

ILLINOIS POLLUTION CONTROL BOARD

April 4, 2002

SANDRA STANTON,)
)
 Complainant,)
)
 v.) PCB 02-89
) (Citizens Enforcement – Air)
 MRS. JESSIE OYSTON, MAYOR (Village of)
 Buckner),)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On January 2, 2002, Sandra Stanton (Stanton) filed a citizen's enforcement action Against Mrs. Jessie Oyston, the Mayor of the Village of Buckner (Oyston). Under the Board's procedural rules, such complaints are placed on the Board's meeting agenda for a duplicitous and frivolous determination. *See generally* 35 Ill. Adm. Code 103.212. In the complaint, Stanton alleges that Oyston violated Section 9(c) of the Environmental Protection Act (Act) (415 ILCS 5/9(c) (2000)), by causing or allowing the open burning of refuse in the Village of Buckner, Franklin County. To date, Oyston has not responded to the complaint.

The Board finds that this complaint is frivolous. This matter is not accepted for hearing, and the docket is closed.

BACKGROUND

Stanton is a resident of the Village of Buckner. Stanton states that she has lived in the area for three years. Comp. at 3. Stanton filed the instant complaint in response to open burning of refuse that is allegedly occurring within 30 to 100 feet of her residence. *Id.* Oyston is the Mayor of the Village of Buckner. Stanton does not allege that Oyston herself has actually committed acts of open burning. Rather, Stanton's allegations against Oyston appear to be based solely on Oyston's status as Village Mayor. Specifically, Stanton states, "[t]he mayor . . . is fully aware of the two specific locations where the regular burning of garbage most adversely affects me." Comp. at 3.

Stanton alleges that, "[a]ll residents of the Village of Buckner who choose to burn their garbage," are responsible for the alleged violation. Comp. at 2. However, Stanton is unwilling to definitively identify the alleged offenders, stating, "[e]ven though I need immediate relief, it is wise that I not give you names and addresses at this time." Comp. at 3.

Stanton describes the burning activities as follows:

[g]arbage in the barrels used burns, then smokes excessively, then smolders for many hours emitting suffocating toxic fumes. This is as close to me as 30 and 100 feet. Burning garbage can also be smelled from across town in lesser degrees. This is a town wide problem. The neighbors near me are an example. Comp. at 3.

She also describes the frequency of the burning as “a near weekly basis” or “several times a week.” Comp. at 3. Stanton alleges that the burning was occurring when she moved to the area three years ago and that it has continued the entire time she has lived there. *Id.*

Stanton seeks a Board order that would require the immediate cessation of openly burning garbage in Buckner. Comp. at 4. Stanton asks that, “the Mayor of Buckner, Jessie Oyston be held responsible for seeing that the Illinois laws concerning the burning of garbage be enforced.” *Id.*

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 31(d) of the Act provides:

Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder or any permit or term or condition thereof. The complainant shall immediately serve a copy of such complaint upon the person or persons named therein. Unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein, in accord with subsection (c) of this Section. 415 ILCS 5/31(d) (2000).

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. 35 Ill. Adm. Code 101.202; Brandle v. Ropp, PCB 85-68 (June 13, 1985).

The Board has not identified any other cases, identical or substantially similar to this, pending in this or any other forum. Therefore, based on the record before us, this matter is not duplicitous.

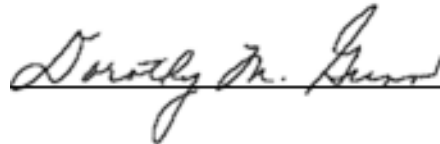
Frivolous

An action before the Board is frivolous if it requests relief that the Board does not have the authority to grant or if the complaint fails to state a cause of action upon which the Board can grant relief. 35 Ill. Adm. Code 101.202; Lake County Forest Preserve Dist. v. Ostro, PCB 92-80 (July 30, 1992).

In the present case, the complaint fails to state a cause of action upon which the Board can grant relief. Stanton's complaint names only Oyston, the Mayor of Buckner, as a respondent. In the complaint, Stanton acknowledges that Oyston did not commit any acts of open burning and declines to identify any person committing such acts. Instead, the complaint alleges that Oyston is aware of the alleged violations and should be held responsible. However, being aware of a violation does not equate to allowing a violation. As pled, the complaint is not sufficient to find that Oyston caused or allowed open burning under the Act. Stanton has not provided any legal basis to support her claim that Oyston is responsible for the alleged violations of the various unnamed citizens of the Village of Buckner. If the facts alleged in the complaint are accepted as true, the Board could not find that Oyston caused or allowed the open burning of refuse, and a violation of Section 9(c) of the Act could not be proved. *See* 415 ILCS 5/9(c) (2000). Accordingly, this complaint is frivolous and will be dismissed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 4, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board