

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

VAN ZELST LANDSCAPE COMPOST )  
FACILITY, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

PCB 11-7  
(Permit Appeal - Land)

**RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT**

Now comes Petitioner Van Zelst Landscape Compost Facility, by and through Larry M. Clark, its attorney, and hereby responds to Respondent Illinois Environmental Protection Agency's Motion For Summary Judgement as follows:

**REGULATORY HISTORY IS NOT APPROPRIATE STANDARD**

In Respondent's Motion For Summary Judgement they rely entirely upon the fact that the Regulatory History allegedly supports their interpretation that the measurement should be to the property line as opposed to the footprint of the residential structure. Such an interpretation is not supported by caselaw, however. First one must look to the clear language of the statute or regulation in question. The best determination of the legislative intent is the clear language of the statute.

**DEFINITION OF "NEAREST RESIDENCE" NOT HELPFUL**

Respondent alleges that the definition of "nearest residence" as contained at Section 830.102 of the Administrative Code may be where the measurement of the 1/8 mile distance should be measured from. The definition of 830.102 for "nearest residence" is as follows:

"Nearest residence" means an occupied dwelling and adjacent property commonly used by inhabitants of the dwelling.

Where that point is, however, cannot be determined with any particularity because it would appear to change on a case by case basis. Indeed, even the IEPA did not use this definition! It should be noted, however, that according to the Application of Petitioner to the IEPA, the distance to the closest residential structure is approximately 700 feet. Because 1/8 of a mile is 660 feet, it would appear to allow for up to 40 feet of "adjacent property that is commonly used by inhabitants of the dwelling". (Page 8 of PCB 11-07 record). How did IEPA determine this was incorrect? Apparently they did not use such a definition in their consideration of the Permit Application, but rather just determined that by the interpretation of the legislative history, that they should measure distance from the lot line. Indeed, it would have to be done on a case by case basis. In this case IEPA just used the property line as a "bright line" determination of the proper setbacks.

**DIFFERENT SECTIONS OF THE STATUTE MUST BE READ TOGETHER**

The setback requirements were amended in 1997 to add requirements for certain children and health related facilities. These setbacks requirements are specifically measured to the property line. IEPA has determined that the setbacks for both a residence and these certain child and health related facilities are the same! If so, what necessitated the addition of the 1997 amendments? One cannot read the two sections of the same paragraph and come to the same conclusion that residences and these special facilities share the same setback requirements.

Indeed, even in this particular example, using the criteria that IEPA did of measuring from the property line, one could get conflicting results. The closest residential structure in this

case is 700 feet away. If a health facility or child related facility as defined at Section 830.203(a)(3)(A), (B) and (C) were located within 10 feet of a lot line of a parcel that was located some 665 feet away (a total of 675 feet from the proposed facility), it would be permitted, but yet a residential structure that is 700 feet away, as in this case, could not be permitted. Such results cannot be accepted. Such results would be neither fair nor equitable to the Petitioner or anyone else who may “stand in their shoes”.

The Respondent argues that the legislative history supports the IEPA’s interpretation of the proper setbacks to use. One cannot avail themselves of the legislative history, however, if one can either (1) ascertain the clear meaning of the legislation from a clear reading *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) and (2) be assured that the different parts of the same section can be read in concert with one another *Scofield v. Board of Ed of Community Consol. School Dist. No. 181*, 103 N.E.2d 640, 411 Ill. 11 (Il.Sup.Ct. 1952).

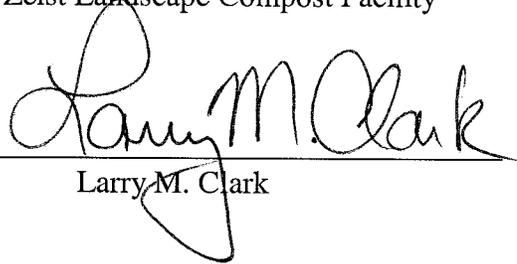
IEPA cannot “bootstrap” its argument that the legislative history of this amendment supports the interpretation that health facilities and child related facilities were considered to be different than residential setbacks, when the clear language of the legislation and the requirement that the different parts of the same paragraph must be read together. Indeed, why would one pass such an amendment if it provided no additional protections? Such an interpretation flies in the face of logic.

**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 residential house/structure nearest the facility, as opposed from the property line of the property upon which a house/structure/residence exists. Such a finding would be the "bright line" determination that IEPA apparently needs to consider applications for this and other similar uses in the future. 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  
Attorney for Van Zelst Landscape Compost Facility  
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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 16<sup>th</sup> 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 16<sup>th</sup> day of May, 2011

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

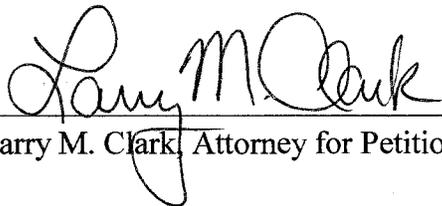
**CERTIFICATE OF SERVICE**

I, Larry M. Clark, an attorney for the Petitioner, hereby certify that on May 16, 2011 I have served the attached Notice of Filing and Appearance on the following persons at the following address by electronic means.

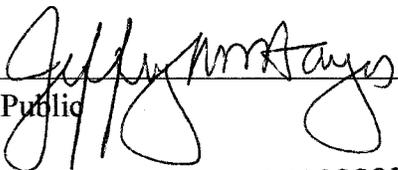
Christopher Grant  
Assistant Attorney General Environmental Bureau  
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Larry M. Clark, Attorney for Petitioner

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 16<sup>th</sup> DAY OF MAY, 2011

  
Notary Public

