

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A
MUNICIPAL CORPORATION,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY, and HAMMAN
FARMS,

Respondents.

PCB No. 08-95
(Appeal of Agency Action)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on August 5, 2008, we electronically filed with the Clerk of the Illinois Pollution Control Board, Respondent Hamman Farms' Motion for Leave to File a Brief Responding to Yorkville's Brief Concerning Discovery, with an attached Brief, copies of which are attached hereto and hereby served upon you.

Dated: August 5, 2008

Respectfully submitted,

On behalf of HAMMAN FARMS

/s/

Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
Nicola Nelson
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A
MUNICIPAL CORPORATION,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY and HAMMAN
FARMS,

PCB No. 08-95
(Appeal of Agency Action)

Respondents.

**RESPONDENT HAMMAN FARMS' MOTION FOR LEAVE TO FILE A BRIEF
RESPONDING TO YORKVILLE'S BRIEF CONCERNING DISCOVERY**

NOW COMES Respondent, HAMMAN FARMS, by and through its attorneys, Charles F. Helsten and HINSHAW & CULBERTSON LLP, pursuant to 35 Ill.Adm.Code 101.610 and 101.616, requesting leave to file its Response to Yorkville's Brief Concerning Discovery, stating as follows:

1. On July 23, 2008, Respondent Hamman Farms filed a motion requesting an order from the Hearing Officer concerning the timing and scope of discovery, if any, in this case.
2. On July 28, 2008, the Hearing Officer ordered that the parties file briefs describing the information they believe is "arguably relevant, discoverable, and admissible in this proceeding that was not before the Agency at the time the permit was issued."
3. On July 31, 2008, Hamman Farms filed its brief pursuant to the Hearing Officer's order; on August 1, 2008, Petitioner City of Yorkville filed its brief pursuant to the Hearing Officer's order.
4. Yorkville's brief repeatedly misuses the term "agronomic rate," which is a term that lies at the heart of the challenged decision, and in so doing, Yorkville misrepresents and mischaracterizes the Agency's decision.

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5. Respondent Hamman Farms accordingly requests leave to file a brief responding to the misrepresentations and mischaracterizations in Yorkville's brief; a copy of Hamman Farms' proposed brief is attached hereto.

WHEREFORE, Respondent HAMMAN FARMS respectfully requests leave, pursuant to the authority of the Hearing Officer under 35 Ill.Adm.Code 101.610 and 101.616, to file the attached brief in Response to Yorkville's Brief Concerning Discovery.

Dated: August 5, 2008

Respectfully submitted,

On behalf of HAMMAN FARMS

/s/

Charles F. Helsten
One of Its Attorneys

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Nicola Nelson
Hinshaw & Culbertson LLP
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Rockford, IL 61105-1389
815-490-4900

George Mueller
Mueller Anderson, P.C.
609 Etna Road
Ottawa, IL 61350
815/431-1500

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A
MUNICIPAL CORPORATION,

Complainant,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY and HAMMAN
FARMS,

Respondents.

PCB No. 08-95
(Appeal of Agency Action)

**RESPONDENT HAMMAN FARMS' RESPONSE TO
YORKVILLE'S BRIEF CONCERNING DISCOVERY**

NOW COMES Respondent, HAMMAN FARMS, by and through its attorneys, Charles F. Helsten and HINSHAW & CULBERTSON LLP, and in response to the brief filed by the City of Yorkville on August 1, 2008 concerning discovery, states as follows:

Yorkville's brief consistently misuses the term "agronomic rate," and alleges that that Illinois Environmental Protection Agency ("IEPA" or "the Agency") has authorized the application of landscape waste at Hamman Farms at "greater than the agronomic rate." This fundamental misunderstanding or, in the alternative, gross misrepresentation, of the term "agronomic rate" pervades Yorkville's brief and indeed, pervades its entire theory of the case.

