

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

MAY 07 2009

STATE OF ILLINOIS  
Pollution Control Board

UNITED CITY OF YORKVILLE, A )  
MUNICIPAL CORPORATION, )  
Petitioner, )

v. )

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

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, and )  
HAMMAN FARMS, )  
Respondents. )

NOTICE OF FILING

TO: SEE PERSONS ON ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of Clerk of the Illinois  
Pollution Control Board, an original and nine copies each of AMENDED COMPLAINT,  
copies of which are herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE,  
Petitioner,

By: Michelle M. LaGrotta  
One of its Attorneys

Dated: May 7, 2009

Thomas G. Gardiner  
Michelle M. LaGrotta  
GARDINER KOCH & WEISBERG  
53 W Jackson Blvd., Ste. 950  
Chicago, IL 60604  
(312) 362-0000  
Atty ID: 29637

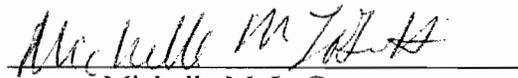
**CERTIFICATE OF SERVICE**

I, Michelle M. LaGrotta, the undersigned certify that on May 7, 2009, I have served the attached **AMENDED COMPLAINT**, upon:

Mr. John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218  
**(via hand delivery)**

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 W Randolph Street  
Chicago, IL 60601  
**(via hand delivery)**

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 CHelsten@hinshawlaw.com, and U.S. Mail)**

  
\_\_\_\_\_  
Michelle M. LaGrotta

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**  
CLERK'S OFFICE

MAY 07 2009

STATE OF ILLINOIS  
Pollution Control Board

UNITED CITY OF YORKVILLE, A )  
MUNICIPAL CORPORATION, )  
Complainant, )

PCB No. 08-96

v. )

(Enforcement-Land, Air, Water)

HAMMAN FARMS, )  
Respondents. )

**AMENDED COMPLAINT**

NOW COMES the Complainant, UNITED CITY OF YORKVILLE, by its attorneys, GARDINER KOCH & WEISBERG, pursuant to Section 31(d) of the Illinois Environmental Protection Act (415 ILCS 5/31(d)), and 35 Ill. Admin. Code § 103.200, and for its Amended Complaint against HAMMAN FARMS, states as follows:

**GENERAL ALLEGATIONS**

1. Complainant, UNITED CITY OF YORKVILLE, (hereinafter referred to as "Yorkville") is an Illinois municipal corporation in Kendall County, Illinois.
2. At all times relevant, HAMMAN FARMS (hereinafter referred to as "HAMMAN") is a farm, located on approximately twenty-two hundred acres of land in Kendall County.
3. On this land, HAMMAN grows crops of soybeans, wheat and corn.
4. Starting in or around 1993, HAMMAN registered with the Illinois Environmental Protection Agency ("Agency") as an On-Site Compost Landscape Waste Compost Facility (hereinafter referred to as "Compost Facility") pursuant to section 21(q)(3) of the Illinois Environmental Protection Act (hereinafter referred to as "Act").

5. As part of HAMMAN'S farming operations, HAMMAN receives landscape waste from offsite. HAMMAN grinds the landscape waste in a tub grinder. HAMMAN then applies the landscape waste to farm fields.

6. Sometime in or around 1992 to 1993, HAMMAN applied to the Agency for permission to apply landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year. The Agency denied Hamman's request.

7. Since registering with the Agency as a Compost Facility, HAMMAN has completed and filed annual reports as required under 35 Illinois Administrative Code §830.106(b)(2).

8. HAMMAN certified that it received landscape waste in the amounts of 157,391 cubic yards, 174,630 cubic yards, 266,441 cubic yards, 192,532 cubic yards, and 222,239 cubic yards for the years 2002, 2003, 2004, 2005, and 2006, respectively.

9. Application of landscape waste at agronomic rates results in application measurements of three quarter of an inch. Application measurements of greater than three quarters of an inch signify that landscape waste is being applied at rates greater than the agronomic rate.

10. Since registering as a Compost Facility, HAMMAN has applied landscape waste at rates resulting in application measurements greater than three quarters of one inch.

11. On several occasions since registering as a Compost Facility, Agency inspectors have found litter mixed with the landscape waste in HAMMAN's fields.

12. Since HAMMAN began the application of landscape waste to its fields, the Agency has received complaints of strong and offensive odors around HAMMAN.

13. On October 17, 2007, Agency inspectors, Gino Bruni and Mark Retzlaff, conducted an inspection of HAMMAN. During the inspection, the inspectors observed the following:

- a. The application rate was two and one half inches to three inches thick using a ruler;
- b. Numerous flies were at the field where landscape waste had been applied; and
- c. General refuse was in the landscape waste.

