

ILLINOIS POLLUTION CONTROL BOARD
November 17, 2011

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

ORDER OF THE BOARD (by C.K. Zalewski):

On September 23, 2011, Kramer Tree Specialist, Inc. (Kramer) filed a request for a 90-day extension (Pet.) of the deadline to appeal an August 18, 2011 determination by the Illinois Environmental Protection Agency (Agency) to deny Kramer a permit. The permit denial concerns Kramer's facility located at 300 Charles Court, West Chicago, in DuPage County.

On October 6, 2011, the Board denied Kramer's request for a 90-day extension because the motion was not brought jointly with the Agency. However, the Board treated the motion as a timely filed petition for review of the Agency determination and ordered Kramer by November 7, 2011, to amend its petition by correcting deficiencies and including acceptable grounds for contesting the permit denial. On November 3, 2011, Kramer filed its amended appeal. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection 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 D. In this case, the Agency denied Kramer's application to develop and operate a leaf mulch production facility in DuPage County. Kramer filed an amended appeal on the grounds that the Agency's application of composting regulations is improper, since Kramer's proposed facility will not produce compost.

Kramer's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing. Kramer has the burden of proof. 415 ILCS 5/40(a)(1) (2010); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, although the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001),

aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2010)), which only Kramer may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Kramer “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is March 2, 2012, which is the 120th day after the Board received Kramer’s amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 1, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by December 5, 2011, which is the first business day following 30 days after the Board received Kramer’s petition. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board