Contrary to Yorkville's use of the term, the "agronomic rate" of fertilizer application or landscape waste application is not a fixed or a scientifically established number suitable for all conditions and all soils. Rather, the "agronomic rate" is "the rate at which fertilizers, organic

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wastes or other amendments can be added to soils for optimum plant growth.” USDA Natural Resources Conservation Service, National Agronomy Manual, at p. 214.¹

Although the Illinois Environmental Protection Act includes an arbitrary, default agronomic rate of 20 tons per acre, the Act goes on to specifically authorize the Agency to calculate and set the appropriate agronomic rate for individual sites based on their particular soil characteristics or crop needs. *See* 415 ILCS 5/21(q). Hamman Farms requested such a Section 5/21(q) determination from the Agency, and although Yorkville’s brief asserts that the Agency’s May 1, 2008 decision in response to that request allowed application of waste at “greater than the agronomic rate,” this improperly characterizes the Agency’s decision, and suggests that the rate calculated by the Agency is somehow suspect. Thus, by misusing the term “agronomic rate,” Yorkville totally misrepresents the Agency’s decision.

Yorkville’s brief implies that the City of Yorkville believes it is better suited than the IEPA to design a method for calculating the rate of application that would “adequately” meet the needs of the fields at Hamman Farms. (Yorkville’s brief at 2). Setting aside the fact that the “agronomic rate” (as observed by the USDA) is the rate that ensures optimal plant growth, not merely the “adequate” rate to avoid destruction of the soil, the City’s efforts to use this litigation to develop what it believes is a superior method for assessing soil and crop needs would result in an outright abuse of this administrative process. Moreover, the City has demanded that Hamman Farms produce a wide-range of information and materials in discovery that extend far beyond the information before the Agency when it made the decision challenged herein. (For a Petitioner

¹ Available online at the United State’s Department of Agriculture website, at: http://www.info.usda.gov/media/pdf/M_190_NAM.pdf.

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that doesn't even know the meaning of the term "agronomic rate," the City has big plans for this litigation.)

Interestingly enough, those big plans involve gathering an exhaustive array of information and materials that go far afield of the litigation's purported subject (calculation of the appropriate agronomic rate for Hamman Farms). Among the entirely unrelated and irrelevant materials and information demanded by Yorkville in discovery are, *e.g.*, "records and contracts, tending to show the source of the landscape waste that Respondent Hamman Farms applies to its fields;" any violation notices served upon Hamman Farms by the IEPA; "the procedures that Respondent Hamman Farms employs to control the emission of odor"; "the number of times during the last ten years that Respondent Hamman Farms has failed to apply landscape waste within twenty-four (24) hours of receiving the load(s) of landscape waste...the reason that Respondent Hamman Farms failed to apply the landscape waste within twenty-four (24) hours...and the identify (sic) of persons with knowledge of the above information." (Yorkville's Requests to Produce, at Nos. 17 and 18, and Interrogatories, at Nos. 12 and 13, attached hereto as Exhibit A.). Such information hardly seems calculated to show that the Agency improperly determined the soil characteristics and/or crop needs at Hamman Farms.

Under well-established Board precedent, the review of an Agency decision should be limited to the record before the Agency at the time of its decision, and under 415 ILCS 5/21(q), the sole factors considered in determining the agronomic rate for a subject site are its soil characteristics and/or crop needs. Clearly, then, the data relied upon by the Agency in determining Hamman Farms' soil characteristics and crop needs are the only relevant materials at issue in a review of the challenged decision. Yorkville has made absolutely no showing in its brief of why, in a case that purports to challenge the Agency's May 1, 2008 decision setting the

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agronomic rate for the subject site, discovery should not be limited to the information that was before the Agency at the time it made its decision. Unless and until Yorkville makes such a showing, discovery outside the record is improper. As a result, Hamman Farms should not be required to answer the discovery served by Yorkville (attached hereto as Exhibit A).

WHEREFORE, HAMMAN FARMS respectfully requests that the Hearing Officer order that discovery is inappropriate in this case, or in the alternative, enter an order limiting discovery to the data that was reviewed and considered by the Agency in reaching its assessment of Hamman Farms' soil characteristics or crop needs, and its resulting calculation of the appropriate agronomic rate for Hamman Farms.

Dated: August 5, 2008

Respectfully submitted,

On behalf of Hamman Farms

151
Charles F. Helsten
One of Its Attorneys

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Nicola Nelson
Hinshaw & Culbertson LLP
100 Park Avenue
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ILLINOIS ENVIRONMENTAL
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PCB No. 08-95

(Appeal of Agency Action)

Respondents.

