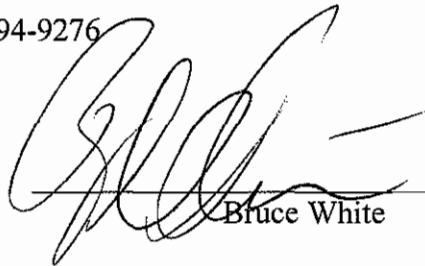




**CERTIFICATE OF SERVICE**

I, on oath state that I have served the attached **Amended Appeal of Landscape Waste Composting Permit to Develop and Operate Denial** electronically on this 3<sup>rd</sup> day of November, 2011 to:

William D. Ingersoll  
Deputy General Counsel  
Illinois Environmental Protection  
Agency  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276



Bruce White

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**AMENDED APPEAL OF LANDSCAPE WASTE COMPOSTING  
PERMIT TO DEVELOP AND OPERATE DENIAL**

NOW COMES Petitioner Kramer Tree Specialists, Inc. (“Kramer” or “Petitioner”) by its attorneys and pursuant to 35 Ill. Adm. Code 105.200 and 105.204(f) hereby files an amended appeal of Respondent Illinois Environmental Protection Agency’s (“IEPA”) denial of Petitioner’s Application for a Permit for a Leaf Mulch Production Facility at 300 Charles Court, West Chicago, DuPage County, Illinois. (The Permit Denial is attached as Exhibit A.) This appeal is filed on or before November 7, 2011 in accordance with the Illinois Pollution Control Board’s decision of October 6, 2011 allowing Petitioner up to and including that date for filing of this appeal. Therefore this appeal must be considered as timely.

**Introduction**

Petitioner filed a permit application for a leaf mulch production facility during May, 2011 in response to IEPA’s insistence that Petitioner have a permit under 35 Ill. Adm. Code 830. In relation to that application, Petitioner discussed its operations with IEPA on several occasions, consistently emphasizing its concern that leaf mulch production varies from classic composting in both its methods of operation and its goals. Consequently, as Petitioner reviewed with IEPA, certain technical aspects of 35 Ill. Adm. Code 830, which were specifically designed for facilitating composting, were not compatible with Petitioner’s operations. Despite being well aware of this situation, IEPA

denied Petitioner's application on August 18, 2011, based on findings that the Petitioner's permit application did not comply with certain of the precise technical provisions designed to promote and control landscape waste composting under 35 Ill. Adm. Code 830. It is from that IEPA application of the 35 Ill. Adm. Code 830 composting regulations and their resultant permitting denial that this appeal is taken.

### **Facility Background**

The Kramer West Chicago facility consists of a ten acre property of which five and a half acres are covered with a reinforced concrete pad. It is on that pad that the mulch production operations, including those related to leaf mulch products, take place. Leaves are collected at residential, municipal and commercial establishments and transported to the Kramer location. There each load of leaves is delivered to a designated area on the concrete pad where it is first piled and then, within twenty-four hours of receipt, stacked. The stacking is done to minimize oxygen and moisture within the leaves to retard composting. At no time, are the leaves managed with composting as the objective.

The next steps in the mulch production following stacking entail the grinding and mixing of the leaves with certain wood materials to produce mulch. Petitioner produces and sells three types of mulch, two of which include leaves; special blend and leaf mulch. The third type of mulch, dyed mulch, is made with recycled wood and does include leaves.<sup>1</sup> The sales of all of these mulch products in 2010 totaled 64,984 cubic yards bringing in revenues of over a million dollars. Thus far in 2011, 68,505 cubic yards of the three mulches have been produced representing earnings of approximately 1.1 million dollars. Of these total cubic yardages and earnings, about 20% is attributable to the leaf mulch and special blend production and sales. Leaves which have decayed significantly through composting are not suitable for mulch production and so Petitioner's operations are designed to avoid that result.

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<sup>1</sup> Up until this year, Kramer also made a leaf mulch product called double grind. That product was discontinued as of this year.

In contrast, the 35 Ill. Adm. Code 830 regulations are designed precisely to first facilitate compost development, and then control the composting material as that decay process and end uses take place. In discussions with Petitioner, IEPA acknowledged this incompatibility, but still insisted that Petitioner had to apply for a landscape waste composting permit for its facility. Petitioner then did its best to meet the composting regulatory requirements, while still producing leaf mulch that would be a marketable product. As Petitioner has explained to IEPA, Petitioner can not both comply with all of the 35 Ill. Adm. Code 830, and also produce its quality leaf mulch. It is this tension between regulatory and operational goals which resulted in the permit denial from which this appeal is taken.

