

ILLINOIS POLLUTION CONTROL BOARD

October 5, 2006

COUNTY OF OGLE,)	
)	
Complainant,)	
)	
v.)	AC 06-53
)	(Administrative Citation)
GEORGE C. HEAL,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

In an order dated August 4, 2006, the Board accepted for hearing a petition for review from the respondent, George Heal. Because the respondent in that petition questioned whether the County of Ogle had adequately served him with the citation, the Board in that August 4, 2006 order also directed the parties to submit filings addressing that issue.

Today, the Board finds on the basis of its procedural rules and the facts of this case that the County of Ogle did adequately serve the citation on the respondent. Accordingly, the Board directs the hearing officer to proceed expeditiously to hearing.

PROCEDURAL HISTORY

On June 16, 2006, the County of Ogle (County) timely filed an administrative citation against George C. Heal (respondent). On July 25, 2006, the respondent timely filed a petition (Pet.) to contest the administrative citation. Among his grounds for contesting the citation, the respondent stated that he was out of town at the time the citation was served upon him and that the person who signed for the certified mail was not authorized to do so on his behalf.

In an order dated August 4, 2006, the Board accepted the respondent's petition for hearing but requested that the hearing officer postpone scheduling a hearing. In the same order, the Board directed the County by August 25, 2006, to file a document addressing the issue of adequacy of service. Also in that order, the Board allowed the respondent to file a response to that filing by September 8, 2006.

On August 25, 2006, the County filed complainant's response to the Board's direction to address adequacy of service on the respondent (Comp. Resp.). On September 11, 2006, the respondent filed his response (Resp. Resp.), which was timely as it was mailed on or before the filing deadline. 35 Ill. Adm. Code 101.300(b)(2).

FACTUAL BACKGROUND

On June 16, 2006, the County filed with the Board an administrative citation against the respondent. On June 22, 2006, the County filed proof of service of the citation upon the respondent. A certified mail receipt shows that, on June 15, 2006, the Ogle County State's Attorney mailed article number 7003 31100001 9352 1552 containing materials pertinent to this citation to George Heal at 1581 Deerpath Lane, Franklin Grove, Illinois. The return receipt corresponding to that article number shows that, on June 16, 2006, Laura Dahm signed for and received that article at the Deerpath Lane address.

COMPLAINANT'S RESPONSE TO BOARD'S DIRECTION

In support of its position that it adequately served the respondent, the County argues that "an Administrative Citation may be served upon the person complained against with written notice by certified mail." Comp. Resp. at 1, citing 415 ILCS 5/30 *et seq.* (2004); 35 Ill. Adm. Code 101.304. The County further argues that this citation was served upon the respondent by certified mail. Comp. Resp. at 1; *see* Comp. Resp., Atts. A, B (certified mail records). The County claims that, "[p]ursuant to 35 Ill. Adm. Code 101.300(c), service by certified mail is presumed complete on the date specified on the mail receipt." Comp. Resp. at 2.

When a statute authorizes service by certified mail, claims the County, "[d]ue process does not require that the Complainant provide proof of actual notice or receipt by the intended recipient for service to be effective." Comp. Resp. at 2. Because the respondent has filed a petition for review of the County's allegations, the County argues that the respondent has been served with the citation.

RESPONDENT'S RESPONSE TO BOARD'S DIRECTION

The respondent first agrees with the County's assertion that "an Administrative Citation may be served upon the person complained against with written notice by certified mail." Resp. Resp. at 1; *see* 415 ILCS 5/30 *et seq.* (2004); 35 Ill. Adm. Code 101.304. Characterizing the person who accepted service of the citation as "a complete stranger to these proceedings," the respondent "denies that a Citation was served upon the Respondent by certified mail because the certified mail was accepted by a non-authorized non-member of Mr. Heal's household." Resp. Resp. at 1. The respondent suggests that service is complete only if the date on the certified mail receipt indicates the date on which the respondent received the citation. *Id.*

Although the respondent acknowledges that a citation has been filed, he argues that his acknowledgement and petition for review do not obviate the requirement that the County properly serve the citation. The respondent argues that "[d]ue process does require service upon the respondent," and that the certified mail receipt submitted by the County does not satisfy that requirement. Resp. Resp. at 1 (emphasis in original).

BOARD DISCUSSION

Section 101.304 of the Board's procedural rules provides that "service of enforcement complaints and administrative citations [] must be made personally, by registered or certified mail, or by messenger service." 35 Ill. Adm. Code 101.304. After considering the plain

language of its procedural rules and the facts of this case, the Board finds that the County has adequately served the citation. The record shows that, on June 15, 2006, the Ogle County State's Attorney sent the citation to George Heal at 1581 Deerpath Lane, Franklin Grove, Illinois. The Board notes that the respondent has not claimed that the Deerpath Lane address is not his home address. *See* Pet. at 1; Resp. Resp. at 1-2. In fact, in his petition for review, the respondent states that the person who accepted service of the citation was "at our house taking care of our animals." Pet. at 1 (¶1). The State's Attorney sent the citation by certified mail, one of the four methods specifically authorized by Section 101.304(c) of the Board's procedural rules.

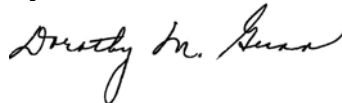
In addition, the Board notes that the respondent has filed with the Board a timely petition for review, which addresses the allegations made in the county's citation. While this filing does not itself show adequate service on the respondent, it is consistent with adequate and timely service of the respondent by the County.

CONCLUSION

The Board finds on the basis of the facts in this case that the County has provided adequate service of the administrative citation upon the respondent. Consequently, the Board directs the hearing officer to proceed expeditiously to hearing consistently with the Board's August 4, 2006 order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 5, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board