**PETITIONER UNITED CITY OF YORKVILLE'S INTERROGATORIES TO
RESPONDENT HAMMAN FARMS**

NOW COMES, Petitioner, United City of Yorkville, by and through its attorneys,
Gardiner Koch & Weisberg, pursuant to ILL. ADMIN. CODE TIT. 35 §§ 101.616 and 101.620, and
directs the Respondent to answer these Interrogatories on or before the deadline set by the
Hearing Officer.

DEFINITIONS

1. "And/or" shall be construed both disjunctively and conjunctively so as to require the broadest possible answer.
2. "Communications" shall mean any verbal, written or other transmittal of words, thoughts, ideas or images between or among persons or groups of persons, whether in person, by letter, by telephone or any other means including, without limitation, discussions, conversations, meetings, conferences, contracts, telephone conversations, inquiries, interviews, negotiations, advertisements, agreements, understandings, cards, letters, correspondence, telegrams, telexes, faxes, cables or other forms of written or verbal intercourse, however transmitted, including reports, notes, memoranda, lists, agenda, video or audio recordings, writings, drawings, graphs, charts, photographs, phone records, and data compilations from which information may be obtained (translated if necessary, through detection devices).
3. "Date" means the exact day, month, and year if ascertainable; if not exactly ascertainable, then the closest approximation that can be made in terms of days, months, and years, seasons, or in relation to other events of matters.

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4. "Petitioner" means and refers to the United City of Yorkville, its agents, employees, attorneys and representatives. "Person" means and refers to natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (*e.g.*, as a committee or board of directors), corporations, partnerships, joint ventures, and any other incorporated or unincorporated business or social entity.
5. "Document" means all writings of every kind in your custody, possession, or control or in the custody, possession, or control of any agent, employee or representative (including attorneys) of yours including, but not limited to letters, telegrams, e-mail or electronic messages, telex messages, facsimile letters or transmissions, memoranda, reports, drawings, studies, calendar or diary entries, maps, plans, pamphlets, notes or records of meetings or conversations of any kind, charts, tabulations, analyses, statistical or information accumulations, financial statements, bills, receipts, work orders, purchase orders, invoices, canceled checks, general ledgers, accounting records of any kind, film impressions, photographs, computer printouts or materials from which such printouts may be obtained, magnetic tapes, sound or mechanical reproductions, drafts, revisions, amendments or supplements of the above, and copies of documents that are not identical duplicates of the originals (because, *e.g.*, handwritten or "blind" notes appear thereon or are attached thereto).
6. "Identify," "Identifying" or "Identification," when used in reference to a natural person, means to state his or her full name and present or last known residential and business address and telephone number, his or her present or last known position or business affiliation; when used in reference to a business entity, means to state the name, address, telephone number, and any account or computer number to which such entity is referred to in your records; when used in reference to a communication, means to state the parties to the communication, including parties present during the communication, the means of communication, the date of the communication, the place of the communication and the substance of the communication; when used in reference to a lawsuit, means to state the name of the suit, the place of the suit, the caption of the suit, the date on which the suit was filed, and the counsel of record for the party and/or parties on whose behalf the suit was filed; when used in reference to a document, means to state the type of document (*i.e.*, letter, memorandum, chart, sound production, report, computer input or output, etc.), the location where it is maintained, all identifying marks and codes, the name of the addressee, the document date, author and persons to whom copies were sent or persons initiating or reading or approving the document and the name of each of the present custodians of the document. If any such document was, but is no longer in your possession, or subject to your control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily, to others, or (4) otherwise disposed of, and in each instance, explain the circumstances surrounding an authorization for such disposition thereof and state the date or approximate date thereof.
7. "Occurrence" means and refers to the incidents leading to your injuries as alleged in your Complaint.

8. "Oral Communication" means and refers to any non-written communication occurring by telephone or in-person meetings, conversations, conferences, or discussions of any kind.
9. "Refer" or "relate" shall mean, in addition to the customary and usual meaning, discuss or discussing, refer or referring, reflect or reflecting, assess or assessing, record or recording.
10. "You", "Your" and "Respondent" mean and refer to Hamman Farms, its agents, employees, attorneys, and representatives.

