

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1997

ANTONIO D.H. NAM,)	
)	
Complainant,)	
)	PCB 97-234
v.)	(Enforcement - UST - Citizens)
)	
KIKON SUH,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On September 18, 1997, complainant Antonio D.H. Nam (complainant) filed a request to file a motion for default judgment (motion) against respondent Kikon Suh (respondent). Complainant requests that he be allowed to file a motion for default judgment against respondent because complainant has been unable to effectuate service of the underlying complaint, filed with the Board on June 24, 1997, upon respondent. On September 30, 1997, complainant filed proof with the Board that he was able to serve respondent with an "Attempted Proof of Service and Request to File a Motion for Default Judgment" by certified mail. Complainant also indicated that "[a]s a courtesy" he would remail the complaint to respondent. For the following reasons, the Board denies complainant's motion.

Complainant's motion alleges that although he has attempted to serve respondent by certified mail on two separate occasions, each time the complaint was returned unclaimed. Mot. at 1. Unclaimed means that two attempts were made by the United States Post Office to deliver the certified letter to respondent and that notice was placed at respondent's residence that a letter was addressed to him which could be obtained at a local post office. If the letter is not picked up, it is returned to the sender unclaimed. Mot. at 1. The motion also states that complainant has hired a service to serve the complaint. Mot. at 2. The motion further alleges that respondent's action can only be interpreted as willful and a deliberate attempt to avoid service. Mot. at 2. Due to respondent's alleged actions, complainant requests that the Board accept complainant's attempt to serve respondent as service and allow him to file a motion for a default judgment against respondent.

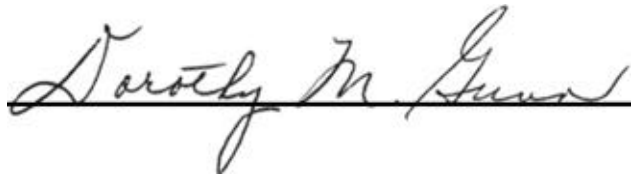
Section 31(d) of the Environmental Protection Act (Act) (415 ILCS 5/31(d) (1996)) provides that any person may file with the Board a complaint against any person allegedly violating the Act or any rules or regulations promulgated thereunder. Section 31(d) further directs that the complainant must immediately serve a copy of such complaint upon the person named in the complaint. 415 ILCS 5/31(d) (1996). The Board's procedural rules establish the methods of service of the complaint, including personal service, registered mail, and certified mail. See 35 Ill. Adm. Code 101.141; see also 35 Ill. Adm. Code 103.123(a).

In the present case, complainant has not served respondent with the complaint as required by Section 31(d) of the Act and Board rules. Therefore, the Board denies complainant's request that the Board accept complainant's attempt to serve respondent as service and allow him to file a motion for default judgment against respondent. The Board also emphasizes that simply mailing the complaint to complainant by First Class United States mail does not meet the requirements of Section 103.123(a) of the Board's rules. See 35 Ill. Adm. Code 103.123(a).

The Board further notes that its procedural rules only provide for the entry of a default order for the failure of a party to appear at a hearing or for the failure to proceed as ordered by the Board. See 35 Ill. Adm. Code 103.220; see also Turner v. Edmiston (February 27, 1992), PCB 91-147 (default order entered where respondent was served with the complaint, but failed to appear at hearing). Because neither circumstance is presented by the instant matter, the Board denies complainant's motion on this basis as well. Moreover, complainant has failed to cite any authority to support the relief he requests at this time, nor has the Board independently found any. Additionally, unlike administrative citations, there is no time deadline in which the complaint in this citizen's enforcement action must be served on respondent. See 415 ILCS 5/31.1(b) (1996). As complainant has indicated that he has hired a service to serve respondent, personal service may be effectuated in the future. If complainant cannot effectuate service on respondent by the methods outlined in Section 103.123(a), complainant may also move to serve respondent by publication. See People v. Cech (October 2, 1997), PCB 97-138.

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 16th day of October 1997, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board