

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANDRA CLAYBORNE,)
)
 Complainant,)
)
 v.) PCB 15-120
)
 CITY OF CHICAGO DEPARTMENT)
 OF WATER MANAGEMENT)
)
 Respondent.)

RECEIVED
CLERK'S OFFICE
JAN 27 2015
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

ORIGINAL

To: Mark A. Schaeve
Schaeve Law Office
101 N. Wacker Dr., Ste. 2010
Chicago, IL 60606

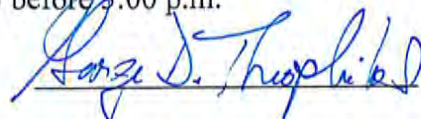
PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the City of Chicago's Special and Limited Appearance and Motion to Dismiss, copies of which are herewith served upon you.


GEORGE D. THEOPHILOS
Senior Corporation Counsel
CHARLES A. KING
Assistant Corporation Counsel
City of Chicago Department of Law
30 N. LaSalle St., Ste. 1400
Chicago, Illinois 60602
(312) 742-3990

Dated: January 27, 2015

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused this Notice of Filing, with enclosures referenced therein, to be served upon the attorney listed above by U.S. Mail by causing same to be deposited into the U.S. Mail at 30 North La Salle Street, Chicago, Illinois, proper postage prepaid, on this 27th day of January, 2015 before 5:00 p.m.



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
JAN 27 2015
STATE OF ILLINOIS
Pollution Control Board

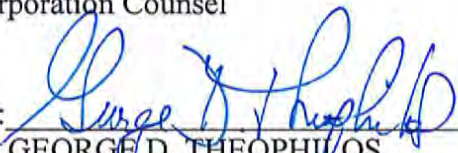
SANDRA CLAYBORNE,)
)
 Complainant,)
)
 v.)
)
 CITY OF CHICAGO DEPARTMENT)
 OF WATER MANAGEMENT)
)
 Respondent.)

PCB 15-120

SPECIAL AND LIMITED APPEARANCE

I hereby file my special and limited appearance in this proceeding, on behalf of the City of Chicago.

THE CITY OF CHICAGO
Stephen R. Patton
Corporation Counsel

By: 

GEORGE D. THEOPHILOS
Senior Corporation Counsel
CHARLES A. KING
Assistant Corporation Counsel
Chicago Department of Law
30 N. LaSalle St., Ste. 1400
Chicago, Illinois 60602
(312) 742-3990

Atty. No. 90909

Dated: January 27, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
JAN 27 2015
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

SANDRA CLAYBORNE,)
)
 Complainant,)
)
 v.) PCB 15-120
)
 CITY OF CHICAGO DEPARTMENT)
 OF WATER MANAGEMENT)
)
 Respondent.)

**CITY OF CHICAGO'S MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION**

Pursuant to § 101.400(a)(5) of the Illinois Pollution Control Board's Procedural Rules ("Board Rules"), 735 IL Adm. Code 5/101.400(a)(5), and §§ 5/2-211 and 5/2-301(a) of the Illinois Code of Civil Procedure ("Code of Civ. Pro."), 735 ILCS 5/2-211 and 5/2-301(a), the City of Chicago ("City"), through the special and limited appearance of its attorney, Stephen R. Patton, Corporation Counsel, hereby moves for dismissal of the Complaint for lack of personal jurisdiction, and as grounds therefor, states:

1. In *Lionel P. Trepanier, et al. v. The University of Illinois, et al.*, PCB 97-50 (November 21, 1996), 1996 WL 709199, the Illinois Pollution Control Board ("Board") dismissed a Complaint filed against the University of Illinois for lack of personal jurisdiction because the complaint was not served upon the officers or officials authorized to accept service of process on behalf of a public corporation under § 5/2-211 of the Code of Civ. Pro., 735 ILCS 5/2-211. For the reasons set forth below, application of the Board's holding in *Trepanier* to the undisputed facts in this matter, requires that the Complaint against the City be dismissed for lack of personal jurisdiction.

2. Section 5/2-211 of the Code of Civ. Pro., 735 ILCS 5/2-211, provides in pertinent part:

§ 2-211. Service on public, municipal, governmental and quasi-municipal corporations. In actions against public, municipal, governmental or quasi-municipal corporations, summons may be served by leaving a copy ... *with the mayor or city clerk in the case of a city....* (Emphasis added.)