GENERAL INSTRUCTIONS

1. Each Interrogatory listed herein shall be continuing in nature and shall be modified or supplemented to include any additional information, knowledge, or data responsive to these Interrogatories which is later discovered by you. If you do not have all of the information that you need to make a complete response to these Interrogatories, provide all of the information that you do have, state that your information is incomplete, identify the information you would need to make a complete response, and provide a supplemental response when you obtain more information.
2. In the following Interrogatories, the Respondent shall produce all Documents containing the requested information within Respondent's possession, custody or control.
3. Each request herein for a Document or Documents to be produced, whether memoranda, reports, letters, minutes or other Documents of any description, requires the production of the Document in its entirety, without redaction or expurgation.
4. In producing documents called for, segregate the documents so as to identify the numbered Interrogatory to which each such document responds.
5. If any document containing the requested information was, but is no longer in your possession, or subject to your control, or in existence, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred, voluntarily or involuntarily, to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding, and the authorization for such disposition, and state the approximate date thereof.
6. Your answer to each of these Interrogatories should be as responsive to each portion thereof as is reasonably possible, whether such portion is stated in a separate sentence, or is stated in conjunction with another portion or portions in a single sentence. If you object to a portion of any Interrogatory, you are instructed to answer the remainder.

7. If you object to any Interrogatory or any part thereof on the basis of any claimed privilege or doctrine, identify the privilege or doctrine claimed, as well as each statement or communication for which such privilege is claimed, and provide the following information with respect to each such statement or communication:
 - a. date;
 - b. names of persons present;
 - c. subject matter;
 - d. location and/or custodian; and
 - e. the basis on which the privilege or doctrine is claimed.
8. Your answer should include the identity of each person or persons answering the Interrogatory or providing assistance or information for the answer.
9. A request to identify a person means to set forth:
 - a. his or her name;
 - b. his or her title or position;
 - c. his or her present or last known business and home address;
 - d. his or her present or last known employer; and
 - e. if your employee, his or her present area of responsibility.

Where the person identified is a business, entity or firm, set forth:

- a. the full name of business, entity or firm; and
- b. the address of its principal place of business.

For any person identified, if any of the above information was different at the time with which a particular Interrogatory is concerned, supply both current information and such different information as applies to the time in question.

10. A request to identify an oral communication means to set forth:
 - a. the date;
 - b. the nature of the communication (e.g., telephone, face-to-face meeting);
 - c. the names of all persons present at the time of the communication; and
 - d. the substance of the communication.
11. The past tense shall be construed to include the present tense, and vice versa, to make the Interrogatory inclusive rather than exclusive.
12. The singular shall be construed to include the plural, and vice versa, to make the Interrogatory inclusive rather than exclusive.

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13. "And" as well as "or" should be construed either disjunctively or conjunctively, as necessary, to bring within the scope of these Interrogatories any information that might otherwise be construed as outside their scope.
14. Regardless of the gender used, each Interrogatory, document request, instruction and definition shall be construed to seek the requested information for persons of both genders, as is necessary to require the most inclusive response.

INTERROGATORIES

INTERROGATORY NO. 1: State the name, address, telephone number and employment position of the person(s) answering these Interrogatories.

ANSWER:

INTERROGATORY NO. 2: Identify all individuals who possess knowledge of each of the allegations in the Petition, and for each such individual, identify the allegation(s) which the individual had knowledge of, the telephone number of that individual, and describe the extent of his/her knowledge and the basis for that knowledge.

ANSWER:

INTERROGATORY NO. 3: Identify all statements (whether written, recorded or videotaped) of any person with knowledge of the substance of each of the allegations in the Petition.

ANSWER:

INTERROGATORY NO. 4: Identify any and all information upon which Respondent Hamman Farms has relied to support its application/requests for an increase in the

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rate of landscape waste application, including but not limited to the following applications: April 10, 2008, April 16, 2008, and April 23, 2008.

ANSWER:

INTERROGATORY NO. 5: Identify all individuals and/or entities that have conducted soil analysis tests and/or feed nutrient analyses on behalf of Respondent Hamman Farms or using samples taken from Respondent Hamman Farms' fields. With regard to each individual/entity, state that person/agency's full name, address, telephone number, and employer.