14. On November 15, 2007, the Agency issued HAMMAN a violation notice. The notice cited the following violations:

- a. Section 21(a) of the Act: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic rates.
- b. Section 21(d) of the Act: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic rates.  
HAMMAN conducted the aforementioned activities without a permit issued by the Agency.
- c. Section 21(p) of the Act: HAMMAN openly dumped litter, and litter was commingled with the landscape waste.
- d. 35 Ill. Admin. Code §807.201: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic rates. HAMMAN conducted the aforementioned activities without a developmental permit granted by the Agency.
- e. 35 Ill. Admin. Code §807.202: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic

rates. HAMMAN conducted the aforementioned activities without a developmental permit granted by the Agency.

15. The violation notice specified “suggested resolutions.” These included the following:

- a. Immediately cease all open dumping;
- b. Immediately remove all litter/general refuse from incoming loads of landscape waste prior to placing into the tub grinder. A second screening of the landscape waste must be conducted prior to being applied to the farm fields. If necessary, a third screening must be conducted prior to the landscape waste being tilled into the field;
- c. Immediately apply landscape waste at agronomic rates (three quarters of one inch in thickness). Daily written agronomic rate calculations must be maintained for three years; and
- d. Immediately calculate, on a daily basis, the percentage of non-landscape waste. These calculations must be maintained for three years.

16. Following the violation notice, a violation notice meeting was held at the Agency’s Des Plaines office. At the meeting, DONALD J. HAMMAN admitted that HAMMAN was applying landscape waste at a rate greater than twenty (20) tons per acre per year.

17. On March 5, 2008, the Agency rejected HAMMAN’s Compliance Commitment Agreement on the following bases:

- a. HAMMAN failed to agree to apply landscape waste at agronomic rates (twenty (20) tons per acre per year); and

b. HAMMAN failed to calculate on a daily basis the percentage of non-landscape waste.

18. On April 10, 2008, HAMMAN filed a request for permission to apply landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year. HAMMAN included with its application the following documents: (1) Land Application Plan; (2) USDA Soil Conservation Service Soil Survey; (3) Chemical Analysis of Soil/Compost; (4) Calculations regarding Nitrogen Demand and Expected Nitrogen and Potassium Loading; and (5) Opinion of Dr. Razvi.

19. The Chemical Analysis of Soil/Compost included four (4) soil samples and one (1) sample of leaves with mixed forage. Midwest Laboratories, who performed the tests, received the four soil samples conducted the analyses on December 7, 2007. Midwest Laboratories' report did not identify the location from where the samples were taken. Midwest Laboratories, Inc. received the sample of leaves with mixed forage on December 5, 2007.

20. The Illinois Agronomy Handbook recommends using a sampling of one composite from each two and one half (2 ½) acre areas when conducting soil test analysis. Mr. Gary Cima, an expert in landscape waste application and former Agency investigator, recommends using a sampling of two tests from each one acre area.

21. On April 16, 2008, HAMMAN filed a supplemental application.

22. On May 1, 2008, the Agency approved HAMMAN's request to raise the agronomic rate.

**COUNT I**  
**OPEN DUMPING VIOLATIONS**

23. Section 21 of the Act, 415 ILCS 5/21(2008), provides in pertinent part as follows:

“No person shall:

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

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

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit...

(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 to 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....

(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;..."

24. Section 3.185 of the Act, 415 ILCS 5/3.185 (2008), provides:

“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.”

25. Section 3.230 of the Act, 415 ILCS 5/3.230 (2008), provides in pertinent part:

“Household waste’ means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households...”

26. Section 3.270 of the Act, 415 ILCS 5/3.270 (2008), provides:

“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.”

27. Section 3.305 of the Act, 415 ILCS 5/3.305 (2008), provides:

“‘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.”

28. Section 3.385 of the Act, 415 ILCS 5/3.385 (2008), provides:

“‘Refuse’ means waste.”

29. Section 3.445 of the Act, 415 ILCS 5/3.445 (2008), provides:

“‘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.”

30. Section 3.470 of the Act, 415 ILCS 5/3.470 (2008), provides:

“‘Solid waste’ means waste.”

31. Section 3.480 of the Act, 415 ILCS 5/3.480 (2008), provides:

“‘Storage’ means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.”

32. Section 3.535 of the Act, 415 ILCS 5/3.535 (2008), provides in pertinent part:

“‘Waste’ means any garbage...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...”