### **Permit Appeal**

Petitioner first appeals from the denial of its permit to the extent that denial generally results from the application of 35 Ill. Adm. Code 830 to its facility. These regulations specifically apply to composting facilities. Petitioner does not operate and, did not apply for a permit to develop and operate a composting facility. Their West Chicago location recycles leaves into marketable mulch. As noted above, and in its attached permit application, compost development is discouraged at each step in the production of the leaf mulch products. To attempt to apply regulations adopted to facilitate composting on Petitioner's non-composting operations, and then to find that Petitioner does not comply, are arbitrary and capricious actions by IEPA.

35 Ill. Adm. Code 830.201 provides as follows:

#### **Scope and Applicability**

- a) Garden compost facilities are exempt from all the requirements of Part 830. (emphasis added)
- b) On-site landscape waste compost facilities are subject to the location standards in Section 830.203. (emphasis added)
- c) On-site commercial landscape waste compost facilities are subject to the minimum performance standards in Section 830.202, the location standards in Section 830.203, and the end-product quality standards in Subpart E of this Part. (emphasis added)

- d) On-farm landscape waste compost facilities which satisfy all the requirements in Section 830.106(a) are subject to the minimum performance standards in Section 830.202. (emphasis added)
- e) Permitted landscape waste compost facilities are subject to the minimum performance standards in Section 830.202, the location standards in Section 830.203, the additional operating standards and requirements in Sections 830.204 through 830.213, the end-product quality standards of Subpart E of this Part and the financial assurance requirements of Subpart F of this Part. (emphasis added)

Each and every one of these delineations of scope and applicability speaks in terms of composting. However, Petitioner simply does not compost the leaves it collects. Instead, Petitioner uses the leaves to produce marketable mulch with the consistent texture and color required by its customers. To do so, Petitioner must prevent or at least minimize compost development. Therefore by their very terms, the regulations codified in 35 Ill. Adm. Code 830 do not apply to Petitioner's facility.

This conclusion of inapplicability is reinforced when one attempts to apply the subsequent regulatory requirements to Petitioner's operations. Standards promulgated to promote composting are not consistent with operations specifically designed to achieve the opposite. For example, 35 Ill. Adm. Code 830.507 provides that general use compost be tested in accordance with identified methods. Those methods, by their very terms, do not apply to leaf mulch; they apply to compost. Therefore it is not possible for Petitioner to comply with these requirements. Yet, despite the fact that IEPA was and remains aware of that compliance impossibility, the Agency has nonetheless applied the regulations to Kramer and denied its permit as a result. In applying composting regulations to a non-composting facility, IEPA acted arbitrarily and capriciously.

With this appeal, Petitioner initially seeks relief from IEPA's first decision to apply composting regulations to their leaf mulch operations. Further, Petitioner appeals for relief, as more specifically reviewed below, from the denial of a permit on the grounds cited in the August 18, 2011 IEPA denial letter.

### Grounds of Denial Under Appeal

In its permit denial decision of August 18, 2011, IEPA cited four grounds for its final decision. (See Exhibit A hereto) Petitioner hereby appeals from both the overall denial, as well as of those identified bases for that denial.

**IEPA Basis for Denial** – 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. (emphasis added)

**Appeal** - As the above quoted portion of 35 Ill. Adm. Code 830.205(a)(1)(A) and 35 Ill. Adm. Code 830.206 state, the size of the storage piles is to be determined to create the “proper conditions for composting.” Petitioner included details as to the sizing of its leaf piles in its permit application (attached to this appeal as Exhibit B.) Piles are up to twenty-five feet tall with an outward slope of less than one vertical to one horizontal to preserve pile stability. The length of any given pile will depend on the orientation and room available on the concrete pad. These piles are maintained no more than twenty-four hours and then the leaves are more tightly stacked. As IEPA was informed, the purpose of the stacking is to minimize composting by reducing available oxygen and moisture. Temperature, as noted in the permit application is monitored and if it gets elevated the piles/stacks are shifted to reduce it. The temperatures compatible with composting are thereby avoided. To require Petitioner to maintain “proper conditions for composting” would be clearly counter-productive.

As noted previously, IEPA was well aware of the fact that Petitioner’s operations and 35 Ill. Adm. Code 830 were inconsistent before requiring Petitioner to apply for a composting permit. In so insisting, the IEPA acted arbitrarily and capriciously as noted above. Petitioner’s leaf mulch production facility is not a composting facility. Having required Petitioner to seek a permit under the composting facility regulations, IEPA then denies that permit when Petitioner describes its operations designed and implemented to avoid composting. Again, IEPA acted arbitrarily and capriciously in using Kramer’s plans to avoid composting as grounds for this permit denial.

