

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A
MUNICIPAL CORPORATION,

Complainant,

V.

HAMMAN FARMS,,

Respondents.

PCB No. 08-96
(Enforcement-Land, Air, Water)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on November 17, 2008, we electronically filed with the Clerk of the Illinois Pollution Control Board, Motion to Dismiss Counts I and II as Duplicative, a copy of which is attached hereto and hereby served upon you.

Dated: November 17, 2008

Respectfully submitted,

On behalf of HAMMAN FARMS

/s/Charles F. Helsten

Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
Nicola Nelson
Hinshaw & Culbertson LLP
100 Park Avenue
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RESPONDENT'S MOTION TO DISMISS COUNTS I AND II AS DUPLICATIVE

NOW COMES the Respondent, HAMMAN FARMS, by and through its attorneys,
Charles F. Helsten and HINSHAW & CULBERTSON LLP, and for its motion to dismiss Counts
I and II as duplicative of an action brought by the State of Illinois, states as follows:

1. The Complaint filed by the City of Yorkville (“Yorkville”) is a four-count citizen’s enforcement action against Respondent, Hamman Farms.

2. Count I of Yorkville's Complaint alleges "Open Dumping" violations arising from litter or refuse that was allegedly mixed in with landscape waste applied by Hamman Farms to its fields in 2007; Count I further alleges this conduct was in violation of Section 5/21 of the Environmental Protection Act, and the implementing regulations thereof.

3. Count II of Yorkville's Complaint alleges "Landscape Waste" violations, pursuant to Hamman Farms' alleged application of landscape waste in excess of the statutory default rate, and the alleged operation of an unpermitted landscape waste composting operation, waste disposal, or waste storage operation, in violation of Section 5/21 of the Environmental Protection Act and the implementing regulations thereof.

4. There is currently pending before the Circuit Court of the Sixteenth Judicial Circuit, Kendall County, Illinois, a Complaint filed against Hamman Farms by the Attorney

General of the State of Illinois. (2008 CH 0811). A true and accurate copy of that Complaint is marked Exhibit A and attached hereto, and incorporated herein by this reference.

5. The Attorney General's Complaint alleges, at Count I, Open Dumping, in violation of the Environmental Protection Act, arising from litter or refuse that was allegedly mixed in with landscape waste applied by Hamman Farms to its fields in 2007; Count I alleges this conduct was in violation of Section 5/21 of the Environmental Protection Act, and the implementing regulations thereof.

6. The Attorney General's now-pending Complaint alleges, at Counts II and III, that Hamman Farms applied landscape waste in excess of the statutory default rate, and allegedly operated an unpermitted landscape waste composting operation, waste disposal, or waste storage operation, pursuant to Section 5/21 of the Environmental Protection Act

7. The same operative facts are pled and relied upon by Yorkville and by the Attorney General. In addition, the very same statutory provisions are alleged to have been violated in Yorkville's Complaint and in the Attorney General's Complaint.

8. The Board's rules provide for dismissal of an action that is duplicative of another proceeding; duplicativeness is defined as a matter that is "identical or substantially similar to one brought before the Board or another forum." 35 Ill.Adm.Code 101.202.

9. In addition to the Board's rules regarding duplicativeness, the Illinois Environmental Protection Act establishes "a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment," and specifically authorizes the Illinois Attorney General to "institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act, ...or to require such other actions as may be necessary to address violations of this Act...." *Village of DePue, Ill. v. Exxon Mobil*

Corp., 537 F.3d 775, 788 (7th Cir. 2008) (quoting 415 ILCS 5/2(b) and 415 ILCS 5/42(e)). Here, the Attorney General has instituted just such an action, and the City of Yorkville's citizen enforcement action seeking a private remedy for alleged violations of the Environmental Protection Act should accordingly yield to the action brought by the Attorney General concerning the same alleged violations.

10. The Attorney General's Environmental Enforcement Division has been given the power and authority to protect the public health and environment by pursuing enforcement actions, and has been tasked with the enforcement of the Environmental Protection Act. Indeed, that is the division's sole purpose.

