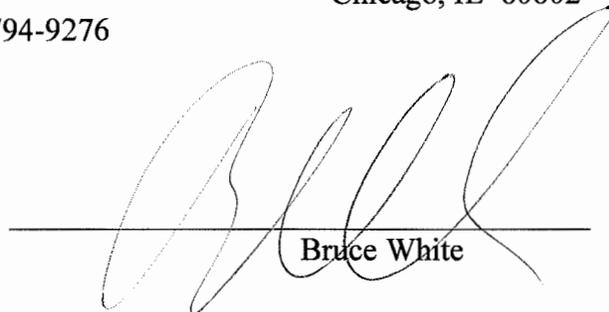


CERTIFICATE OF SERVICE

I, on oath, state that I have served the attached **Reply Brief of Petitioner Kramer Tree Specialists, Inc.** electronically on this 30th day of June, 2014 to:

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Bruce White

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KRAMER TREE SPECIALISTS, INC.,)	
)	
Petitioner,)	
)	
vs.)	AS 14-2
)	(Adjusted Standard – Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

REPLY BRIEF OF PETITIONER KRAMER TREE SPECIALISTS, INC.

Petitioner Kramer Tree Specialists, Inc. (“Kramer”) submits this reply brief in further response to the May 1, 2014 Order of the Board.

The Illinois Environmental Protection Agency (“IEPA”) has not contested any of the substantive arguments set forth in Kramer’s opening brief. Indeed, IEPA’s Response is notable for its omission of any assertion that the dispositive terms “waste” and “composting” apply to Kramer’s operations. Instead, IEPA offers a policy argument disembodied entirely from the applicable statutory definitions, regulatory provisions, or Board and court decisions discussed at length in Kramer’s opening brief. IEPA’s position is that Kramer’s leaf mulch operation should be regulated under the composting regulations – despite the conceded lack of any “discarded” materials or “composting” – based on a general assertion that leaf mulching poses environmental risks similar to those presented by composting. IEPA’s exclusive focus on the purposes of the composting regulations, however, is irrelevant to whether Kramer’s operations are governed by the actual text of Section 830 in the first place. Section 830, by its express terms, does not apply.

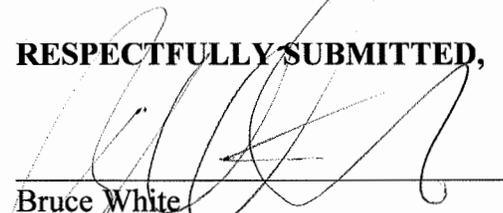
IEPA finds “Kramer’s argument” – that leaves used in its mulch are not waste because they are not discarded – “troubling” because “the same argument” might be made “regarding

landscape waste composting operations.” IEPA Response at 2. IEPA has no reason to be troubled: Both the Act’s prohibition against unpermitted composting, 415 ILCS 5/21(q), and Section 830 unequivocally foreclose that argument being advanced by composting operations and represent explicit legislative and administrative determinations that composting requires specific regulations. With a statute and rule that directly regulate “composting,” the question of whether or not composting materials are “discarded” is simply inapposite. Neither the legislature nor IEPA (at least in any promulgated rule) have found a need to similarly regulate leaf mulching operations.¹ The Board and courts have repeatedly endorsed and applied “Kramer’s” argument to find that materials, like Kramer’s leaf feedstock, which are not the subject of specific regulation and are not “discarded,” cannot be regulated as “waste.” As the Illinois Supreme Court reminded IEPA in *Alternative Fuels*, if IEPA “deem[s] this industry worthy of regulation,” it must do so “through a properly promulgated regulation” it cannot back into that result by ignoring the “plain meaning” of the terms “discarded” and “waste.” *Alternative Fuels, Inc. v. IEPA*, 830 N.E. 244, 259 (2005).

¹ IEPA asserts that it should be allowed to regulate leaf mulching under Section 830 because “composting is a natural process that will occur even at leaf mulching operations.” IEPA Response at 3. Regardless of whether decomposition occurs to some degree at leaf-mulching facilities, IEPA makes no effort to establish that the scale or scope of any incidental decomposition presents meaningful environmental threats justifying any regulation at all, let alone the application of extensive regulatory requirements designed to address composting operations that are purposefully facilitate decomposition. In any event, Kramer takes environmental stewardship seriously and manages its leaf-mulch operation in a safe and environmentally sensitive manner. That much is amply evidenced by the leaf-mulch process information presented in the instant Petition and accompanying exhibits as well as Kramer’s persistent willingness to accommodate IEPA’s shifting approach to its business.

As Kramer established in its opening brief – and as IEPA does not dispute – the express language of Section 830 is inapplicable to Kramer’s leaf mulch operations.²

RESPECTFULLY SUBMITTED,



Bruce White
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Dated: June 30, 2014

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² If the Board determines that Section 830 applies to Kramer’s leaf-mulch operations, Kramer is prepared to proceed under the adjusted standards and appended draft permit presented in its Petition.