

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KRAMER TREE SPECIALISTS, INC.,)
 Petitioner,)
))
 v.) PCB 12-51
) (Land Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

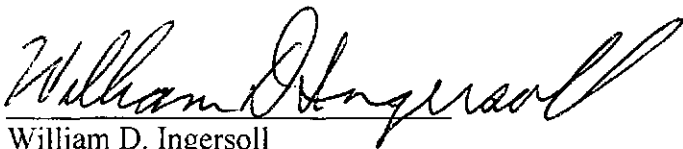
NOTICE

John Therriault
Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

A. Bruce White
Barnes & Thornburg, Ltd.
One North Wacker Drive
Suite 4400
Chicago, IL 60606

PLEASE TAKE NOTICE that I have today caused to be filed the OBJECTION TO NOTICE OF REQUEST FOR EXTENSION OF APPEAL PERIOD by the Illinois Environmental Protection Agency with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY


William D. Ingersoll
Deputy General Counsel

Dated: October 3, 2011
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KRAMER TREE SPECIALISTS, INC.,)
 Petitioner,)
)
 v.) PCB 12-51
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

OBJECTION TO NOTICE OF REQUEST FOR EXTENSION OF APPEAL PERIOD

The Illinois Environmental Protection Agency (“Illinois EPA”) hereby objects to the NOTICE OF REQUEST FOR EXTENSION OF APPEAL PERIOD filed on September 23, 2011 by KRAMER TREE SPECIALISTS, INC. (“Kramer”). In support of its objection, the Illinois EPA states as follows:

1. Illinois EPA rendered a final decision denying Kramer’s permit application on August 18, 2011. U.S. Postal Service website tracking information indicates that this decision was delivered on August 22, 2011, thereby making September 26, 2011 the deadline for filing an appeal with the Pollution Control Board (“Board”).

2. Kramer did not file an appeal of the Illinois EPA permit denial. Rather, on September 23, 2011, Kramer filed with the Board a pleading entitled “Notice of Request for Extension of Appeal Period.” The request is made on behalf of Kramer alone, with no mention of any Illinois EPA concurrence or even any contact with Illinois EPA.

3. Kramer’s request correctly cites to Section 40(a)(1) of the Environmental Protection Act (415 ILCS 5/40(a)(1)) as to the statutory provision authorizing 90-day extensions of the appeal deadline, but seems to have ignored that the notice of such an extension must come from both

Kramer *AND* Illinois EPA, and that such joint notice from both must be made within the original 35-day appeal period.

4. To implement this statutory provision, the Board included the following in its procedural rules within Title 35 of the Illinois Administrative Code:

Section 105.208 Extension of Time to File a Petition for Review

a) Permit or Other Agency Final Decision. For appeals pursuant to Section 40(a)(1) of the Act, *the 35-day period* described in Section 105.206(a) of this Subpart *for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period* [415 ILCS 5/40(a)(1)].

1) The applicant and the Agency must jointly file a request for extension within 35 days after the date of service of the Agency's final decision.

2) The joint request described in subsection (a)(1) of this Section may seek an appeal period not exceeding 125 days from the date of service of the Agency's final decision to file a petition for review under this Subpart.

* * *

c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.

5. Kramer obviously did not follow the very clear mandatory language of Section 105.208. In addition, no known contacts were made in which Kramer sought concurrence by Illinois EPA. Illinois EPA contends that the extensions are intended to allow for continued discussions between the parties in an attempt to resolve differences and thus avoid litigation and its burden on the parties and the Board. Kramer makes its intentions clear – it needed more time to evaluate its legal strategies. This is not among the reasons that the 90-day extension provision was added to the

Environmental Protection Act.

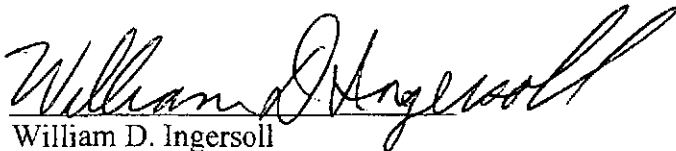
6. Allowing Kramer to unilaterally extend the jurisdictional 35-day appeal period, without prior Illinois EPA concurrence or Board approval, could act to make that requirement a *de facto* 125-day deadline. Kramer cannot, by itself, extend a jurisdictional deadline.

7. Illinois EPA further requests that Kramer become more familiarized with the Board's procedural rules also as to service. Pursuant to Section 101.304(g)(1), service on the Illinois EPA *must* be made at the following address:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

For the reasons stated herein, Illinois EPA respectfully requests that the Board strike Kramer's unilateral effort in an unauthorized manner to extend the statutory deadline for appeal. Some may argue that this would produce the harsh result of Kramer being barred from appeal, but the Board should not be expected to protect Kramer from its own failure to follow the rules.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,



William D. Ingersoll
Deputy General Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: October 3, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

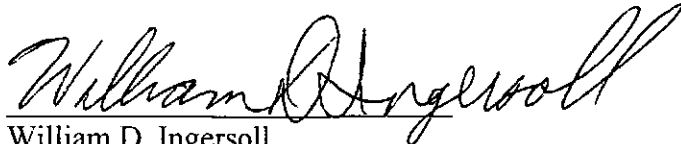
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 29, 2007 I served true and correct copies of the OBJECTION TO NOTICE OF REQUEST FOR EXTENSION OF APPEAL PERIOD upon the persons and by causing same to be placed with the United States Postal Service with appropriate first-class postage attached.

John Therriault
Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

A. Bruce White
Barnes & Thornburg, Ltd.
One North Wacker Drive
Suite 4400
Chicago, IL 60606

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



William D. Ingersoll
Deputy General Counsel
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
TDD 217/782-9143