ANSWER:

INTERROGATORY NO. 6: Identify any and all information that supports Respondent Hamman Farm's contention that its soil characteristics or crop needs require a higher rate of landscape waste application.

ANSWER:

INTERROGATORY NO. 7: Identify all persons possessing knowledge of Respondent Hamman Farms' landscape waste application operations, including the amounts of landscape waste that has been applied to Respondent Hamman Farms' fields for the last ten years and the source of the landscape waste that Respondent Hamman Farms applies to its fields.

ANSWER:

INTERROGATORY NO. 8: State the amount of landscape waste that Respondent Hamman Farms has applied to its fields each year for the previous ten years, and for

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each year, state the number of acres to which Respondent Hamman Farms applied the landscape waste and identify fields to which Respondent Hamman Farms applied the landscape.

ANSWER:

INTERROGATORY NO. 9: State whether Respondent Hamman Farms has applied fertilizer in addition to landscape waste to its fields, and if so, identify the dates on which Respondent Hamman Farms applied fertilizer to its fields and the types and amounts of fertilizer that Respondent Hamman Farms has applied to its fields.

ANSWER:

INTERROGATORY NO. 10: Identify the types of crops that Respondent Hamman Farms has planted in its fields during the last ten years, the years that those crops were planted, the exact field in which those crops were planted for each year the crop was planted, and the yield of the crop each year it was planted.

ANSWER:

INTERROGATORY NO. 11: State the procedures that Respondent Hamman Farms employs to prevent the application of garbage or other solid waste, with the exception of landscape waste, to Respondent's Hamman Farms fields, whether these procedures have been successful in preventing the application of garbage or other solid waste to its fields, the dates and times when Respondent Hamman Farms' procedures have failed to prevent the application of garbage or other solid waste, any remedial efforts that Respondent Hamman Farms following

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application of garbage or other solid waste, and the identity of those persons with knowledge of the above information.

ANSWER:

INTERROGATORY NO. 12: State the procedures that Respondent Hamman Farms employs to control the emission of odor due to the Respondent Hamman Farms' application of landscape waste to its fields, whether these procedures have been successful in preventing the emission of odor due to Respondent Hamman Farms' application of landscape waste, the dates and times when Respondent Hamman Farms' procedures have failed to prevent the emission of odor, any remedial efforts that Respondent Hamman Farms following the emission of odor due to the application of landscape waste, and the identity of those persons with knowledge of the above information.

ANSWER:

INTERROGATORY NO. 13: State the number of times during the last ten years that Respondent Hamman Farms has failed to apply landscape waste within twenty-four (24) hours of receiving the load(s) of landscape waste, the dates and times that Respondent Hamman Farms has failed to apply landscape waste within twenty-four (24) hours of receiving the load(s) of landscape waste, the reason that Respondent Hamman Farms failed to apply the landscape waste within twenty-four (24) hours of receiving the load(s) of landscape waste for each such occurrence, and the identify of persons with knowledge of the above information.

ANSWER:

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INTERROGATORY NO. 14: Identify the number of times prior to April 10, 2008

that Respondent Hamman Farms requested permission from the Illinois Environmental Protection Agency to increase the rate of landscape waste application, the dates of those requests and/or applications, the outcome of those requests, the individual(s) who assisted with the preparation of each request and/or application, and any and all individuals possessing knowledge of the prior requests and/or applications.

ANSWER:

INTERROGATORY NO. 15: Identify all individuals possessing knowledge of

Respondent Hamman Farms' record-keeping procedures with regard to records of soil analysis tests, types and amounts of fertilizer applied to Respondent Hamman Farms' fields, the types of crops planted in each field, and the yield of each of Respondent Hamman Farms' fields.

ANSWER:

INTERROGATORY NO. 16: State the number of times that the Illinois Pollution

Control Agency has issued violation notices to Respondent Hamman Farms, the dates that each violation notice was issued, the basis of each violation notice, and the outcome of each violation notice.

ANSWER:

INTERROGATORY NO. 17: Identify the following:

- a. The name, address, and telephone numbers of each and every lay witness and identify with specificity the subjects on which each witness will testify.