33. Section 3.540 of the Act, 415 ILCS 5/3.540 (2008), provides:

“‘Waste disposal site’ is a site on which solid waste is disposed.”

34. On October 23, 2007 the Agency inspected HAMMAN and found refuse mixed in with the landscape waste.

35. Garbage and refuse mixed with the landscape waste constitutes waste under section 3.535 of the Act. 415 ILCS 5/535.

36. On several occasions since HAMMAN began applying landscape waste, garbage has been mixed with the landscape waste on HAMMAN fields.

37. In allowing the garbage to be disposed of and remain on HAMMAN fields, HAMMAN allowed “open dumping” for purposes of 415 ILCS 5/21(a).

38. In allowing the garbage to be disposed of and remain on HAMMAN fields, HAMMAN conducted waste-storage and waste-disposal operations, for purposes of 415 ILCS 5/21(d)(1) and (2), without a permit and in violation of the Act and regulations.

39. In allowing the garbage to be disposed of and remain on HAMMAN fields, HAMMAN became a waste disposal site for purposes of 415 ILCS 5/21(e). At the time that HAMMAN allowed garbage to remain on HAMMAN fields, HAMMAN was not permitted for the disposal of waste, and thus does not meet the requirements of the Act or the regulations for purposes of 415 ILCS 5/21(e).

40. In allowing the garbage to be disposed of and remain on HAMMAN fields, HAMMAN allowed “open dumping” of litter for purposes of 415 ILCS 5/21(p)(1).

41. HAMMAN’s failure to remove the waste is harmful to the environment and to the health and welfare of the people living and working near HAMMAN.

42. Because of the aforementioned reasons, HAMMAN has violated sections 21(a), 21(d)(1) and (2), 21(e), and 21(p)(1) of the Act.

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, UNITED CITY OF YORKVILLE, respectfully requests that the Board enter an order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Ordering the Respondent to pay a civil penalty of \$50,000 for each such violation, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a);
- E. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT II**  
**LANDSCAPE WASTE VIOLATIONS**

43. Section 21 of the Act, 415 ILCS 5/21(2008), provides in pertinent part as follows:

“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

(3) operating a landscape waste composting facility on a farm, if the facility meets all of the following criteria:

(A) the composting facility is operated by the farmer on property on which the

composting material is utilized, and the composting facility constitutes no more than 2% of the property's total acreage...

(C) all compost generated by the composting facility is applied at agronomic rates and used as mulch, fertilizer or soil conditioner on land actually farmed...

(D) the owner or operator, by...January 1 of each year thereafter, (i) registers the site with the Agency, (ii) reports to the Agency on the volume of composting material received and used at the site, (iii) certifies to the Agency that the site complies with the requirements set forth in subparagraphs (A), (B) and (C) of this paragraph (q)(3), and (iv) certifies to the Agency that all composting material was placed more than 200 feet from the nearest potable water supply well, was placed outside the boundary of the 10-year floodplain or on a part of the site that is floodproofed, was placed at least 1/4 mile from the nearest residence (other than a residence located on the same property as the facility) and there are not more than 10 occupied non-farm residences within 1/2 mile of the boundaries of the site on the date of application, and was placed more than 5 feet above the water table.

For the purposes of this subsection (q), '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."

44. Section 3.270 of the Act, 415 ILCS 5/3.270 (2008), provides:

"'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."

45. Section 830.102 of the Illinois Administrative Code Title 35, ILL. ADMIN. CODE

TIT. 35, §830.102, provides in pertinent part:

“Except as stated in this Section, the definition of each word or term used in this Part, 35 Ill. Adm. Code 831 and 35 Ill. Adm. Code 832 shall be the same as that applied to the same word or term in the Environmental Protection Act...

‘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.)...

‘Compost’ means the humus-like product of the process of composting waste, which may be used as a soil conditioner. (Section 3.70 of the Act.)

‘Composting’ means the biological treatment process by which microorganisms decompose the organic fraction of the waste, producing compost. (Section 3.70 of the Act.)  
Land application is not composting....

‘Land application’ means the spreading of waste, at an agronomic rate, as a soil amendment to improve soil structure and crop productivity....

‘Landscape waste compost facility’ means an entire landscape waste composting operation, with the exception of a garden compost operation....

‘On-farm landscape waste compost facility’ means a landscape compost facility which satisfies all of the criteria set forth in Section 830.106. “

46. Section 832.109 of the Illinois Administrative Code Title 35, ILL. ADMIN. CODE

TIT. 35, §832.109, provides:

“The issuance and possession of a permit shall not constitute a defense to a violation of the Act or any Board regulations, except for the development and operation of a facility without a permit.”

