

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,)	
)	
Complainant,)	PCB # 2015-139
v.)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY)	
DISTRICT,)	
)	
Respondent.)	

NOTICE OF FILING

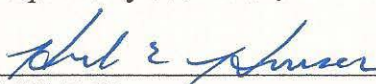
To:
Lawrence A. Stein
Huck Bouma PC
1755 South Naperville Road
Wheaton, IL 60189

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following documents:

SPECIAL AND LIMITED APPEARANCE OF JOSEPH R. PODLEWSKI JR.,
SPECIAL AND LIMITED APPEARANCE OF HEIDI E. HANSON and
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION,

a copy of which is hereby served upon you.

Respectfully submitted,



Heidi E. Hanson

Dated: March 11, 2015

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

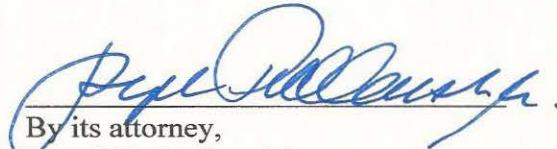
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HIGHLAND HILLS SANITARY)	
DISTRICT,)	
)	
Respondent.)	

SPECIAL AND LIMITED APPEARANCE OF JOSEPH R. PODLEWSKI

NOW COMES Joseph R. Podlewski Jr., of the law firm of PODLEWSKI & HANSON P.C. and hereby enters his special and limited appearance, as lead attorney, on behalf of Respondent, Highland Hills Sanitary District.

Respectfully submitted,
HIGHLAND HILLS
SANITARY DISTRICT



By its attorney,
Joseph R. Podlewski

Dated: March 11, 2015

Joseph R. Podlewski, Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
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SPECIAL AND LIMITED APPEARANCE OF HEIDI E. HANSON

NOW COMES Heidi E. Hanson, of the law firm of PODLEWSKI & HANSON
P.C. and hereby enters her special and limited appearance on behalf of Respondent,
Highland Hills Sanitary District.

Respectfully submitted,
HIGHLAND HILLS
SANITARY DISTRICT


By its attorney,
Heidi E. Hanson

Dated: March 11, 2015

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
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RESPONDENT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Respondent HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys, PODLEWSKI & HANSON P.C., hereby moves for the dismissal of the above-captioned matter for lack of personal jurisdiction.

In support of this motion, the District states as follows:

1. Although this motion is filed more than 30 days after an attempted service on the District (see paragraphs 3-4 herein), it is timely because jurisdictional issues can be raised at any time. *Berge v. Mader, et al.*, 2011 IL App (1st) 103778, ¶ 5.
2. On January 16, 2015, Complainant Susan M. Bruce ("Bruce") filed a Formal Complaint ("Complaint") against the District with the Illinois Pollution Control Board ("Board"), alleging violations of certain Illinois Pollution Control Board Water Pollution Control Rules.
3. On January 15, 2015, Bruce mailed a Certificate of Mailing and on March 2, 2015, Bruce mailed a Proof of Service of the Complaint to the Board. Both documents state that

a copy of the Complaint was placed in an envelope addressed to “Highland Hills Sanitary District.”

4. Attached to Bruce’s March 2, 2015 Proof of Service as Exhibit A thereto is a copy of the return receipt (“Green Card”). The Green Card provides that an “article” addressed to the District was received by Kirsten Schoenke on January 20, 2015.

5. Bruce’s attempt to serve her Complaint on the District by sending a copy to the District by U.S. Mail in an envelope simply addressed to the “Highland Hills Sanitary District” fails to comport with the requirements of Section 2-211 of the Illinois Code of Civil Procedure (735 ILCS 5/2-211) relating to service of process.

6. 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)) and it has done so in past rulings. *See Clayborne v. City of Chicago Department o Water Management*, PCB 15-120 (March 5, 2015); *Trepanier v. The Board of Trustees of University of Illinois at Chicago, et al.*, PCB 97-50 (November 21, 1996).

7. Section 2-211 of the Illinois Code of Civil Procedure provides, in pertinent part, that:

In actions against public, municipal, governmental or quasi-municipal corporations, summons may be served by leaving a copy 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.

