

ILLINOIS POLLUTION CONTROL BOARD  
December 7, 1995

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 96-12  
 ) (Administrative Citation)  
RCS, INC. and MICHAEL DUVALL, ) (IEPA No. 559-95-AC)  
 )  
Respondents. )

ORDER OF THE BOARD (By J. Yi):

On September 13, 1995 the Illinois Environmental Protection Agency (Agency) filed an administrative citation against RCS, Inc. and Michael Duvall as operators of a facility located in Jersey County, Illinois. The Agency filed the administrative citation pursuant to Section 31.1 of the Environmental Protection Act (Act). (415 ILCS 5/31.1 (1994).)

On October 12, 1995, respondents filed a limited appearance challenging the Board's jurisdiction to issue a default judgement in this administrative citation proceeding. Additionally, respondents filed a petition for review and dismissal. On November 2, 1995, the Board received a response to the motion to dismiss filed by the Agency. On November 13, 1995, the respondents filed a motion to file a reply to the Agency answer and its reply. The Board accepts both of these filings.

For the reasons stated below the Board grants the motion to dismiss the respondents RCS, Inc. and Michael Duvall.

Facts

On September 13, 1995 the Agency filed an administrative citation against RCS, Inc. and Mr. Duvall, as operators, alleging a violation of Section 21(o)(9) of the Act. (415 ILCS 5/21(o)(9) (1994).) The Agency attorney states, in a cover letter attached to the administrative citation, that the administrative citation was "mailed to Respondents on September 11, 1995, certified mail, return receipt requested", and that "[a]s soon as I receive the green receipt card back, I will notify you so that your files can reflect the exact date of service...". (AC at 1.)<sup>1</sup> The filing

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<sup>1</sup>The administrative citation filed with the Board will be referenced as "AC at ", the respondents motion to dismiss will be referred to as "Mot. at ", the Agency's response will be referenced as "Resp. at " and the respondents reply will be

states that service on RCS, Inc. was sent to Greg Ribaldo at 3950 Mississippi Avenue, Cahokia, Il. 66206 and to Michael Duvall, Chief Operator, RCS, Inc. Landfill, 1386 Crystal Lake Road, Jerseyville, Il. 62052, which is the address of the landfill. (AC at 1,9.) The administrative citation does not indicate that service had been made at the time of the its filing. On October 20, 1995 the Agency filed proof of service for Michael Duvall. Attached to the proof of service was a green receipt card indicating that on September 13, 1995, Sandy Moore signed under the signature as "Agent" for Mr. Duvall.

### Arguments

As stated previously, on October 13, 1995, the respondents through their attorney filed a "Special and Limited Appearance Petitioning the Illinois Pollution Control Board for Review and Dismissal of the Administrative Citation." (Mot. at 1.) The respondents argue that the Section 31.1(b) of the Act specifically directs the Agency to personally serve the administrative citation upon the named persons which, therefore, precludes sending the administrative citation by certified or registered mail. (Mot. at 2.) Although the respondents recognize that the Administrative Procedure Act (APA) and the Board's procedurals permit service by registered or certified mail, they argue that Section 31.1(e) specifically exempts the administrative citation process from the requirements of the APA and that if the statute sets forth the process of service it must be strictly adhered to. (Mot. at 2-4, Reply at 3-6.) Thus, the respondents conclude that since the administrative citation was served through the use of certified mail and was not personally served the Board lacks jurisdiction to hear the matter.

Alternatively, the respondents argue that even if service by registered or certified mail is allowed the Agency has not demonstrated that service was done in compliance with the Board's regulations. (Mot. at 5.) Specifically, the respondents argue that the Agency has failed to immediately file proof of service and demonstrate service on both respondents. (Mot. at 5-8.) The respondent, Mr. Duvall argues that he was not personally served and that he did not personally sign a mail receipt for the administrative citation. (Mot. at 6.) Furthermore, citing to In re J & R Landfill, AC 89-79, (July 13, 1989), Mr. Duvall argues "...that there is no evidence that any person who might have signed a letter containing an administrative citation was an 'authorized agent' as required by the Act". (Mot. at 6-7.) RCS, Inc. argues that there is no evidence that it was served either personally or through its agent. (Mot. at 7.)

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referred to as "Reply at ".

