

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2009

VEOLIA ES VALLEY VIEW LANDFILL,)
INC.,)
)
Petitioner,)
)
v.) PCB 10-31
) (Pollution Control Facility
COUNTY BOARD OF MACON COUNTY,) Siting Appeal)
)
Respondent.)

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

On November 9, 2009, Veolia ES Valley View Landfill, Inc. (Veolia) timely filed a petition asking the Board to review an October 8, 2009 decision of the Macon County Board (County). *See* 415 ILCS 5/40.1(a) (2008) ¹; 35 Ill. Adm. Code 101.300(b), 107.204. The County's decision concerns Veolia's proposed siting of a pollution control facility in Harristown Township, Macon County. For the reasons below, the Board accepts Veolia's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the proposed facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government denies siting or approves siting with conditions, the siting applicant may appeal the local government's decision to the Board. *See* 415 ILCS 5/39(c), 40.1(a) (2008); 35 Ill. Adm. Code 107.

In this case, the County granted with conditions Veolia's application to site a pollution control facility in Harristown Township, Macon County. Veolia appeals on the grounds that that Conditions 8, 9, 11, 19, and 27 are unsupported by the record, against the manifest weight of the evidence, standardless, vague, not within the authority of the County to impose, not reasonable and necessary to accomplish the purposes of Section 39.2 of the Act, potentially in conflict with permit conditions imposed by the Illinois Environmental Protection Agency, and inconsistent with regulations promulgated by the Board. Veolia's petition meets the content requirements of 35 Ill. Adm. Code 107.208.

The Board accepts the petition for hearing. Veolia has the burden of proof. 415 ILCS 5/40.1(a) (2008); *see also* 35 Ill. Adm. Code 105.506. Hearings will be based exclusively on the record before the County. Accordingly, though the Board hearing affords petitioner the

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

opportunity to challenge the local government's reasons for its decision, information developed after the local government's decision typically is not admitted at hearing or considered by the Board. However, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(a) (2008); Land & Lakes v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a) (2008)), which only Veolia may extend by waiver (*see* 35 Ill. Adm. Code 107.504; 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Veolia "may deem the site location approved." 415 ILCS 5/40.1(a) (2008). Currently, the decision deadline is March 9, 2010, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for March 4, 2010.

The County must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. Veolia must pay to the County the cost of preparing and certifying the record. *See* 415 ILCS 5/39.2(n) (2008); 35 Ill. Adm. Code 107.306, 107.502(b).

IT IS SO ORDERED.

C.K. Zalewski abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2009, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board