11. Accordingly, Counts I and II of Yorkville's Complaint should be dismissed as duplicative of the Attorney General's action pending in the Circuit Court of Kendall County, wherein the State's full resources and extensive experience in litigating environmental actions may be brought to bear in prosecuting and redressing the alleged environmental violations by Hamman Farms.

WHEREFORE: Respondent, Hamman Farms, respectfully requests that the Board dismiss Counts I and II of Yorkville's Complaint.

Dated: November 14, 2008

Respectfully submitted,

On behalf of Hamman Farms

/s/
One of Its Attorneys

Charles F. Helsten
Nicola Nelson
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
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WHEREFORE: Respondent, Hamman Farms, respectfully requests that the Board dismiss Counts I and II of Yorkville's Complaint.

Dated: November 17, 2008

Respectfully submitted,

On behalf of Hamman Farms

/s/
One of Its Attorneys

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FILED

日期: 17.2000

BECKY MORGANEGG
CIRCUIT CLERK KENDALL CO.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois.

Plaintiff,

vs.

DON HAMMAN FARMS LLC, an Illinois limited liability company and DONALD J. HAMMAN, an individual,

Defendants.

[illegible]

2008-CH-0811

No.

NOTICE

Pursuant to Supreme Court Rule 218 Initial Case Management Conference shall be held at 9:00 am Attorneys of record responsible for case or parties. If unrepresented must appear and be prepared to comply with Supreme Court Rule 218. or be subject to appropriate sanctions.

Clerk of the Circuit Court

Bucky Fitzgerald

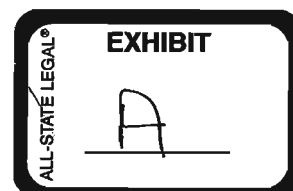
COMPLAINT FOR INJUNCTIVE RELIEF AND OTHER CIVIL PENALTIES

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Defendants, DON HAMMAN FARMS LLC, a limited liability company, and DONALD J. HAMMAN, an individual, as follows:

COUNT I

OPEN DUMPING

1. This Count I is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, (“Illinois EPA”), pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2006), and is an action to restrain ongoing violations of the Act and for civil penalties.



2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. On information and belief, the Defendant, DON HAMMAN FARMS LLC ("Hamman Farms") at all times relevant to the complaint, was and is an Illinois limited liability company in good standing. The business address is 6110 State Route 71, Oswego, Kendall County, Illinois.

4. On information and belief, the Defendant, DONALD J. HAMMAN, ("Mr. Hamman"), is the owner of 2200 acres of land located at 6275 State Route 71, Yorkville, Kendall County, Illinois ("Site"). The land is primarily used for agricultural purposes.

5. At all times relevant to the complaint, Defendant DONALD J. HAMMAN, is and was the manager of the limited liability company and also its registered agent. On information and belief, Mr. Hamman, is in control of and responsible for the day-to-day operations of Hamman Farms. He is present on the Site almost every day. Mr. Hamman has been and continues to be responsible for accepting materials at the Site that constitute landscape waste. He makes all decisions concerning environmental compliance including requesting an expert opinion from Dr. Razvi concerning the soil composition of the Site. Mr. Hamman has met and continues to meet with the Illinois EPA personnel at the Site when they are present, on most occasions. He responds to their questions and also seeks their opinion on compliance. On information and belief, Mr. Hamman is responsible for all major decisions concerning the Site.

6. Since at least September 2007, or at a time better known to Defendants, and continuing to at least the filing of this complaint, Defendants have conducted an on-farm

landscape waste composting operation at the Site. Defendants receive monetary fees to accept landscape waste. The landscape waste is then land-applied to the Defendants' farm acreage.

7. Defendants, as owners and/or operators of the Site, are subject to the Act and the Rules and Regulations promulgated by the Illinois Pollution Control Board ("Board"). The Board's regulations for solid waste and special waste handling are found in Title 35, Subtitle G, Chapter I, Subchapter I, of the Illinois Administrative Code ("Board Regulations for Solid Waste Handling").