8. The District is a municipal corporation, created under the Sanitary District Act of 1936 (70 ILCS 2805/1 *et seq.*). Accordingly, under Section 2-211 of the Illinois Code of Civil Procedure, service can only be made upon the District's president, clerk or "other officer corresponding thereto."

9. Because a copy of the Complaint was sent by U.S. Mail in an envelope simply addressed to the District, it was not served upon one of the specified officials of the District as required by 735 ILCS 5/2-211.

10. The District acknowledges that it received a copy of the Complaint on January 20, 2015. However, the individual who signed the Green Card, Kirsten Schoenke, is not a District official. (See the Affidavit of Kirsten Schoenke attached hereto as Exhibit A).

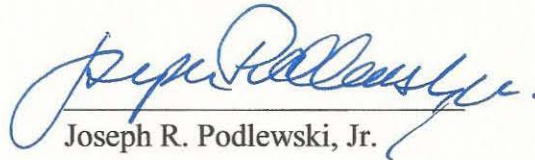
11. Furthermore, the fact that the District may have had "actual knowledge of the attempted service does not render the service effectual if in fact the process was not served in accordance with the requirements of the statute." *Trepanier v. Board of Trustees of University of Illinois at Chicago, et al.*, PCB 97-50 (November 21, 1996) at 5, quoting *Bell Federal Savings and Loan Association v. Horton*, 59 Ill. App 3d. 923, 930, 376 N. E. 2d 1029, 1035 (5th Dist. 1978).

12. "[T]he Board does not have discretion to ignore this jurisdictional requirement." *Trepanier v. Board of Trustees of University of Illinois at Chicago, et al.*, PCB 97-50 (November 21, 1996) at 5.

13. Because Bruce's attempt to serve the District with a copy of the Complaint did not comport with the requirements for service of process on a municipal corporation under Section 2-211 of the Illinois Code of Civil Procedure, the Board lacks personal jurisdiction over the District in this matter and the Complaint must be dismissed.

WHEREFORE, Respondent Highland Hills Sanitary District prays that the Complaint of Complainant Susan M. Bruce be dismissed for lack of personal jurisdiction.

Respectfully submitted,



Joseph R. Podlewski, Jr.

Dated: March 11, 2015

Joseph R. Podlewski Jr.
Heidi E. Hanson
PODLEWSKI & HANSON P.C.
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AFFIDAVIT OF KIRSTEN SCHOENKE

KIRSTEN SCHOENKE, being first duly sworn upon oath, deposes and states as follows:

1. I have personal knowledge of the facts stated herein and, if sworn as a witness, can testify competently thereto.
2. I am an employee of the Highland Hills Sanitary District and work at its office located at 566 E. 13th Place in Lombard, Illinois.
3. My normal working hours are 9:00 a.m. to 1:00 p.m. Monday through Friday.
4. My job title is Office Coordinator.
5. I am not now, nor have I ever been, the President, Clerk, Trustee or any other officer of the Highland Hills Sanitary District.

FURTHER AFFIANT SAYETH NOT.

K. Schoenke

KIRSTEN SCHOENKE

Subscribed and Sworn to before me this 10TH
day of March, 2015

John H. Brechin

Notary Public



CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served the attached:

SPECIAL AND LIMITED APPEARANCE OF JOSEPH R. PODLEWSKI R.,
SPECIAL AND LIMITED APPEARANCE OF HEIDI E. HANSON and
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

By electronic filing before 4:30 this day, March 11, 2015 upon:

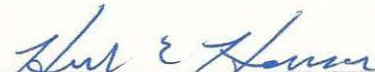
Clerk's Office On-Line
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Mail at Western Springs, Illinois before 4:30 this day, March 11, 2015 postage prepaid, upon the following persons:

One copy to:

Lawrence A. Stein
Huck Bouma PC
1755 South Naperville Road
Wheaton, IL 60189

Dated: March 11, 2015



Heidi E. Hanson

Joseph R. Podlewski Jr.
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