

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VAN ZELST LANDCAPE COMPOST FACILITY,)	
)	
)	
Petitioner,)	
)	
v.)	PCB No. 11-7
)	(Permit Appeal-Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY)	
)	
)	
Respondent.)	

RESPONSE TO VAN ZELST MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA” or “Agency”), by LISA MADIGAN, Attorney General of the State of Illinois, and responds to Petitioner Van Zelst Landscape Compost Facility’s (“Van Zelst’s”) Motion for Summary Judgment.

I. THE BOARD SHOULD CONSIDER THE REGULATORY HISTORY

In its Motion for Summary Judgment, Van Zelst suggests that the Board should simply apply the plain language of 35 Ill. Adm. Code 830.203(a)(3), and find that the regulation distinguishes the residential setback from the other protected uses. It is true that where language in a statute is clear and unambiguous, a reviewing body should “apply it as written without resort to extrinsic aids to statutory construction”¹. However, that cannot be done in this case. The definition of “nearest residence” in the regulation is ambiguous, and therefore the Board cannot simply apply the regulations ‘as written’. The Board should therefore look to the regulatory history of both the original, and amended Rule.

¹ *People v. Dobbs*, 239 Ill.2d 277,287 (2010).

A statute is ambiguous when it is capable of more than one reasonable interpretation². Illinois EPA believes that the term “residence”, as used in the regulations, is subject to several reasonable interpretations. Section 830.102 defines “nearest residence as meaning: “...an occupied dwelling and adjacent property commonly used by inhabitants of the dwelling”³. As noted in Respondent’s Motion for Summary Judgment, the term “commonly used” could reasonably be construed to have several meanings, and therefore it is unclear and ambiguous⁴.

In the case of an ambiguous statute, a reviewing body may consider extrinsic aids, such as legislative history⁵. In this case, the Board should look to the regulatory history of the compost facility siting regulations. As noted in Respondent’s Motion for Summary Judgment, this history clearly indicates that the 1997 Amendments, which added additional protected facilities to the setback requirements, were intended to adopt the existing residential setback standard. Accordingly, the Board should find that the appropriate measurement of the residential setback is to the property line of the residence.

II. CONCLUSION

No material facts are at issue in this matter, and summary judgment is appropriate. The regulatory history of the composting regulations indicates that the Board considers the property line of a residence to be the appropriate measure for determining setback requirements. Also, this interpretation is practical and reasonable, and in accord with the purpose of the applicable regulations

Based on the stipulated facts, Petitioner’s facility does not meet the applicable setback requirements, as the border of the composting area is less than 1/8 mile from the adjacent

² *County of Du Page v. Illinois Labor Relations Board*, 231 Ill.2d 593, 604 (2008).

³ 35 Ill. Adm. Code 830.102

⁴ As noted in Respondent’s Motion, property being farmed, used for outdoor recreation, occasionally walked over, etc. could all constitute “common use”. Alternatively, the term could be construed to mean ‘used daily’.

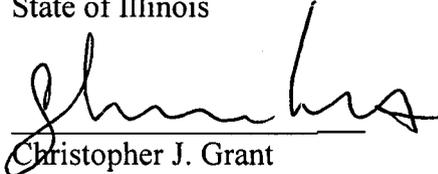
⁵ 231 Ill.2d. 593,604

residential boundary. Illinois EPA correctly denied the permit at issue in this case, and is entitled to summary judgment in its favor.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

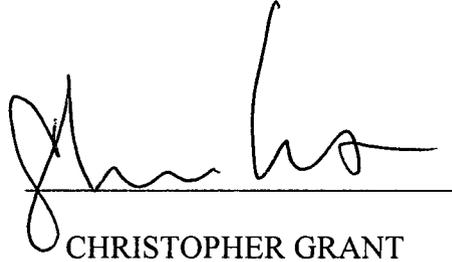
by LISA MADIGAN
Attorney General of the
State of Illinois

A handwritten signature in black ink, appearing to read "Christopher J. Grant", is written over a horizontal line.

Christopher J. Grant
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 16th day of May, 2011, the foregoing Respondent's Response to Van Zelst Motion for Summary Judgment upon the persons listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.



CHRISTOPHER GRANT

Mr. John Therriault
Assistant Clerk
Illinois Pollution Control Board
(by electronic filing)

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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