

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

IN THE MATTER OF: )  
)  
PETITION OF KRAMER TREE )  
SPECIALISTS, INC. FOR AN ADJUSTED )  
STANDARD FROM 35 ILL. ADM. CODE )  
830. )  
)

AS 14-2  
(Adjusted Standard - Land)

RECEIVED  
CLERK'S OFFICE

JUN 18 2014

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

To:

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

Bruce White  
Barnes & Thornburg LLP  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606

Christopher Grant  
Assistant Attorney General  
69 W. Washington Street  
Suite 1800  
Chicago, Illinois 60602

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Response of the Illinois EPA**, a copy of which is served upon you.

Respectfully submitted,

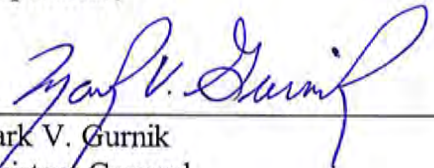
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: June 16, 2014

Respondent,

Mark V. Gurnik  
Attorney Registration No. 6200029  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

BY:

  
Mark V. Gurnik  
Assistant Counsel

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**RESPONSE OF THE ILLINOIS EPA**

In its May 1, 2014, Order, the Illinois Pollution Control Board (“Board”) found that “...neither Kramer nor the IEPA has demonstrated that Part 830 of the Board’s Solid Waste and Special Waste Hauling regulations is applicable to Kramer. Therefore, the Board directs the parties to brief the issue of how the Board’s Standards for Compost Facilities (35 Ill. Adm. Code 830) apply to Kramer’s leaf mulching operation.” Now comes the Illinois Environmental Protection Agency (“Illinois EPA”) by its attorney, Mark V. Gurnik, with its response to the Board’s request.

A description of Kramer’s leaf mulch operation is set forth in its Petition. Petition at 1-5. The operation consists of the collection of fallen leaves in the autumn, and the storage of the leaves until needed for production of the two types of leaf mulch that Kramer offers. The leaves collected by Kramer, as much as 15,000 cubic yards (Petition at 2), are stacked in piles and stored until needed. The storage duration could be as little as two months, or as long as ten months or more. Kramer explains that it begins its special blend production in late January, and the regular leaf mulch production in March. Petition at 4. By the end of July, it indicates that 80% of its leaf mulch has been sold. Petition at 2. The amount of leaves removed from the storage piles and taken to the leaf mulch grinder depends upon the pace and timing of the production process needed to maintain a two to four week supply of leaf mulch product on hand. Petition at 4. To ensure a supply of the main ingredient for the leaf mulch production, some leaves must be maintained in the storage piles well into July.

The Illinois Environmental Protection Act (“Act”) and the Board rules at 35 Ill. Adm. Code Part 830 regulate the management of landscape waste, and particularly the operation of landscape waste composting facilities. “Landscape waste” is defined as “all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.” 415 ILCS 5/3.270 (2012). Since July 1, 1990, landscape waste has been prohibited from being disposed with other municipal waste in a landfill. 415 ILCS 5/22.22 (2012). The management of landscape waste is further regulated. A person wishing to develop or construct a composting facility must provide notice of its intent to certain individuals and the general public before the Illinois EPA can issue a permit. 415 ILCS 5/22.26 (2012). Furthermore, the Board rules provide location and operational standards for compost facilities, as well as the quality performance standards for finished product compost. 35 Ill. Adm. Code Part 830. The Board stated “[t]hese regulations are intended to allow for the competitive operation of landscape waste compost facilities which do not impact or threaten to adversely impact health or the environment in the State of Illinois.” Regulation of Landscape Waste Compost Facilities 35 Ill. Adm. Code 830-832, PCB R93-29, at 22 (November 3, 1994). The threats posed by an improperly located or operated composting facility can include odors, blowing litter, vectors, groundwater contamination and leachate runoff from the landscape waste pile, and fires. These same threats exist at an improperly located or operated leaf mulch operation.

Kramer has argued that its leaves are not a waste, and therefore are not landscape waste, and that 35 Ill. Adm. Code Part 830 does not apply to the leaves. It relies heavily upon the rationale in Alternate Fuels, Inc. v. IEPA, 830 N.E.2<sup>nd</sup> 444 (2005), to state that the leaves are not a waste because they are not “other discarded material.” The leaves are returned to the economic mainstream, and no contaminants are removed from the leaves. Because the leaves are not a waste, it argues that regulations for landscape waste composting facilities in Part 830 do not apply.

