

ILLINOIS POLLUTION CONTROL BOARD  
October 7, 2010

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

ORDER OF THE BOARD (by G.T. Girard):

On September 2, 2010, the Board denied an August 20, 2010 request from Van Zelst Landscape Compost Facility (Van Zelst) for a 90-day extension to file an appeal. Instead, the Board accepted Van Zelst's request as a timely-filed petition to contest a July 22, 2010 determination of the Illinois Environmental Protection Agency (Agency), but directed Van Zelst to file an amended petition to cure deficiencies by October 4, 2010. The Agency determination concerns Van Zelst's proposed landscape waste compost facility, which would be located in Lake County. On October 4, 2010, Van Zelst timely filed an amended petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2008)), the Agency is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2008); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency denied Van Zelst's permit application to develop and operate a landscape waste compost facility because "[t]he proposed facility does not meet [t]he required setback of an 1/8 of a mile from the nearest residence as required, pursuant to 35 [Ill. Adm. Code] 830.203(a)(3)." Petition, Exhibit A at 1. Van Zelst appeals on the grounds that the Agency misapplied the setback standard by measuring compliance from the "'property line' of a parcel that contains a residence as opposed to the 'residence', as required by 35 [Ill. Adm. Code] 830.203(a)(3)." Petition at 2. Van Zelst's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Van Zelst has the burden of proof. 415 ILCS 5/40(a)(1) (2008); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, information developed after the Agency's decision typically is not admitted at hearing or

considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2008)), which only Van Zelst may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Van Zelst “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is February 1, 2011, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for January 20, 2011.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 3, 2010, which is 30 days after the Board received Van Zelst’s amended petition. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for an extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 7, 2010, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board