8. From at least September 21, 2007, or at a time better known to the Defendants, and continuing to at least the filing of this complaint, Defendants have caused or allowed thousands of pieces of plastic, metal, paper, and miscellaneous debris mixed with the landscape waste to be deposited in and around the Site as well as on roads and ditches adjacent to the farm fields of the Site.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

10. Defendants Hamman Farms and Mr. Hamman are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

11. Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 5/21(a), 21(p)(1)(2006), provide, in pertinent part, as follows:

Sec. 21. Prohibited acts. No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

- (p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

* * *

12. Section 3.535 of the Act, 415 ILCS 5/3.535(2006), provides the following definition:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

13. Section 3.445 of the Act, 415 ILCS 5/3.445(2006), provides the following definition:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

14. Sections 3.185 and 3.305 of the Act, 415 ILCS 5/3.185, 5/3.305 (2006), respectively, provide the following definitions:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

15. The thousands of pieces of plastic, metal, paper, and miscellaneous debris mixed with the landscape waste deposited in and around the Site as well as on roads and ditches surrounding the Site, are "waste" as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2006).

16. The deposition of the landscape waste mixed with plastic, metal, paper, and miscellaneous debris on the Site constitutes "open dumping" as that term is defined in Section 3.305 of the Act, 415 ILCS 5/3.305(2006).

17. Defendants' Site is a "disposal" site as that term is defined in Section 3.185 of the Act, 415 ILCS 5/3.185 (2006) because of the landscape waste and plastic, metal, paper, and miscellaneous debris placed there.

18. Defendants' Site is not a "sanitary landfill" as that term is defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2006) and does not have a permit as one.

19. From on or about September 21, 2007, or at a time better known to the Defendants, and continuing at least until the filing of this complaint, Defendants have caused or allowed landscape waste, plastic, metal, paper, and miscellaneous debris to be openly dumped on their Site, without being a permitted landfill in violation of Section 21(a) of the Act, 415 ILCS 5/21(a)(2006).

20. From on or about September 21, 2007, or at a time better known to the

Defendants, and continuing at least until the filing of this complaint, Defendants have caused or allowed landscape waste and debris to be openly dumped on their Site, mixed together in a manner creating litter in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1)(2006).

21. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter a preliminary and, after a trial, permanent injunction and an Order in favor of Plaintiff and against the Defendants, , DON HAMMAN FARMS, LLC and DONALD J. HAMMAN, on this Count I:

A. Finding that the Defendants have violated Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 21(a), 21(p)(1)(2006);

B. Enjoining the Defendants from any further violations of Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 21(a), 21(p)(1)(2006);

C. Ordering Defendants to take the appropriate corrective actions that will result in the abatement of the violations alleged herein;

D. Assessing a civil penalty of \$50,000.00 against the Defendants for each and every violation of the Act and pertinent regulations and an additional \$10,000.00 for each day during which the violation continues;

E. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendants; and

F. For such other relief as this Court may deem appropriate and just.

COUNT II

CONDUCTING A WASTE STORAGE OPERATION WITHOUT A PERMIT

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 10 and 12 through 18 of Count I, as paragraphs 1 through 17 of this Count II.

18. Sections 21(d) and 21(e) of the Act, 415 ILCS 5/21(d), 5/21(e)(2006), provide, in pertinent part, as follows:

No person shall:

* * *

d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) without a permit granted by the Agency...

* * *

(2) in violation of any regulations or standards adopted by the Board under this Act; ...

* * *

e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

19. Section 807.201 of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, provides, in relevant part, as follows:

Development Permits

...no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency.

20. Section 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.202(b) provides, in relevant part, as follows:

Operating Permits

* * *

b) Existing Solid Waste Management Sites.

1) ...no person shall cause or allow the use or operation of any existing solid waste management site without an Operating Permit issued by the Agency not later than one year after the effective date of these Regulations.

21. From some time before September 17, 2007, or at a time better known to Defendants, and continuing at least until the filing of this complaint, Defendants have conducted a waste-disposal operation.

22. From some time before September 17, 2007, or at a time better known to Defendants, and continuing at least until the filing of this complaint, Defendants have conducted and/or modified their waste-disposal operation without obtaining a Development or Operating Permit for said operation.

23. From some time before September 17, 2007, or at a time better known to Defendants, and continuing at least until the filing of this complaint, Defendants have disposed of waste at a site or facility which has not met the requirements of this Act or of the regulations and standards thereunder.

