ILLINOIS POLLUTION CONTROL BOARD
September 16, 2010

VEOLIA ES ZION LANDFILL, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 11-10
	)	(Pollution Control Facility
CITY COUNCIL OF THE CITY OF ZION,	)	Siting Appeal)
	)	
Respondent.	)	

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

On September 2, 2010, Veolia ES Zion Landfill, Inc. (Veolia) timely filed a petition asking the Board to review an August 3, 2010 decision of the City Council of the City of Zion (Zion). *See* 415 ILCS 5/40.1(a) (2008); 35 Ill. Adm. Code 101.300(b), 107.204. Zion's decision concerns Veolia's proposed expansion of the existing landfill encompassing approximately 317.9 acres in Zion, Lake 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, Zion granted with conditions Veolia's application to expands Veolia's facility in Zion, Lake County. Veolia appeals on the grounds that Condition 2.2 is unsupported by the record, against the manifest weight of the evidence, standardless, vague, not within the authority of the City 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 Zion. Accordingly, though the Board hearing affords petitioner the 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); <u>Land & Lakes v. PCB</u>, 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, Veolia "may deem the site location approved." 415 ILCS 5/40.1(a) (2008). Currently, the decision deadline is December 31, 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 December 16, 2010.

Zion 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 Zion 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.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2010, by a vote of 5-0.

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John Therriault, Assistant Clerk
Illinois Pollution Control Board