

ILLINOIS POLLUTION CONTROL BOARD
October 6, 2011

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

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

On September 23, 2011, Kramer Tree Specialist, Inc. (Kramer or Petitioner) filed a request for a 90-day extension (Pet.) from an August 18, 2011 determination by the Illinois Environmental Protection Agency (Agency) denying a permit to Kramer. The permit denial concerns Kramer's facility located West Chicago. On October 5, 2011, the Board received an "Objection to Notice of Request for Extension of Appeal Period" filed by the Agency. For the reasons below, the Board accepts Kramer's timely filed request as a petition to contest the permit denial, but directs Kramer to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 105.Subpart B.

On May 18, 2011, Kramer filed a permit application to develop and operate a landscape waste compost facility. The Agency received Kramer's permit application on May 24, 2011. In the denial, the Agency explained that granting Kramer's permit would result in violations of the Act. As required under Section 39(a) of the Act, the Agency provided specific reasons for the denial. 415 ILCS 5/39(a). Pursuant to 35 Ill. Adm. Code 830.203(a)(3), the Agency specifically denied the permit for the following reasons:

1. The size of the storage piles and the operating plan associated with the leaf mulch does not provide proper conditions for composting, pursuant to 35 IAC 830.205(a)(1)(A) and 35 IAC 830.206.
2. The compost generated at the proposed facility will not meet the standards for general use compost, pursuant to 35 IAC 830.503
3. The facility cannot perform testing of the leaf mulch in accordance with 35 IAC 830.504

4. Samples from the leaf mulch cannot properly be taken in accordance with 35 IAC 830.507. Pet. Attach. 1 at 1.

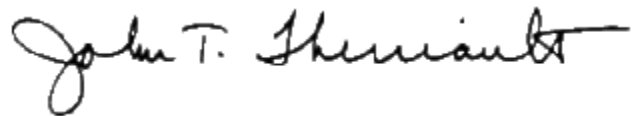
The Agency timely responded to Kramer's permit application, and on September 23, 2011, Kramer timely filed a request for a 90-day extension to appeal. However, Kramer's request was not jointly filed with the Agency, as required. *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206(c), 105.208(a),(c). The Agency's objection asks that the Board strike the "unilateral effort in an unauthorized manner to extend the statutory deadline for appeal." Obj. at 3.

Because the request is not a joint request, the Board does not accept the request for an extension. However, the filing was received by the Board within 35 days of the Agency's decision so the Board accepts Kramer's request as a petition to contest the permit denial. Further, the Board finds that the petition contains deficiencies that must be remedied before the case can be accepted for hearing.

The Board directs Kramer to file an amended petition by November 7, 2011, which is the first business day following the 30th day after the date of this order. The amended petition must state one or more acceptable grounds for contesting the permit denial. 35 Ill. Adm. Code 105.210. Kramer must also serve a copy of the amended petition upon the Agency and file proof of service with the Board. 35 Ill. Adm. Code 101.304. If Kramer fails to provide an amended petition in accordance with this order, the Board will dismiss this case and close the docket.

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 6, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board