

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VAN ZELST LANDSCAPE COMPOST FACILITY,)	
)	
Petitioner,)	
)	
v.)	PCB 11-7
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

PETITIONER'S MOTION FOR SUMMARY JUDGEMENT

Now comes Petitioner Van Zelst Landscape Compost Facility, by and through Larry M. Clark, its attorney, and hereby moves the Illinois Pollution Control Board ("Board"), pursuant to 35 Ill.Adm.Code 101.516 for Summary Judgement as against the Illinois Environmental Protection Agency ("Agency") and states in support of said Motion as follows:

INTRODUCTION/BACKGROUND

1. That on or about March 24, 2010 the Agency received an Application for Permit to develop a landscape waste compost facility, dated March 10, 2010 and prepared by Camp Dresser & McKee, Inc.
2. That on July 22, 2010 the Agency "denied" said request (Page 001/PCB11-07). The basis for the denial of said request was stated as follows: "The proposed facility does not meet he (sic) required setback of an 1/8 of a mile from the nearest residence as required, pursuant to 35 IAC 830.203(a)(3)."
3. That the parties have stipulated as follows: "Petitioner and Respondent stipulate that in this case, the proposed compost facility is located less than 1/8th of a mile from the property boundary line of the nearest residential property, but more than 1/8th of a mile from the

house located upon the adjacent property. The correct application of the 1/8th mile setback requirement, and the appropriate definition of 'residence', are the sole issues in this case."

PRELIMINARY MATTERS

1. That 35 IAC 830.203(a)(3) states as follows:

(a) With the exception of on-farm landscape waste operations, all landscape waste compost facilities subject to this Part shall comply with the following:

(3) The composting area of the facility must be located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence, and in the case of a facility that is developed or the permitted composting area of which is expanded after November 17, 1991, the composting area shall be located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility). (Section 39(m) of the Act) In addition, in the case of a facility that is developed or the permitted composting area of which is expanded after January 1, 1999, the composting area shall be located at least 1/8 mile from the property line of each of the following:

(A) Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;

(B) Primary and secondary schools and adjacent areas that the school uses for recreation; and

(C) Any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation.

2. That the interpretation of this section of the Illinois Administrative Code is a question of law and not fact, and is therefore ripe for a Motion For Summary Judgement.

Oberman v. Byrne, 67 Ill.Dec. 894, 897, 445 N.E.2d 374, 80 Ill.App.3d 514 (Ill.App. 1st Dist. 1980).

ARGUMENT

I. PLAIN MEANING OF THE LANGUAGE OF THE ADMINISTRATIVE CODE

1. Where language is specific and unambiguous, there is no need for interpretation or construction. *People ex rel. Skonberg v. Paxton*, 211 N.E.2d 591, 64 Ill.App.2d 294 (Il.Sup.Ct.1965).

2. The language of the applicable section of the administrative code is clear on its face that the proposed facility must be at least 1/8 of a mile from the nearest “residence”. Residence does not appear to be defined in this part of the Administrative Code.

3. Absent a definition, the language in a statute must be given its plain and ordinary meaning. *Illinois Power Co. v. Mahin*, 21 Ill.Dec. 144, 381 N.E.2d 222, 72 Ill.Dec. 240. (Il.SupCt, 1978).

4. The actual language of a statute is the primary source to give the intention of the legislature. If the language is certain and unambiguous, the proper function of a court is to enforce the statute as enacted. *People ex rel. Gibson v. Cannon*, 2 Ill.Dec. 737, 739, 357 N.E.2d 31, 63 Ill.2d 534 (Il.Sup.Ct, 1976). *Chicago Transit Authority v. Adams*, 607 F.2d 1284, certiorari denied 100 S.Ct. 2175, 446 U.S. 946, 64 L.Ed.2d 802.(1982).

5. To interpret the word “residence” as anything other than a dwelling structure would be to give the word “residence” a different meaning than that which it is normally has. Such an interpretation to “change” the plain meaning of a statute should be avoided if at all possible. *City of Champaign v. Hill*, 173 N.E.2d 839, 29 Ill.App.2d 429 (3d App.Ct., 1961).

II. 35 IAC 830.203(a)(3) MUST BE JOINTLY CONSTRUED

1. In construing a statute, all of its sections must be construed together in light of the general purpose and plan. *Scofield v. Board of Ed of Community Consol. School Dist. No. 181*, 103 N.E.2d 640, 411 Ill. 11 (Il.Sup.Ct. 1952).

2. The latter portion of 35 IAC 830.203(a)(3) provides for certain setback requirements when a proposed landscape waste facility is located near a school, certain health facilities or certain child-care facilities. In those cases the setback must be 1/8 of a mile from the **property line** (emphasis added).

3. If one were to interpret that the word "residence" meant the property line as opposed to the structure itself, it would seemingly contradict or be in conflict with the portion of 35 IAC 830.203(a)(3) that provides specific direction as to the distance that a proposed facility must be set back from certain types of schools, certain health facilities or child-care facilities. It would serve no purpose to have the specific language as to setbacks for schools, health facilities or child-care facilities as being measured from the property line if that was the interpretation of the prior part of 203(a)(3). Indeed the setback would be exactly the same as interpreted by the Agency. Why then would this additional language be needed? Clearly the language of the Code was written to provide additional setbacks for children and people with certain breathing problems. Such an interpretation is plain and obvious on its face and will only lead to the conclusion that the drafters of this language intended the setback distances to be different for different categories of people. Thus one can only come to the conclusion that the setback from a residence must be measured from the structure of the residence itself as opposed to the property line of the parcel upon which the structure was located.

4. This Board should avoid the construction that would produce an absurd result. *Ambassador East, Inc. v. City of Chicago*, 77 N.E.2d 803, 399 Ill. 359 (Ill.Sup.Ct. 1948)

5. An interpretation that the set back requirement from a "residence" is the same as the set back from the property line upon which the structure exists is an absurd result and should not be endorsed by the Board.

REQUESTED RELIEF

Wherefore your Petitioner and Movant requests the Honorable Pollution Control Board to enter an order finding that the correct set back for a landscape compost facility shall be a minimum of 1/8 of a mile from the house/structure nearest the facility, as opposed from the property line of the property upon which a house/structure/residence exists. It is further requested that the Board enter an Order finding that the word "residence" in 35 IAC 830.203(a)(3) is defined as the actual footprint of the house/structure used for living purposes.

Respectively Submitted,
Van Zelst Landscape Compost Facility

By:


Larry M. Clark

Larry M. Clark
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NOTICE OF FILING

To: Christopher Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
Chicago, IL 60601

Mr. John Therriault
Assistant Clerk
Illinois Pollution Control Board
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
Chicago, IL 60601

Please take notice that on the 2nd day of May, 2011 I have filed with the Office of the Clerk of the Pollution Control Board the Petitioners Motion For Summary Judgement, a copy of which is hereby served upon you.



Larry M. Clark, Attorney for
Van Zelst Landscape Compost Facility

Dated this 2nd day of May, 2011

Larry M. Clark
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700 North Lake Street, Suite 200
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847-949-9396

CERTIFICATE OF SERVICE

I, Larry M. Clark, an attorney for the Petitioner, hereby certify that on May 2, 2011 I have served the attached Notice of Filing and Appearance on the following persons at the following address by electronic means.

Christopher Grant
Assistant Attorney General Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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Mr. John Therriault
Assistant Clerk
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Suite 11-500
Chicago, IL 60601


Larry M. Clark, Attorney for Petitioner

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 2nd DAY OF MAY 2011


Notary Public