**IEPA Basis for Denial** – The compost generated at the proposed facility will not meet the standards for general use compost, pursuant to 35 IAC 830.503.

**Appeal** – No compost is generated at Petitioner’s facility. Rather, Petitioner’s operations, as described to IEPA both pre and post-permit application filing, are designed to prevent the generation of compost. Therefore, this regulatory provision is simply inapplicable to Petitioner’s facility. In the alternative, Petitioner could be viewed to be in compliance with the provision since it produces no compost which does not meet the standard. Under either scenario, citing 35 Ill. Adm. Code as the grounds for denying a permit to Petitioner is arbitrary and capricious.

**IEPA Basis for Denial** – The facility cannot perform testing of the leaf mulch in accordance with 35 IACS 830.504.

**Appeal** – This statement is accurate. 35 Ill. Adm. Code 830.504 incorporates testing methods for **compost** – none are appropriate for leaf mulch and no other published standards are available for such mulch. Petitioner does implement reviews to make sure that the leaf mulch is of a consistent quality satisfactory to its customers. Those practices were described in the permit application at Section 5.0 Operating Plan, items f) and m.3). Here again, Petitioner does not produce any compost, so an alternate interpretation that no untested compost is produced could be adopted. To deny the permit on this basis, however, given the IEPA’s pre-application knowledge that no compost is produced, is arbitrary and capricious.

**IEPA Basis for Denial** – Samples from the leaf mulch cannot properly be taken in accordance with 35 IAC 830.507.

**Appeal** – Again, this statement is accurate. Since 35 Ill. Adm. Code 830.507 relates to sampling of compost only, Petitioner’s leaf mulch can not be sampled in strict compliance with the compost rules. Yet, as stated above, Petitioner does maintain quality controls for the leaf mulch it does produce. Also as stated above, no generally accepted testing method exists for leaf mulch.

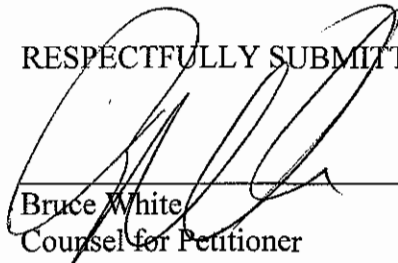
### **Conclusion**

IEPA acted arbitrarily and capriciously in two ways when addressing Petitioner’s leaf mulch production facility. First in determining that regulations specifically written to encourage compost development were applicable to an operation designed and



operated with the opposite goal. Second, having decided to apply those regulations, denying a permit pursuant to them, because the subject operation could not meet each requirement for producing and monitoring compost, a material it does not, in fact, produce. With this appeal, Petitioner seeks a decision that the 35 Ill Adm. Code 830 regulations do not apply to its facility, or in the alternative, that the compost-specific provision within those regulations may not be used to deny a permit.

RESPECTFULLY SUBMITTED,



Bruce White  
Counsel for Petitioner

Dated: November 3, 2011

Bruce White  
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Electronic Filing - Received, Clerk's Office, 11/03/2011

## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

217/524-3300

August 18, 2011

Certified Mail

7009 3410 0002 3750 4047

Kramer Tree Specialists, Inc.  
300 Charles Court  
West Chicago, Illinois 60185

Re: 0430905909 – DuPage County  
Kramer Tree Specialists, Inc.  
Log No. 2011-205  
03T Compost  
Permit Denial

Dear Mr. Kramer:

This will acknowledge receipt of your Application for Permit to develop and operate a landscape waste compost facility, dated May 18, 2011 and received by the Illinois EPA on May 24, 2011.

Your permit application to develop and operate a landscape waste compost facility is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Section 39(a) of the Act [415 ILCS 5/39(a)] requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reason(s) are given:

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.

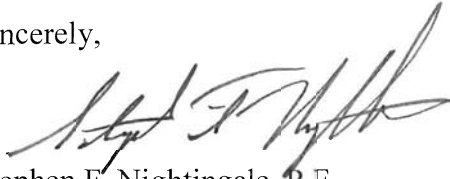
Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a

Page 2

period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

Should you wish to reapply or have any questions regarding this application, please contact Derek Rompot at 217/524-3262.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen F. Nightingale". The signature is fluid and cursive, with a large initial "S" and "N".

Stephen F. Nightingale, P.E.  
Manager, Permit Section  
Bureau of Land

SFN:<sup>TD</sup>DCR:bjh\111353s.doc

cc: John Lardner, P.E., JPL Environmental Engineering