The Agency argues that the respondents' interpretation of the statute would have a respondent in an enforcement proceeding, which could result in much more severe penalties being assessed, being served by registered mail and certified mail, but a respondent in an administrative citation, where the penalties are statutorily set at \$500 per violation, being served personally. (Resp. at 1.) The Agency concludes by arguing that it is more equitable and consistent for service of process in administrative citations to include service by registered and certified mail. (Resp. at 2.) In response to respondents' arguments that the Agency failed to comply with the Board's procedural rules and decisions, the Agency states that it has been its policy to mail the proof of service immediately upon receiving the green card receipt from the U.S. Postal Service. (Resp. at 2.) In cases when there are two respondents, the Agency holds the green card receipts until all are received. (Resp. at 2.) In this case, the Agency states it was waiting for the green card receipt to be returned for RCS, Inc. and has been subsequently informed by the U.S. Postal service that the service of the administrative citation was undeliverable. (Resp. at 2.)

The Agency argues that it has complied with Board regulations in the service of the administrative citation against Mr. Duvall by sending the administrative citation by certified mail to his place of employment. (Resp. at 2.) Additionally, citing to Dobrowolski v. Laporte, 348 N.E.2d 237 (1st Dist. 1976), the Agency argues that the method of service in this case is reasonable and to require the Agency to ensure that a person signing as agent is the agent for the person being served is unreasonable and would subvert the purpose of utilizing registered and certified mail. (Resp. at 3-4.) The Agency requests that the Board dismiss the action against RCS, Inc. due to the lack of service and deny the motion to dismiss concerning Mr. Duvall and set this matter to hearing. (Resp. at 4.)

The respondent, Mr. Duvall, argues in his reply to the Agency's response, that Dobrowolski, does not apply because the court was construing Supreme Court Rule 284(b) which did not require the action to be directly served on the defendant as does Section 31.1 of the Act. (Reply at 1-2.) Furthermore, the rule has been amended which limits the precedential value of Dobrowolski. (Reply at 2.) Finally, respondent re-argues the same issues in its motion to dismiss concerning whether service of an administrative citation may be done by registered or certified mail. (Reply at 3-6.)

#### Applicable Law

Section 31.1(b) of the Act in pertinent part states the following:

...the Agency ... may issue and serve an administrative citation upon such person within not more than 60 days after the date of the observed violation. Each such citation issued shall be served upon the person named therein or such person's authorized agent for service of process, and shall include...

The Board's procedural regulations governing service of process are found in 35 Ill. Adm. Code 101.141, 101.243, and 103.123 which provide in pertinent part as follows:

Section 101.141

A copy of all initial filings in any Board proceeding shall be served upon all persons, required by this Chapter to be served, or their registered agent. 35 Ill. Adm. Code 102 through 120 set forth more specifically who must be served in any given type of Board proceeding. Service of all initial filings shall be made personally, or by registered, certified or First Class mail, or by messenger service. However, initial complaints in enforcement proceedings pursuant to 35 Ill. Adm. Code 103 must be served personally, by registered or certified mail, or by messenger service.

Section 101.243(b), (c)

- b) All motions challenging the jurisdiction of the Board shall be filed prior to the filing of any other document by the moving participant or party, unless the Board determines that material prejudice will result. Such participant or party will be allowed to appear specially for the purpose of making such motion.
- c) A person may participate in a proceeding without waiving any jurisdictional objection if such objection is timely raised pursuant to subsection (b).

Section 103.123

- a) A copy of the notice and complaint shall either be served personally on the respondent or his authorized agent, or shall be served by registered mail with

return receipt signed by the respondent or his authorized agent. Proof shall be made by affidavit of the person making the personal service, or by properly executed registered or certified mail receipt. Proof of service of the notice and complaint shall be filed with the Clerk immediately upon completion of service.

### Discussion

The Board disagrees with the respondents' interpretation of Section 31.1 of the Act in that service can not be made by registered or certified mail. Section 31 of the Act concerning enforcement actions states that "...the Agency shall issue and serve upon the person complained against a written notice..." (415 ILCS 5/31 (1994).) Section 31.1(b) of the Act states that the administrative citation shall be "...served upon such person named therein...". Arguably there is no language difference between the two sections requiring service. Section 31.1(e) exempts certain provisions of the APA from applying to the administrative citation proceeding. The Board interprets that exemption of sections of the APA as relating the hearing in the administrative citations and not for the purposes of service.

