

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2009

JERRY R. WEST II,)
)
 Complainant,)
)
 v.) PCB 09-45
) (Citizens Enforcement - Air)
 NOKOMIS QUARRY COMPANY,)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On January 5, 2009, Jerry R. West II (West) filed a complaint *pro se* against Nokomis Quarry Company (Nokomis Quarry). The complaint concerns limestone particles allegedly emitted from Nokomis Quarry's site located at 23311 Taylorville Road in Nokomis, Montgomery County. As discussed below, the Board declines to accept the complaint for hearing at this time because the record does not demonstrate that West has properly served the complaint on Nokomis Quarry.

The Board's procedural rules require a complainant to serve the complaint on the respondent personally, by registered or certified mail, or by messenger service. 35 Ill. Adm. Code 101.304(c), (d), 103.204(a). "Proof of service" of the complaint must be filed with the Board "upon completion of service." 35 Ill. Adm. Code 101.304(b). The Board's procedural rules also require that the complaint be accompanied by an affidavit or certificate of service. *See* 35 Ill. Adm. Code 101.304(d).

West's complaint lacks any affidavit or certificate of service. On January 13, 2009, West filed a certified mail receipt, documenting that a mailing was directed to "Samuels M. JS. Sly LLP" at P.O. Box 1400, Decatur, Illinois 62525. The receipt is stamped January 8, 2009, United States Postal Service, McMinnville, Tennessee. Even assuming that West's complaint is the mailing associated with this receipt, the receipt indicates that West did not serve the complaint on Nokomis Quarry itself, and there is no evidence in the record that "Samuels M. JS. Sly LLP" is authorized as an agent to accept service for Nokomis Quarry.

Additionally, the requisite proof that a complaint has been served by certified mail is the certified mail return receipt, executed by the respondent or its authorized agent. 35 Ill. Adm. Code 101.300(c); *see Thigpen v. Morton Mobile Home Park, LLC, d/b/a Edgewood Terrace Mobile Home Park*, PCB 08-12, slip op. at 2 (Sept. 6, 2007) (requiring "proof that service has been completed"); *Trepanier v. Board of Trustees of the University of Illinois at Chicago*, PCB 97-50, slip op. at 4 (Nov. 21, 1996) (service of complaint by certified mail requires return receipt signed by respondent or authorized agent). The required proof of service is lacking here.

Under these circumstances, the Board directs West to file with the Board proper proof that he has served the complaint on Nokomis Quarry or its authorized agent. West must file the proof by March 5, 2009, or the Board may dismiss this proceeding. The Board reserves ruling on whether the complaint is duplicative, frivolous, or otherwise deficient. *See* 415 ILCS 5/31(d)(1) (2006); 35 Ill. Adm. Code 103.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board