

ILLINOIS POLLUTION CONTROL BOARD
March 5, 2015

SANDRA CLAYBORNE,)
)
 Complainant,)
)
 v.) PCB 15-120
) (Enforcement - Public Water Supply)
 CITY OF CHICAGO DEPARTMENT OF)
 WATER MANAGEMENT,)
)
 Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On December 23, 2014, Sandra Clayborne (complainant) filed a complaint alleging that the City of Chicago Department of Water Management (respondent) violated the Environmental Protection Act and respondent's permits by allowing grit and sand to enter the potable water supply. On January 27, 2015, respondent filed a limited appearance along with a motion to dismiss, challenging personal jurisdiction. Complainant did not respond to the motion to dismiss.

MOTION

Respondent argues that complainant failed to properly serve the respondent and therefore the Board lacks personal jurisdiction to hear the case. Mot. at 1. Respondent relies on Lionel P. Trepanier v. University of Illinois, et al., PCB 97-50 (Nov. 21, 1996) to support its argument. Respondent argues that the Board dismissed the complaint against the University of Illinois (University) for lack of personal jurisdiction, because the complaint was not properly served. *Id.*

In Trepanier, the complainant served the complaint by hand delivery to the Office of the President of the University of Illinois (University). Trepanier, PCB 97-50, slip op. at 4. Under Section 2-211 of the Code of Civil Procedure (Code) (735 ILCS 5/2-211 (2014)), the University was required to be served through the president, clerk or other officer. *Id.*

Respondent maintains that the City of Chicago is a city within the meaning of Section 2-211 of the Code (735 ILCS 5/2-211 (2014)). Section 2-211 of the Code provides that a summons must be served by leaving a copy with the mayor or city clerk in the case of a city. Mot. at 2, quoting 735 ILCS 5/2-211 (2014). Respondent notes that the certificate of service for the complaint indicates that the complaint was mailed to the City of Chicago Department of Water Management. Mot. at 2. Respondent argues that neither the certificate of service nor the certified mail receipt indicate that the complaint was served upon the mayor or the city clerk. *Id.* Therefore, respondent asserts that the service of the complaint was insufficient and the Board lacks personal jurisdiction. *Id.* Respondent opines that the complaint must be dismissed.

DISCUSSION

The Board first notes that by failing to respond to the motion, any objection to the granting of the motion is deemed waived. *See* 35 Ill. Adm. Code 101.500(d). However, waiver of the objection does not bind the Board in ruling on the motion. *Id.*

With regards to service of a complaint, the Board's rules provide that:

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by registered or certified mail, messenger service, or personal service upon all respondents and the filing of the notice and complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h), and 101.304(c).)
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board. 35 Ill. Adm. Code 103.204(a) and (b).

The Board's rules further provide that:

The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent. 35 Ill. Adm. Code 101.100(b).

The Board's procedural rules do not expressly provide for who may receive service on behalf of a respondent such as the City of Chicago Department of Water Management. Therefore, the Board will look to the Code. *See e.g. Trepanier*, PCB 97-50, slip op. at 3.

Section 2-211 of the Code provides:

Service on public, municipal, governmental and quasi-municipal corporations. In actions against public, municipal, governmental or quasi-municipal corporations, summons may be served by leaving a copy with the chairperson of the county board or county clerk in the case of a county, with the mayor or city clerk in the case of a city, with the president of the board of trustees or village clerk in the case of a village, with the supervisor or town clerk in the case of a town, and with the president or clerk or other officer corresponding thereto in the case of any other public, municipal, governmental or quasi-municipal corporation or body. 735 ILCS 5/2-211 (2014).

Thus, to gain personal jurisdiction over a city, service must be completed on the mayor or city clerk.

Personal jurisdiction does not exist unless proper service of summons has been made. Miller v. Town of Cicero, 225 Ill. App. 3d 105, 110, 590 N.E.2d 490, 493 (1st Dist. 1992), citing

Giralamo v. O'Connell, 145 Ill. App. 3d 527, 495 N.E.2d 1180 (1st Dist. 1986). Absent proper service of summons, unless there is a general appearance or a waiver of process, personal jurisdiction can be obtained only by compliance with the applicable statute specifying the precise manner of service of process. *Id.* Without such compliance, the judgment is void even where defendant had actual knowledge of the proceedings. *Id.*, citing State Bank of Lake Zurich v. Thill, 113 Ill. 2d 294, 497 N.E.2d 1156 (1986). Further, personal jurisdiction may be exercised only over those respondents served in accordance with the applicable statute or rule. Trepanier, PCB 97-50, slip op. at 3, citing Miller, 225 Ill. App. 3d 105 (service upon office clerk of village was ineffective when statute required that service be made on president of board of trustees or village clerk).

The record demonstrates that complainant mailed by certified mail, return receipt requested, the complaint and notice to the City of Chicago Department of Water Management. The proof of service also shows that the complaint was sent to City of Chicago Department of Water Management. The law is clear that proper service on a city must be achieved by service on the mayor or city clerk. The record contains no evidence that the complaint was served on the mayor or city clerk. Therefore, the Board finds that the Board lacks personal jurisdiction over the respondent and grants respondent's motion to dismiss the complaint.

IT IS SO ORDERED.

Board Member J.A. Burke abstains.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2014); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 5, 2015, by a vote of 3-0.



John T. Therriault, Clerk
Illinois Pollution Control Board