

ILLINOIS POLLUTION CONTROL BOARD
May 11, 1989

ST. CLAIR COUNTY,)
)
 Complainant,)
)
 v.) AC 89-18
)
 J & R LANDFILL, INC.,)
)
 Respondent)

ORDER OF THE BOARD (by J. Marlin):

On May 8, 1989, J & R Landfill, Inc. (J&R) filed a Motion to Dismiss for lack of jurisdiction. The Board received a response by St. Clair County on May 10, 1989.

In J & R's motion, J & R asserts that the Board lacks jurisdiction of this matter because, according to J & R, the administrative citation issued by St. Clair County was improperly served upon J & R. Specifically, J & R asserts that the administrative citation was served on James Quirin and that James Quirin is not the registered agent for the corporation. Attached to J & R's motion is the annual report of J & R, which lists James Quirin as an officer of the corporation (specifically the Secretary) and not the registered agent. J & R states that service of process on a corporation may only be effectuated by serving papers upon the registered agent. As a result, J & R requests that this matter be dismissed.

In response, St. Clair County first cites 35 Ill. Adm. Code 103.140(i) for the proposition that J & R waived any jurisdictional objection to the citation because J & R did not raise the issue in its initial pleading (petition for review filed February 2, 1989). Alternatively, St. Clair County states that a corporation may be served with process by means other than by serving the registered agent. St. Clair County asserts that serving the citation upon James Quirin, Secretary of J & R, equates to proper service upon J & R. St. Clair County requests that the Board deny J & R's motion.

Section 31.1(b) of the Environmental Protection Act states:

Each [administrative] citation issued shall be served upon the person named therein or such person's authorized agent for service of process...

Ill. Rev. Stat. 1987, ch. 111-1/2,
par. 1031(b).

The term "person" is defined by Section 3.26 of the Act as including a corporation.

Under 35 Ill. Adm. Code 103.123, service of a complaint may be accomplished by certified mail with a signed receipt as proof of service.

On January 12, 1989, St. Clair County filed a signed certified mail receipt as proof of service of the citation upon J & R. The receipt indicate;s that the citation was mailed to "James Quirin, J & R Landfill, Inc."

Given Mr. Quirin's position in J & R, the Board finds that service in accordance with Section 31.1(b) was properly effectuated upon J & R by mailing James Quirin the citation. J & R's motion is denied.

Additionally, the Board notes that Ill. Rev. Stat. 1987, ch. 110, par. 2-204 states:

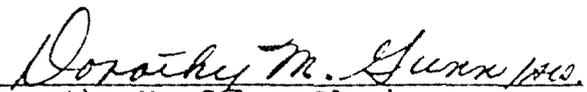
Service on private corporations. A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.

While it has been held that the Illinois Code of Civil Procedure does not apply to Board proceedings, (Village of South Elgin v. Waste Management of Illinois, 64 Ill. App. 3d 365, 381 N.E.2d 778 (2d Dist. 1978)), the Board notes that its action today appears to be generally consistent with the intent of the Illinois Code of Civil Procedure.

The Board notes that it does not today address the waiver argument put forth by St. Clair County.

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 11th day of May, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board