What is troubling about Kramer’s argument is that its logic could be used to make the same argument regarding landscape waste composting operations. A landscape waste compost facility

takes landscape waste and uses it as the raw ingredient for the production of compost, a marketable product that is returned to the economic mainstream. However, the Illinois Legislature, through provisions adopted in the Act, clearly feels that the production of compost merits regulation. Standards have been established in 35 Ill. Adm. Code Part 830 for landscape waste compost facilities. Location standards require a landscape waste composting facility to be 200 feet or more away from a potable water supply well, greater than five feet from the water table, outside the boundary of a 10-year floodplain, and cannot restrict the flow of water in a 100-year floodplain. The facility must also be located at least 200 feet away from any residence, and 1/8 mile from certain medical care facilities, primary or secondary schools, and child care or preschool facilities. 35 Ill. Adm. Code 830.203. Operational standards for facilities include the control of stormwater runoff and the collection and management of landscape waste leachate. 35 Ill. Adm. Code 830.203 and 830.204. The standards also address the acceptance and managing of material received at the facility (35 Ill. Adm. Code 830.205), minimum performance standards for the compost (35 Ill. Adm. Code 830.202), personnel training (35 Ill. Adm. Code 830.210), and recordkeeping for the operation (35 Ill. Adm. Code 830.211). There are performance standards for end-use compost (35 Ill. Adm. Code 830.501 through 508), and even rules for posting financial assurance to deal with the premature final closure, routine final closure, and temporary suspension of acceptance of landscape waste at landscape waste composting facility (35 Ill. Adm. Code 830.213 and 830.601 through 830.606).

The end goal of a leaf mulch production facility may be the opposite of a landscape waste compost facility; namely, a leaf mulch operation wants to minimize the breakdown or composting of the leaves while they are in storage, whereas the goal of a landscape waste composting facility is to promote the breakdown of landscape waste to produce compost. It is important to recognize that composting is a natural process that will occur even at leaf mulch operations. The rate of breakdown will be accelerated or retarded by the manipulation of factors such as available oxygen, moisture, and temperature. In fact, Kramer recognizes this and has designed its "... handling and storage of leaves so as to minimize leaf decomposition." Petition at 3.

Despite the opposing goals of leaf mulch production and landscape waste compost production

facilities, the threats to human health and the environment inherent in the improper operation of a landscape waste composting facility are also present in the operation of a leaf mulch facility. Leaf piles at a leaf mulch facility that are exposed to precipitation and storm water runoff pose the same threat of contamination to the groundwater or leachate runoff that a landscape waste compost operation must address. The leaf piles, if not properly managed, can present the same odor problems that a landscape waste composting operation may experience. And, if the internal conditions of the leaf piles are not adequately monitored and controlled, the piles at a leaf mulch facility can catch fire just as readily as an improperly managed compost pile can.

Kramer argues that it should not be regulated by the rules for the management and operation of a landscape waste compost facility in Part 830. This is understandable. An unregulated operation not subject to regulatory oversight is certainly cheaper to operate than one subject to scrutiny and regulatory standards. However, the more prudent approach is to regulate leaf mulch operations under Part 830, and to make adjustments to the operational standards and testing procedures for the end product to accommodate the production of leaf mulch.

## I. CONCLUSION

The Illinois EPA believes that 35 Ill. Adm. Code Part 830, with appropriate adjustments, provides a reasonable framework for the regulation of leaf mulch operations, and the Board should find that the regulations apply to Kramer's leaf mulch production operation.

Dated: June 16, 2014

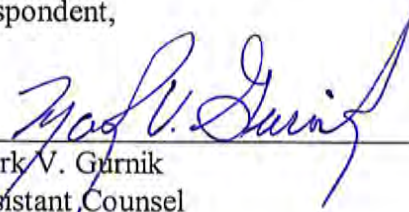
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Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

BY:

  
Mark V. Gurnik  
Assistant Counsel

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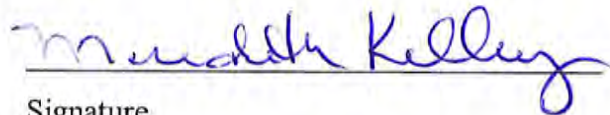
CERTIFICATE OF SERVICE

I, the undersigned, on oath states that I have served on the date of June 16, 2014, the attached **Response of the Illinois EPA**, by placing true copies thereof in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, upon the following persons:

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

Bruce White  
Barnes & Thornburg LLP  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606

Christopher Grant  
Assistant Attorney General  
69 W. Washington Street  
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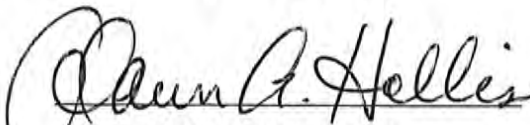
Signature

State of Illinois

County of Sangamon

SUBSCRIBED AND SWORN to before me

this 16th day of June, 2014.

  
NOTARY PUBLIC