47. Landscape waste constitutes waste under section 3.535 of the Act. 415 ILCS 5/535.

48. Since HAMMAN began applying landscape waste, HAMMAN has applied landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year.

49. In applying landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year, HAMMAN allowed "open dumping" for purposes of 415 ILCS 5/21(a).

50. In applying landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year, HAMMAN conducted waste-storage and waste-disposal operations, for purposes of 415 ILCS 5/21(d)(1) and (2), without a permit and in violation of the Act and regulations.

51. In applying landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year, HAMMAN became a waste disposal site for purposes of 415 ILCS 5/21(e). HAMMAN was not permitted for the disposal of waste, and thus does not meet the requirements of the Act or the regulations for purposes of 415 ILCS 5/21(e).

52. In applying landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year, HAMMAN does not meet the permit exemptions found in sections 21(q)(2) and (3) of the Act. In applying landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year, without a permit, HAMMAN violated section 21(q) of the act.

53. Because of the aforementioned reasons, HAMMAN has violated sections 21(a), 21(d)(1) and (2), 21(e), and 21(q).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, UNITED CITY OF YORKVILLE, respectfully requests that the Board enter an order against the Respondent,

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Ordering the Respondent to pay a civil penalty of \$50,000 for each such violation, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a);
- E. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- F. Granting such other relief as the Board may deem appropriate.

**COUNT III**  
**AIR POLLUTION VIOLATIONS**

54. Section 9 of the Act, 415 ILCS 5/9 (2008) provides in pertinent part:

“No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act...”

55. Section 3.115 of the Act, 415 ILCS 5/3.115 (2008), provides

“‘Air pollution’ is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.”

56. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides:

“‘Contaminant’ is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.”

57. Under Section 3.165 of the Act, the odor that is emitted from HAMMAN’s application of landscape waste is a contaminant.

58. Under Section 3.115 of the Act, the release of the odor, a contaminant, is air pollution that unreasonably interferes with the enjoyment of life or property. This odor unreasonably interferes with Yorkville’s residents’ use and enjoyment of life and property.

59. Specifically, the odor caused by Hamman Farms has substantially interfered with the Yorkville residents’ rights to public health and comfort and to the quiet use and enjoyment of their land, in the following ways:

- a. It forces Yorkville residents to remain indoors;
- b. It prevents Yorkville residents from opening windows to cool their homes and causes them to use air conditioning instead;
- c. It precludes Yorkville residents from entertaining guests outdoors;
- d. It precludes Yorkville residents from using the outdoor portions of their property, including decks attached to their homes;
- e. It prevents Yorkville children from playing outdoors; and
- f. It occasionally causes nausea in the people who smell the odor.

60. Joann Gilbert, who resides at 8730 East Highpoint Road, Yorkville, Illinois, first noticed the odor caused by Hamman Farms during the summer of 1994. Ms. Gilbert found the

odor so offensive that she called emergency services because she thought the odor resulted from an accident. Although police officers came out to investigate the odor, Ms. Gilbert did not learn the source of the smell until several weeks later.

- a. From 1994 until 2006, Ms. Gilbert noticed the odor a several times per month from May until October.
- b. As a result of the odor, Ms. Gilbert began to use air conditioning instead of leaving the windows of her home open.
- c. In May 2008, Ms. Gilbert noted the odor on at least three occasions. Ms. Gilbert noted the odor again on at least four occasions in June 2008 (on or about, June 18th, 19th, 20th, and 30th) and once in July 2008 (on or about, July 31<sup>st</sup>).
- d. On those occasions, Ms. Gilbert informed the Illinois Environmental Protection Agency.

61. Diane Pobol, a former Yorkville resident, resided on property surrounded by Hamman Farms from early 2006 until fall of 2008.

- a. Ms. Pobol noticed the odor for the first time in spring 2006. When Ms. Pobol first noticed the odor, she thought that there was a problem with the septic tank on her property. Ms. Pobol later learned that that the odor came from Hamman Farms.
- b. Ms. Pobol's home did not have air conditioning, and she was forced to leave windows open despite the smell. As a result of the odor, Ms. Pobol's eyes were often irritated and continually teared.

- c. Prior to moving into her home, Ms. Pobol had entered negotiations to rent one of the barns on the property. The rental money was intended to help subsidize the mortgage payments. Following the potential renters' visit to the property in May 2006, the potential renters refused to enter the lease due to the odor emanating from Hamman Farms. Ms. Pobol was never able to find a renter for the barn.
- d. Ms. Pobol tried to sell the property in 2006. The odor, along with the garbage and flies lying in and around the fields of Hamman Farms, drove away potential buyers. Ms. Pobol was unable to sell the home.