24. By failing to obtain a Development or Operating Permit for a waste disposal operation, Defendants have violated Sections 807.201 and 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, 807.202(b), and, therefore, violated Sections 21(d)(1),(d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006).

25. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter a preliminary and, after a trial, permanent injunction and an Order in favor of Plaintiff and against the Defendants, DON HAMMAN FARMS, LLC and DONALD J. HAMMAN, on this Count II:

- A. Finding that the Defendants have violated 21(d)(1),(d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006), and Sections 807.201 and 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, 807.202(b);
- B. Enjoining the Defendants from any further violations of 21(d)(1), (d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006), and Sections 807.201 and 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, 807.202(b);
- C. Ordering Defendants to take the appropriate corrective actions that will result in the abatement of the violations alleged herein;
- D. Assessing a civil penalty of \$50,000.00 against the Defendants for each and every violation of the Act and pertinent regulations and an additional \$10,000.00 for each day during which the violation continues;
- E. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendants; and
- F. For such other relief as this Court may deem appropriate and just.

COUNT III

**FAILURE TO MEET THE APPLICATION AT AGRONOMIC RATES
EXEMPTION**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, pursuant to Section 42(d) and (e) of the Environmental Protection Act, 415 ILCS 5/42(d) and (e) (2006) ("Act").

2. The Attorney General is the chief legal officer of the State of Illinois having the powers and duties prescribed by law. ILL. CONST. Article V, Section 15 (1970).

3-18. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 10 and 12 through 18 of Count I, as paragraphs 3 through 18 of this Count III.

19. Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006), provides, in relevant part, as follows:

Sec. 21. Prohibited acts. No person shall:

* * *

(q) Conduct a landscape waste composting operation without an Agency permit, provided, however, that no permit shall be required for any person:

* * *

(2) applying landscape waste or composted landscape waste at agronomic rates; or

* * *

20. Section 830.102 of the Board Regulations for Solid Waste Handling, 35 of Ill.

Adm. Code 830.102, provides the following definition:

"Agronomic Rates" means the application of not more than 20 tons per acre per year, except that the Agency may allow a higher rate for individual sites where

the owner or operator has demonstrated to the Agency that the site's soil characteristics or crop needs require a higher rate. (Section 21(q) of the Act.)

21. Section 3.270 of the Act, 415 ILCS 5/3.270 (2006), provides the following definition:

"Landscape waste" means 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.

22. On September 21, 2007, inspectors from the Illinois EPA Bureau of Land observed landscape waste on the Site that had been applied at a rate of more than 20 tons per acre per year.

23. On October 17, 2007, inspectors from the Illinois EPA observed landscape waste on the Site that had been applied at a rate of more than 20 tons per acre per year.

24. On at least September 21, 2007, October 17, 2007, and at times better known to the Defendants, Defendants have not met the exemption from a permit requirement contained in Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006), and, thus, are required to have a permit for the operation of their landscaping waste composting operation. Defendants did not have a permit or permission for said operation, and were not given permission by the Illinois EPA to apply a higher rate of landscape waste per acre per year until May 1, 2008.

25. By applying landscape waste at a rate of more than 20 tons of landscape waste per acre, per year, without first obtaining a permit from the Illinois EPA, Defendants have violated Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter Judgment in favor of Plaintiff and against the Defendants, DON HAMMAN FARMS, LLC and DONALD J. HAMMAN, on this Count III:

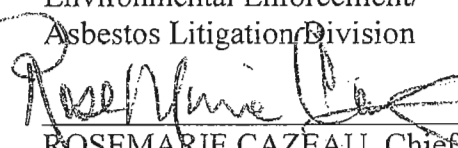
- A. Finding that the Defendants have violated Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006);
- B. Enjoining the Defendants from any further violations of Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006);
- C. Assessing a civil penalty of \$50,000.00 against the Defendants for each and every violation of the Act and an additional \$10,000.00 for each day during which the violation continues;
- D. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendants; and
- E. For such other relief as this Court may deem appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

ex rel. LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

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(312) 814-1511

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 November 17, 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
(via electronic filing)

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Via electronic filing and/or e-mail delivery.



PCB No. 08-96
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