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- b. The name, address, and telephone numbers of each and every independent expert witness and identify the subjects on which each witness will testify and the testimony that you expect to elicit.
- c. The name, address, and telephone numbers of each and every controlled expert witness and identify (i) the subject matter on which the witness will testify; (ii) whether an examination, investigation or test of the trench or water main has been made by the expert; (iii) the conclusions and opinions of the witness and the bases therefore; (iv) the qualifications of the witness; (v) any reports prepared by the witness about the case; and (vi) the rates charged by the witness.

ANSWER:

INTERROGATORY NO. 18: Identify all reports prepared by and any conclusions or opinions reached by the experts identified in Interrogatory #17 of these Interrogatories, and identify all documents those experts relied upon in formulation their conclusions or opinions.

ANSWER:

INTERROGATORY NO. 19: Identify all witnesses that the Respondent Hamman Farms intends to call as witnesses at the hearing and the subject matter of each individual's testimony.

ANSWER:

INTERROGATORY NO. 20: Identify all documents, reports, opinions or calculations that Respondent intends to use in defense of this Petition, whether by introducing them as evidence or by using them on other ways during the proceedings, and as to each, identify the content and purpose of each such document.

ANSWER:

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: 

One of its Attorneys

Thomas G. Gardiner
Michelle M. LaGrotta
Gardiner Koch & Weisberg
53 W Jackson Blvd., Ste. 950
Chicago, IL 60604
(312) 362-0000
Law Firm ID: 29637

CERTIFICATE OF SERVICE

I, Michelle M. LaGrotta, the undersigned certify that on July 23, 2008, I have served the attached **PETITIONER UNITED CITY OF YORKVILLE'S INTERROGATORIES TO RESPONDENT HAMMAN FARMS** upon:

Michelle M. Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(via email to: Michelle.Ryan@Illinois.gov and U.S. Mail)

Charles F. Helsten
Nicola A. Nelson
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(via email to: NNelson@hinshawlaw.com and U.S. Mail)


Michelle M. LaGrotta

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A)
MUNICIPAL CORPORATION,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
HAMMAN FARMS,)

PCB No. 08-95

(Appeal of Agency Action)

Respondents.

**PETITIONER UNITED CITY OF YORKVILLE'S REQUESTS TO PRODUCE OF
RESPONDENT HAMMAN FARMS**

NOW COMES, Petitioner, United City of Yorkville, by and through its attorneys,
Gardiner Koch & Weisberg, pursuant to ILL. ADMIN. CODE TIT. 35 § 101.616, and directs the
Respondent to produce the following documents, objects or tangible things on or before the
deadline set by the Hearing Officer:

DEFINITIONS

1. "And/or" shall be construed both disjunctively and conjunctively so as to require the broadest possible answer.
2. "Communications" shall mean any verbal, written or other transmittal of words, thoughts, ideas or images between or among persons or groups of persons, whether in person, by letter, by telephone or any other means including, without limitation, discussions, conversations, meetings, conferences, contracts, telephone conversations, inquiries, interviews, negotiations, advertisements, agreements, understandings, cards, letters, correspondence, telegrams, telexes, faxes, cables or other forms of written or verbal intercourse, however transmitted, including reports, notes, memoranda, lists, agenda, video or audio recordings, writings, drawings, graphs, charts, photographs, phone records, and data compilations from which information may be obtained (translated if necessary, through detection devices).
3. "Date" means the exact day, month, and year if ascertainable; if not exactly ascertainable, then the closest approximation that can be made in terms of days, months, and years, seasons, or in relation to other events of matters.

