

ILLINOIS POLLUTION CONTROL BOARD
March 14, 2012

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MAR 14 2012

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 12-21
) (Enforcement - Land)
ALTIIVITY PACKAGING, LLC,)
a Delaware limited liability company,)
INTRA-PLANT MAINTENANCE)
CORPORATION, an Illinois corporation,)
IRONHUSTLER EXCAVATING, INC.,)
an Illinois corporation, and)
RON BRIGHT d/b/a QUARTER)
CONSTRUCTION,)
)
Respondents.)

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HEARING OFFICER ORDER

On March 12, 2012, the parties participated in a telephone status conference with the hearing officer. The parties discussed proof of service issues pertaining to Intra-Plant Maintenance Corporation's (Intra-Plant's) cross complaint against Ironhustler Excavating, Inc. (Ironhustler), but the same issues apply to Altivity Packaging's (Altivity's) cross claim against Intra-Plant, Ironhustler, and Mr. Bright.

Specifically, any new citizen's enforcement complaint must be served by certified mail, messenger service, or personal service even if the claim is made against existing parties. Proof of service must be in the form of a return receipt for certified mail and messenger service, or an affidavit for personal service. *See* 35 Ill. Adm. Code 101.304(c), 103.204, and 103.206. The respondents then have 30 days from service to file a motion to dismiss on grounds that the allegations are duplicative or frivolous. *See* 35 Ill. Adm. Code 101.506. If the complaint is neither duplicative nor frivolous, the Board will accept the complaint for hearing, at which time the 60 time period to answer the complaint will begin. *See* 35 Ill. Adm. Code 103.204(d).

In this instance, neither Altivity, nor Intra-Plant served by certified mail. Their most recent filings do not resolve service issues. However, to move this action forward without additional service, the respondents in the newly filed cross claim and cross complaint can acknowledge receipt of the complaints against them. This would allow the hearing officer, if necessary, to set a deadline for the filing of any motions to dismiss for duplicative or frivolous claims.

Mr. Immel, who represents Ironhustler and Mr. Bright, acknowledges receipt of Altivity's cross claim and Intra-Plant's cross complaint. Mr. Immel further states that he will not be filing a motion on behalf of his clients to assert that the claims are duplicative or frivolous.

On or before March 26, 2012, Intra-Plant is directed to contact the hearing officer to acknowledge receipt of Altivity's cross claim, or request that Altivity serve the cross claim via certified mail, and submit proof of service to the Board. (The date of Intra-Plant's receipt of any certified mail complaint would trigger the 30 days for the filing of a motion asserting that the claims are duplicative or frivolous.)

Intra-Plant should also advise the hearing officer whether it will be filing a dismissal motion. If Intra-Plant chooses to acknowledge receipt, and wishes to file a dismissal motion, the hearing officer will set a deadline for that filing. If no motion will be filed, the hearing officer will advise the Board that it may proceed with the order accepting the complaints for hearing.

The parties are reminded to participate in a telephone status conference with the hearing officer at 2:00 p.m. on May 14, 2012. The status conference shall be initiated by the People.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 14, 2012, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 14, 2012:

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Illinois Pollution Control Board
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