3. The City of Chicago is a city within the meaning of 735 ILCS 5/2-211.

4. Section 101.304(b) of the Board Rules, 735 IL Adm. Code 5/101.304(b), provides that proof of service of initial filings must be filed with the Board by complainant upon completion of service. The Certificate of Service on page 7 of the Complaint filed in this matter as posted in the Board's electronic case file, Exhibit A, hereto, states:

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, CERTIFY THAT I HAVE SERVED THE ATTACHED Notice and this formal Complaint, by placing same in the U.S. mail certified, with return receipt requested, in Chicago, Illinois on 11/21/14 addressed to:

City of Chicago Department of Water Management
City Hall
121 N. LaSalle Street
Chicago, Illinois 60602

5. Further, the certified mail receipt posted in the Board's electronic case file, Exhibit B, hereto, likewise identifies the entity upon which service was allegedly made as the City of Chicago Department of Water Management at 121 N. La Salle St., Chicago, IL.

6. Neither the Complainant's Certificate of Service nor the certified mail receipt posted in the Board's electronic case file were addressed to, nor provide proof of service upon, the Mayor or the City Clerk as required by 735 ILCS 5/2-211. Therefore, Complainant's alleged service of the notice and complaint was insufficient or improper as a matter of law and consequently the Board lacks personal jurisdiction over the City in this matter.

7. Section 5/2/-301(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-301, provides in pertinent part:

§ 2-301. Objections to jurisdiction over the person.

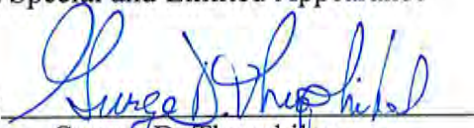
(a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, ... on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.1. Unless the facts that constitute the basis for the objection are apparent from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts.

WHEREFORE, for the reasons set forth herein, the City respectfully requests that the Board dismiss the Complaint against the City for lack of personal jurisdiction.

Dated: January 27, 2015

Respectfully submitted,

THE CITY OF CHICAGO
Stephen R. Patton
Corporation Counsel
Via Special and Limited Appearance

By: 
George D. Theophilos
Charles A. King

#90909
GEORGE D. THEOPHILOS
Senior Corporation Counsel
CHARLES A. KING
Assistant Corporation Counsel
Chicago Department of Law
30 N. LaSalle St., Ste. 1400
Chicago, Illinois 60602
(312) 742-3990

EXHIBIT A

Respectfully submitted,
SCHAEVE LAW OFFICE

By Mark Schaeve,
One of the attorneys for SANDRA CLAYBORNE

Mark A. Schaeve
Schaeve Law Office
2748 Maple Ave.
Downers Grove, Ill. 60515
(773) 899-0095 (p)
mschaeve@gmail.com
Atty. No. 6291156

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Notice and this Formal Complaint, by placing same in the U.S. mail certified, with return receipt requested, in Chicago, Illinois on 11/21/14 addressed to:

City of Chicago Department of Water Management
City Hall
121 N. LaSalle Street
Chicago, Illinois 60602

Mark Schaeve

Mark A. Schaeve

EXHIBIT B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

City of Chicago Dept. Water Mgmt
121 N. La Salle St.
Chicago, IL 60602

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 [Signature] 12/8/14

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

RECEIVED
CLERK'S OFFICE

DEC 23 2014

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

2. Article Number (Transfer from service label) 7009 2820 0001 5913 5882

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Postal Service...
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

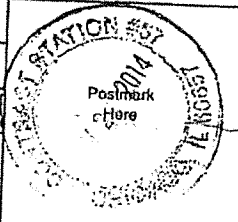
OFFICIAL USE

Postage	\$ 1.19
Certified Fee	3.30
Return Receipt Fee (Endorsement Required)	2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.19

Sent To: City of Chicago Dept. Water Mgmt.
 Street, Apt. No., or PO Box No.: 121 N. La Salle St.
 City, State, ZIP+4: Chicago, IL 60602

PS Form 3800, August 2005 See Reverse for Instructions

7009 2820 0001 5913 5882



POSTAL SERVICE
 CHICAGO, IL 60602
 PM 8-09
 0013
 *7.19
 *10.00
 *2.81
 00-10-2000 MC #:0000
 DEPT 17
 TOTAL AMOUNT CHANGED
 PLEASE COME AGAIN
 * YOUR RECEIPT *
 * THANK YOU *
 * * * * *

PCB15-120