

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2010

WILLIAM H. LEESMAN,)
)
 Complainant,)
)
 v.) PCB 11-1
) (Citizens Enforcement - Air)
 CIMCO RECYCLING, STERLING and)
 CIMCO RESOURCES, INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by A.S. Moore):

On July 9, 2010, William H. Leesman (complainant) filed a complaint *pro se* against Cimco Recycling, Sterling, and Cimco Resources, Inc. (collectively, respondents). The complaint concerns noise and odor allegedly emitted from respondents' metal recycling facility located in Sterling, Whiteside County. As discussed below, the Board declines to accept the complaint for hearing at this time because the record does not demonstrate that complainant has properly served the complaint on respondents.

The Board's procedural rules require a complainant to serve the complaint on all respondents either 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 procedural rules provide that "[p]roof of proper service is the responsibility of the party filing and serving the document." 35 Ill. Adm. Code 101.304(d). The Board notes the complaint was accompanied by a sworn certificate of service indicating that complainant served the complaint on respondents at specified addresses on July 7, 2010, by certified registered mail. *See* 35 Ill. Adm. Code 101, Appendix E, Illustration A (certificate of service by non-attorney).

However, 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 record in this case lacks the required proof of service of the complaint.

Under these circumstances, the Board directs complainant to file with the Board proper proof that he has served the complaint on respondents or their authorized agent or agents. Complainant must file the proof by Monday, October 4, 2010, or the Board may dismiss this

proceeding. The Board today 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 2, 2010, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board