4. "Petitioner" means and refers to the United City of Yorkville, its agents, employees, attorneys and representatives. "Person" means and refers to natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (e.g., as a committee or board of directors), corporations, partnerships, joint ventures, and any other incorporated or unincorporated business or social entity.
5. "Document" means all writings of every kind in your custody, possession, or control or in the custody, possession, or control of any agent, employee or representative (including attorneys) of yours including, but not limited to letters, telegrams, e-mail or electronic messages, telex messages, facsimile letters or transmissions, memoranda, reports, drawings, studies, calendar or diary entries, maps, plans, pamphlets, notes or records of meetings or conversations of any kind, charts, tabulations, analyses, statistical or information accumulations, financial statements, bills, receipts, work orders, purchase orders, invoices, canceled checks, general ledgers, accounting records of any kind, film impressions, photographs, computer printouts or materials from which such printouts may be obtained, magnetic tapes, sound or mechanical reproductions, drafts, revisions, amendments or supplements of the above, and copies of documents that are not identical duplicates of the originals (because, e.g., handwritten or "blind" notes appear thereon or are attached thereto).
6. "Identify," "Identifying" or "Identification," when used in reference to a natural person, means to state his or her full name and present or last known residential and business address and telephone number, his or her present or last known position or business affiliation; when used in reference to a business entity, means to state the name, address, telephone number, and any account or computer number to which such entity is referred to in your records; when used in reference to a communication, means to state the parties to the communication, including parties present during the communication, the means of communication, the date of the communication, the place of the communication and the substance of the communication; when used in reference to a lawsuit, means to state the name of the suit, the place of the suit, the caption of the suit, the date on which the suit was filed, and the counsel of record for the party and/or parties on whose behalf the suit was filed; when used in reference to a document, means to state the type of document (i.e., letter, memorandum, chart, sound production, report, computer input or output, etc.), the location where it is maintained, all identifying marks and codes, the name of the addressee, the document date, author and persons to whom copies were sent or persons initiating or reading or approving the document and the name of each of the present custodians of the document. If any such document was, but is no longer in your possession, or subject to your control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily, to others, or (4) otherwise disposed of, and in each instance, explain the circumstances surrounding an authorization for such disposition thereof and state the date or approximate date thereof.
7. "Occurrence" means and refers to the incidents leading to your injuries as alleged in your Complaint.

8. "Oral Communication" means and refers to any non-written communication occurring by telephone or in-person meetings, conversations, conferences, or discussions of any kind.
9. "Refer" or "relate" shall mean, in addition to the customary and usual meaning, discuss or discussing, refer or referring, reflect or reflecting, assess or assessing, record or recording.
10. "You", "Your" and "Respondent" mean and refer to Hamman Farms, its agents, employees, attorneys, and representatives.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1: Any and all applications, supplemental applications, and/or requests, on behalf of Respondent Hamman Farms, to the Illinois Environmental Protection Agency requesting an increase in the rate of landscape waste application.

RESPONSE:

REQUEST NO. 2: Any and all documents which Respondent Hamman Farms, and its attorneys, experts and/or consultants, referred to, or on which they relied, when preparing their applications, supplemental applications, and/or requests to the Illinois Environmental Protection Agency, including but not limited to:

- a. Any and all documents relied upon in preparing Application Plan-Overview,
- b. any and all documents relied upon in preparing Facility Operations and Application Rate;
- c. any and all documents relied upon in preparing Litter Control Procedures;
- d. any and all documents relied upon in preparing Odor Control Procedures; and
- e. any and all documents relied upon in determining the Nitrogen Calculations;

RESPONSE:

REQUEST NO. 3: All documents, including correspondence, Respondent Hamman Farms received from the Illinois Environmental Protection Agency regarding any and all applications, supplemental applications, and/or requests for an increase in the rate of landscape waste application.

RESPONSE:

REQUEST NO. 4: All documents, including correspondence, Respondent Hamman Farms sent to the Illinois Environmental Protection Agency regarding any and all applications, supplemental applications, and/or requests for an increase in the rate of landscape waste application.

RESPONSE:

REQUEST NO. 5: All documents referenced in Respondent's Answers to the Interrogatories propounded by Petitioner United City of Yorkville.

RESPONSE:

REQUEST NO. 6: All documents that Respondent Hamman Farms, and its attorneys, experts and/or consultants, utilized or relied upon when preparing and drafting the Answers to the Interrogatories propounded by Petitioner United City of Yorkville in this action.

RESPONSE:

Electronic Filing - Received, Clerk's Office, August 5, 2008

REQUEST NO. 7: All opinions, notes, or reports prepared by Aga S. Razvi regarding the subject matter of this action.

RESPONSE:

REQUEST NO. 8: All documents relied upon by Aga S. Razvi in preparing his report of February 23, 2008, which was included in Respondent's April 10, 2008 application.

