Nuss leave to file an amended complaint against Durand on or before November 18, 2000. On November 22, 2000, the Board received Nuss's amended complaint.<sup>1</sup>

However, because the filing was unsigned and did not include proof of service on Durand, Board Hearing Officer John Knittle contacted Nuss and requested that Nuss remedy these deficiencies and file another amended complaint. On January 25, 2001, Nuss filed a signed amended complaint with proof of service on David Mulvain, identifying Mulvain only as a member of the Village of Durand Board.

In actions against a village, summons may be served by leaving a copy with "the president of the board of trustees or village clerk." 735 ILCS 5/2-211(2000).

Given Nuss's failure to properly serve the president of the board or village clerk, the Board dismisses this complaint for lack of jurisdiction over Durand. In so finding, the Board makes no ruling on the sufficiency or merits of the complaint. The docket is now closed. However, Nuss is free to file a new complaint in this matter, addressing the issues raised by the Board in this and the prior Board order. If Nuss has any questions regarding this process, Nuss may contact Hearing Officer John Knittle at 312-814-3473.

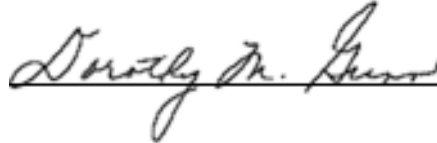
IT IS SO ORDERED.

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<sup>1</sup> Section 101.300(b)(2) states "if a document is filed by U.S. Mail subsequent to a filing deadline, yet the postmark date precedes the filing deadline, the document will be deemed filed on the postmark date." 35 Ill. Adm. Code 101.300(b)(2). The postmark is dated November 16, 2000, and thus Nuss's amended complaint was timely filed.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15th day of February 2001 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