

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1989

IN THE MATTER OF:)
)
J & R LANDFILL, INC.,) AC 89-18
) (Docket No. 89-1 SC)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On May 16, 1989, J & R Landfill, Inc. (J & R) filed a Motion for Reconsideration requesting that the Board reconsider its Order of May 11, 1989. The State's Attorney of St. Clair County filed a response on May 30, 1989, and J & R filed a reply on June 8, 1989. The Board grants J & R's motion in so far as the Board will reconsider its previous decision.

By its Order of May 11, 1989, which is the subject of J & R's motion, the Board denied a motion made by J & R to dismiss this proceeding. J & R had contended that the administrative citation issued by St. Clair County to J & R was not properly served upon J & R and that, as a consequence, the case should be dismissed due to a lack of jurisdiction over J & R.

Relying on a document which had been submitted by J & R with its motion to dismiss, the Board found that the administrative citation was properly served. Specifically, the Board noted that the administrative citation had been sent to James Quirin. J & R had attached to its motion a copy of J & R's 1988 Annual Report of the corporation. J & R sought to use that report to prove that James Quirin was not the registered agent for J & R on January 6, 1989. However, that report indicated that James Quirin was an officer of the corporation, specifically the Secretary.

Now, in its Motion for Reconsideration, J & R asserts that "James Quirin held no position with the corporation during 1989". Attached to this motion is an affidavit of James Quirin which states that during 1989 he "did not serve in any capacity, either as an officer or registered agent of the corporation". J & R asserts again that service of the citation was not properly effectuated.

In response, St. Clair County cites 35 Ill. Adm. Code 103.140(i) and states that J & R waived its jurisdictional objection by not filing its original motion to dismiss at or before J & R's initial pleading or within 14 days after receipt of the complaint.

Alternatively, St. Clair County states that the motion should have been filed at least 14 days prior to the scheduled hearing in this matter in order to comply with 103.120(a).

Finally, St. Clair County contends that the citation was properly served. Specifically, St. Clair County asserts that the certified mail receipt was signed by Alan L. Baum and that such receipt of the citation was sufficient for service upon J & R.

J & R replies that Baum is an employee of J & R and that he is not an agent of J & R for the service of process. J & R further argues that service on an officer of a corporation is considered service on the corporation only when the officer is personally served. J & R cites Section 2-204 of the Code of Civil Procedure as authority for this position.

J & R argues in its Motion for Reconsideration that the procedural rules cited by St. Clair County do not apply to administrative citations. J & R cites In The Matter Of: J and R Landfill, Inc., AC 88-23, AC 88-34 (November 17, 1988) for the proposition that administrative citation cases are handled differently from other types of enforcement cases.

First, the Board disagrees with J & R's suggestion that In The Matter Of: J and R Landfill, Inc., AC 88-23, AC 88-34 (November 17, 1988), supports the contention that the Board's procedural rules set forth by 35 Ill. Adm. Code 103 are inapplicable to administrative citations. In fact, in that case the Board held:

The circumstances of this case amply illustrate the need for careful adherence to the Board's procedural rules, particularly with respect to actions involving administrative citations. (emphasis added)

Id. at 2.

In particular, the Board was referring to application of 35 Ill. Adm. Code 103.140 to an administrative citation case.

Section 103.140(i) states:

Any party may participate in the proceedings without forfeiting any jurisdictional objection, if such objection is raised at or before the time the respondent files his initial pleading or motion, or, if no pleading or motion is made, within 14 days after receipt of complaint. All jurisdictional objections shall conform to the requirements of subsection (a).

In the case at hand, the administrative citation and the proof of service of that citation were filed by St. Clair County on January 12, 1989. J & R filed its Petition for Review on February 2, 1989. The petition makes no mention of a

jurisdictional objection concerning an alleged failure to serve the citation. A hearing was noticed and scheduled for May 17, 1989. On May 8, 1989 J & R filed its motion to dismiss in which it raised, for the first time, its jurisdictional objection. Consequently, J & R did not raise its jurisdictional objection when it filed its initial pleading, which in this case was J & R's February 2, 1989 petition for review.

J & R argues that the Board lacks jurisdiction over its person due to failed service. However, given the applicability of Section 103.140 and the plain language of subsection (i), the Board finds that J & R forfeited its jurisdictional objection by failing to raise the objection at the time J & R filed its initial pleading in this matter. By failing to raise its objection at that time, J & R submitted itself to the Board's jurisdiction. Cf. Waste Management of Illinois, Inc., AC 88-31 (August 4, 1988) (the Board vacated a default Order, on the grounds of improper service, pursuant to respondent's motion which was the initial filing of the respondent) and Waste Management of Illinois, Inc., AC 88-54 (August 4, 1988) (finding service proper, the Board denied respondent's motion to dismiss which had challenged the jurisdiction based on alleged failed service and which was filed concurrently with respondent's petition for review).

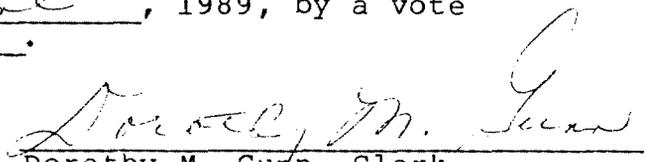
The case at hand is distinct from the situation where the Board would lack jurisdiction due to substantive deficiencies in the citation which was served. e.g. In The Matter Of: J and R Landfill, Inc., AC 88-23, AC 88-34, October 20, 1988 and November 17, 1988). Here, J & R argues that the Board does not have jurisdiction over J & R itself due to a failure to actually serve the citation.

The Board notes that it did not address St. Clair County's waiver argument in its Order May 11, 1989. Upon reconsideration and for the reasons stated herein, the Board re-affirms its denial of J & R's May 16th motion to dismiss.

This matter is to proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 23rd day of June, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board