Those particular sections of the APA concern "Contested cases-Notice-Hearing", "Disqualification of the administrative law judge", "Record in contested cases", "Rules of Evidence-Official Notice", "Proposal for Decision", "Decisions and orders" and "Ex parte communication", which are all related to the hearing. None of the APA sections address service by the complainant on the respondent in an action. Instead the APA section entitled "Contested cases-Notice-Hearing" (5 ILCS 100/10-25) addresses when the agency gives notice of a mandatory hearing. (415 ILCS 5/31.1(d)(1) (1994).) However, in administrative citations there is no mandatory hearings. The Board finds that General Assembly did not mean to exclude service by registered mail or certified mail by the language of Section 31.1(e) of the Act. The Board has been given the general authority to adopt such procedural rules to carry out the purposes of the Act. (415 ILCS 5/26 (1994).) The Board has adopted, pursuant to the APA, procedural rules which apply equally to the enforcement actions brought pursuant to Title VIII of the Act. Those procedural rules set forth the acceptable methods of service such as the use of registered or certified mail.

The Agency concedes that the Board should dismiss RCS, Inc. because service was not delivered. RCS, Inc states that it was never served with the administrative citation. Pursuant to Section 31.1(b) the Agency must serve the administrative citation

within 60 days of the observed violation. Since the Agency has not served the administrative citation upon RCS, Inc. within 60 days of the observed violation, RCS, Inc. is dismissed from this matter.

Mr. Duvall argues that he was not served and that there is no evidence that Sandy Moore is his "authorized agent" citing to In re J & R Landfill. In In re J & R Landfill the Board was confronted with a similar situation as here. In In re J & R Landfill St. Clair County named J & R Landfill Inc. (J&R) as a respondent and sent the administrative citation by registered or certified mail to a Mr. James Quirin who was neither the registered agent nor an officer of J&R at the time of service. St. Clair County asserted that the mail receipt was signed by another employee of J&R, Dennis Blevins, which constitutes adequate service. The Board stated the following:

Apparently Dennis Blevins signed the certified mail receipt. Although St. Clair County states that Dennis Blevins is an agent for J&R, it is not argued that Mr. Blevins is an "authorized agent" in terms of receiving administrative citations for J&R. Moreover, St. Clair County does not indicate a factual basis for its conclusion that Mr. Blevins is an agent of any kind for J&R. Mr. Blevins signature is by itself no evidence of agency: it is well settled that agency cannot be imputed solely on the basis of representations by the putative agent. See Schoenberger v. Chicago Transit Authority, 84 Ill. App.3d 1132, 405 N.E.2d 1076(1980). In addition, for service of process, even apparent authority is insufficient. See Slates v. International House of Pancakes, 90 Ill. App. 3rd 716, 413 N.E.2d 457 (1980).

In this case, however, we are determining whether service can be made on an individual not a corporation. Usually an individual will not have a registered agent and service is usually done at the individual's place of abode.

In this instance the Agency attempted service by sending the administrative citation by certified mail to Mr. Duvall's place of employment. In Schusterman v. Northwestern Medical Faculty, Foundation, 142 Ill.Dec. 437, 552 N.E.2d 1178, 195 Ill.App.3d 632 (1st. Dist.) the court held that service cannot be made on an individual by substitute service on a business partner. While the Agency argues that it would be impracticable to require the Agency to perform an inquiry as to the actual agency status of a person who states that they are an "authorized agent", the Agency could have avoided this by sending the administrative citation to Mr. Duvall's usual place of abode pursuant to the Illinois Code of Civil Procedure. (735 ILCS 5/2-203(a) (1994).) We find that since Mr. Duvall, or that his authorized agent, did not sign the

receipt, the Agency failed to serve Mr. Duvall with the administrative citation within 60 days of when the alleged violation was observed. Pursuant to Section 31.1(b) of the Act, Mr. Duvall dismissed from this matter.

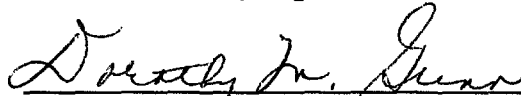
#### Conclusion

For the reasons stated above we find that the Agency has failed to properly serve respondents with the administrative citation within 60 days of the observed alleged violation as required pursuant to Section 31.1(b) of the Act. The Board accordingly dismisses the administrative citation as to each respondent and closes the docket in this matter.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7<sup>th</sup> day of December, 1995, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board