



**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. 08-96

**RESPONDENT HAMMAN FARMS' ANSWER AND AFFIRMATIVE DEFENSES TO COUNT IV OF THE AMENDED COMPLAINT**

NOW COMES Respondent HAMMAN FARMS, by and through its attorneys, HINSHAW & CULBERTSON LLP and MUELLER ANDERSON, P.C., and for its Answer and Affirmative Defenses to Count IV of the Amended Complaint, states as follows:

**Answer to Count IV of Amended Complaint**

68. Hamman Farms neither admits nor denies the allegations contained in paragraph 68 of the Amended Complaint, as such is a conclusion of law rather than a factual allegation.

69. Hamman Farms neither admits nor denies the allegations contained in paragraph 69 of the Amended Complaint, as such is a conclusion of law rather than a factual allegation.

70. Hamman Farms neither admits nor denies the allegations contained in paragraph 70 of the Amended Complaint, as such is a conclusion of law rather than a factual allegation.

71. Hamman Farms neither admits nor denies the allegations contained in paragraph 71 of the Amended Complaint, as such is a conclusion of law rather than a factual allegation.

72. Hamman Farms denies the allegations contained in paragraph 72 of the Amended Complaint and demands strict proof thereof.

73. Hamman Farms denies the allegations contained in paragraph 73 of the Amended Complaint and demands strict proof thereof.

74. Hamman Farms denies the allegations contained in paragraph 74 of the Amended Complaint and demands strict proof thereof.

75. Hamman Farms denies the allegations contained in paragraph 75 of the Amended Complaint and demands strict proof thereof.

76. Hamman Farms denies the allegations contained in paragraph 76 of the Amended Complaint and demands strict proof thereof.

**Affirmative Defenses to Count IV of Amended Complaint**

**Affirmative Defense Number 1**

Complainant is precluded from recovery because Hamman Farms' lawful application of landscape waste under the Illinois Environmental Protection Act, 415 ILCS 5/21(q), as specifically approved by the Illinois Environmental Protection Agency, prohibits any finding that Hamman Farms has engaged in water pollution under Section 12 of the Act.

**Affirmative Defense Number 2**

Complainant is precluded from recovery under the doctrine of *laches*, due to their unreasonable delay in bringing an action for relief, which has prejudiced the rights of Hamman Farms.

WHEREFORE, Respondent HAMMAN FARMS prays that this Board enter judgment in its favor and against Complainant on Count IV of the Amended Complaint, and grant such other and further relief as the Board deems appropriate.

Dated: June 30, 2009

HAMMAN FARMS

By: /s/

One of Their Attorneys

Charles F. Helsten Michael F. Iasparro Hinshaw & Culbertson LLP 100 Park Avenue – P.O. Box 1389 Rockford, IL 61105-1389 Phone: 815-490-4900 Fax: 815-490-4901	George Mueller Mueller Anderson, P.C. 609 Etna Road Ottawa, IL 61350 815/431-1500
---	---

**AFFIDAVIT OF SERVICE**

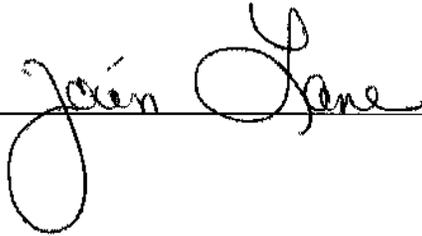
The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on June 30, 2009, she caused to be served a copy of the foregoing upon:

Mr. John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
**(via electronic filing)**

Thomas G. Gardiner  
Michelle M. LaGrotta  
GARDINER KOCH & WEISBERG  
53 W. Jackson Blvd., Ste. 950  
Chicago, IL 60604  
[tgardiner@gkw-law.com](mailto:tgardiner@gkw-law.com)  
[mlagrotta@gkw-law.com](mailto:mlagrotta@gkw-law.com)

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

Via electronic filing and/or e-mail delivery.



A handwritten signature in black ink, appearing to read "Joan Kane", is written over a horizontal line. The signature is cursive and stylized.

PCB No. 08-96  
Charles F. Helsten  
Nicola A. Nelson  
HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
(815) 490-4900