

ILLINOIS POLLUTION CONTROL BOARD
November 21, 1991

THOMAS AND BARBARA SNEED,)
)
 Complainant,)
)
 v.)
)
)
FRANK FARRAR and the FIRST)
BANK AND TRUST CO.,)
)
)
 Respondent.)

PCB 91-183
(Enforcement)

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on a complaint received by the Board on October 3, 1991. On October 31, 1991, the Respondents filed with the Board a Motion for Extension of Time to File Motions to Dismiss, Motions to Dismiss filed on behalf of both respondents and the Joint Answer and Affirmative Defenses of Respondents. On November 12, 1991, the Board received a response to the Motions filed by Complainants.

As a preliminary matter, the Board will grant the Motion for Extension of Time to File Motions to Dismiss. The Board notes that although two separate Motions to Dismiss were filed, the Motions are interrelated. With respect to Respondent, Frank Farrar, the Motion to Dismiss argues that Mr. Farrar is not a proper party to the complaint. The Motion states that "no relief or remedy can properly be entered against him [Farrar] in that he is an individual residing in Britton, South Dakota". (Farrar Motion p. 2). Mr. Farrar is a director of the Bank but he does not "own the premises upon which the air conditioning unit complained of is located". (Farrar Motion p. 1).

With respect to the Motion to Dismiss filed for Respondent, First Bank and Trust Company (the "Bank"), the Motion argues that the enforcement action has not been properly commenced. The Motion states that the Bank has never been served with notice of the complaint and that only the individual, Frank Farrar, was served. The Motion maintains that this service is improper under the Board's procedural rules and the Illinois Code of Civil Procedure (Ill. Rev. Stat. 1989, ch. 110, par. 2-204).

The Complainants responded to the Motions to Dismiss stating that "[t]he Alexander County Clerks office furnished me with the name of the owner of record at the First Bank and Trust Co.". In addition, the Complainants point to letters filed with the Board by Mr. Farrar on Bank stationary. Thus, the Complainants have made a good faith effort to establish the proper individual on whom service must be achieved.


Section 101.100 of the Board's procedural rules specifically states that the Code of Civil Procedure shall not expressly apply to proceedings before the Board; however, parties may argue the applicability absent a provision in the Board's procedural rules. 35 Ill. Adm. Code 101.100. In this case, Section 103.123 of the Board's procedural rules allows for service via certified mail on the respondent. Therefore, Complainants appear to have properly served Mr. Farrar and the Bank.

The Board finds that there are several issues in controversy in this case including the issue of proper service. The Board believes that these issues should be addressed more fully by the parties at a hearing on the merits of the case. Therefore, at this time, the Board denies both Motions to Dismiss and accepts this case for hearing.

This matter will be assigned to a hearing officer, who will contact the parties to set a hearing date.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 21st day of November, 1991, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board