62. Todd Milliron, who has resided at 61 Cotswold Drive, Yorkville, Illinois since in or around September 1996, noticed the odor immediately upon moving into his home.

- a. Mr. Milliron noticed the odor on an ongoing basis from mid-May until early October of each year from 1996 until the fall of 2007. Although Mr. Milliron constantly noted the odor, the odor at times became especially intense when the wind blew in the direction of his home.
- b. Because of the ongoing odor, Mr. Milliron was forced to use air conditioning rather than leaving windows open. This caused Mr. Milliron to feel like a prisoner in his own home, unable to open the windows and get fresh air, or enjoy the exterior of his property.

63. Robert and Lynn Smith, who have resided at 9122 Lisbon Road, Yorkville, Illinois since in or around 1965, noticed the odor within the last ten years.

- a. The Smiths notice the odor on a daily basis from April to November; however, they note that the odor can be particularly bad when the wind directs the odor toward their home.
- b. The Smiths describe the odor as a sour smell that is worse than typical farm smells.
- c. The Smiths held family reunions on their property annually over the last three years. Each year, approximately two thirds of their guests left early due to the odor.
- d. The Smiths find that they are unable to enjoy outdoor activities on their property and are unable to leave their windows open when they otherwise would.

64. Larry Alex, who has resided at 2108 Bernadette Lane, Yorkville, Illinois for the last two years, has noticed the odor since moving into his home.

- a. Mr. Alex finds the intensity of the odor is dependent upon the wind direction.
- b. Mr. Alex finds the odor particularly strong about two to three times per month during the months of April through November.
- c. The odor has negatively affected Mr. Alex's outdoor activities.

65. William Fowler, who has resided at 8577 W Highpoint Road, Yorkville, Illinois since 1998, has noticed the odor every summer since moving into his home.

- a. Mr. Fowler finds the odor present from April to October or November.
- b. Mr. Fowler finds the odor to have a fowl, moldy grass smell that is not typical of farms.
- c. Mr. Fowler is unable to enjoy outdoor activities on his property.

d. Mr. Fowler finds the odor embarrassing when he has guests at his home and is compelled to explain the odor.

66. In applying the landscape waste, HAMMAN is allowing the discharge of contaminant into the environment so as to cause air pollution under section 9(a) of the Act.

67. Because of the aforementioned reasons, HAMMAN has violated section 9(a) of the Act.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, UNITED CITY OF YORKVILLE, respectfully requests that the Board enter an order against the Respondent,

- A. Finding that the Respondent has violated the Act and regulations as alleged herein;
- B. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- C. Ordering the Respondent to pay a civil penalty of \$50,000 for each such violation, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a);
- D. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- E. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- F. Granting such other relief as the Board may deem appropriate.

**COUNT IV**  
**WATER POLLUTION VIOLATIONS**

68. Section 12 of the Act, 415 ILCS 5/12 (2008), provides in pertinent part:

“No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act...

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.”

69. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides:

“‘Contaminant’ is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.”

70. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), provides:

“‘Water pollution’ is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.”

71. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), provides:

“‘Waters’ means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.”

72. Under Section 3.165 of the Act, the landscape waste that HAMMAN is applying is a contaminant.

73. Under Section 3.545 of the Act, HAMMAN's application of landscape waste is water pollution in that the landscape waste is a contaminant which is being discharged into ground water.

74. In applying the landscape waste, HAMMAN is allowing the discharge of contaminant into the environment so as to cause or tend to cause water pollution under section 12(a) of the Act.

75. In applying the landscape waste, HAMMAN is allowing the deposit of contaminants so as to create a water pollution hazard under section 12(d) of the Act.

76. Because of the aforementioned reasons, HAMMAN has violated sections 12(a) and 12(d) of the Act.

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, UNITED CITY OF YORKVILLE, respectfully requests that the Board enter an order against the Respondent,

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Ordering the Respondent to pay a civil penalty of \$50,000 for each such violation, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a);

- E. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

UNITED CITY OF YORKVILLE,  
Complainant,

By: *Michelle M. LaGrotta*  
One of its Attorneys

Dated: May 7, 2009

Thomas G. Gardiner  
Kenneth M. Battle  
Michelle M. LaGrotta  
Gardiner Koch & Weisberg  
53 W Jackson Blvd., Ste. 950  
Chicago, IL 60604  
(312) 362-0000