RESPONSE:

REQUEST NO. 9: All opinions, notes, or reports prepared by persons retained by Respondent, whether as consultants or as expert witnesses, and all documents reviewed by such persons on forming their opinions, notes, or reports.

RESPONSE:

REQUEST NO. 10: The curriculum vitae of each expert retained or consulted by Respondent concerning this action.

RESPONSE:

REQUEST NO. 11: The March 17, 2008 Steve Nightingale Memorandum referenced in Respondent's April 10, 2008 Application sent to the Illinois Environmental Protection Agency.

RESPONSE:

Electronic Filing - Received, Clerk's Office, August 5, 2008

REQUEST NO. 12: Any and all documents that support Respondent Hamman Farms' contention that its soil characteristics and crop needs require higher rates of landscape waste application.

RESPONSE:

REQUEST NO. 13: All documents and/or other evidence Respondent Hamman Farms sent to and received from Midwest Laboratories, Inc. regarding any and all soil analysis tests and feed nutrient analyses for the ten years prior to Respondent Hamman Farms' Request of April 10, 2008, including but not limited to the following:

- a. any and all documents supporting the location from where the samples were obtained; and
- b. any and all documents supporting the dates on which the samples were obtained.

RESPONSE:

REQUEST NO. 14: Any and all documents regarding the type of soil and the nutrient needs of the soil in the land occupied by Respondent Hamman Farms.

RESPONSE:

REQUEST NO. 15: Any and all documents showing the type and amount of fertilizer and soil conditioner that Respondent Hamman Farms has applied to its fields for the last ten years.

RESPONSE:

REQUEST NO. 16: Any and all documents showing and/or recording the amount of landscape waste Respondent Hamman Farms has applied to its fields for the last ten years.

RESPONSE:

REQUEST NO. 17: Any and all documents, including but not limited to records and contracts, tending to show the source of the landscape waste that Respondent Hamman Farms applies to its fields.

RESPONSE:

REQUEST NO. 18: Any and all violation notices that Respondent Hamman Farms received from the Illinois Environmental Protection Agency.

RESPONSE:

REQUEST NO. 19: All documents that the Respondent Hamman Farms intends to use and/or enter into evidence in this action, whether at hearing or to support any motion.

RESPONSE:

REQUEST NO. 20: Respondent Hamman Farms is requested to furnish an Affidavit stating whether the production is complete.

RESPONSE:

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: 

One of its Attorneys

Thomas G. Gardiner
Michelle M. LaGrotta
Gardiner Koch & Weisberg
53 W Jackson Blvd., Ste. 950
Chicago, IL 60604
(312) 362-0000
Law Firm ID: 29637

CERTIFICATE OF SERVICE

I, Michelle M. LaGrotta, the undersigned certify that on July 23, 2008, I have served the attached **PETITIONER UNITED CITY OF YORKVILLE'S REQUESTS TO PRODUCE OF RESPONDENT HAMMAN FARMS** upon:

Michelle M. Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(via email to: Michelle.Ryan@Illinois.gov and U.S. Mail)

Charles F. Helsten
Nicola A. Nelson
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(via email to: NNelson@hinshawlaw.com and U.S. Mail)



Michelle M. LaGrotta

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on August 5, 2008, she caused to be served a copy of the foregoing upon:

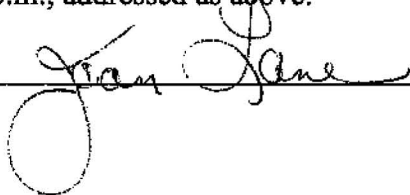
Mr. John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601
therriaj@ipcb.state.il.us
(via electronic filing)

via e-mail
Thomas G. Gardiner
Michelle M. LaGrotta
GARDINER KOCH & WEISBERG
53 W. Jackson Blvd., Ste. 950
Chicago, IL 60604
tgardiner@gkw-law.com
mlagrotta@gkw-law.com

via e-mail
Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
Michelle.Ryan@Illinois.gov

via email
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 w. Randolph Street
Chicago, IL 60601
hallorab@ipcb.state.il.us

A copy of the same was enclosed in an envelope in the United States mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



PCB No. 08-95
Charles F. Helsten
Nicola A. Nelson
HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900