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.

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on July 23, 2008, we electronically filed with the Clerk of the Illinois Pollution Control Board, Hamman Farms' Motion for Hearing Officer's Ruling on Discovery, a copy of which are attached hereto and hereby served upon you.

Dated:	July 23, 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,))) PCB No. 08-95
v.) (Appeal of Agency Action)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and HAMMAN FARMS,) } }

Respondents.

HAMMAN FARMS' MOTION FOR HEARING OFFICER'S RULING ON 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(m) and 35 Ill.Adm.Code 101.616, and requests the issuance of an Order by the Hearing Officer concerning discovery, stating as follows:

- 1. In response to the position asserted by counsel for the Illinois Environmental Protection Agency ("IEPA") at the July 22, 2008 status conference concerning discovery, and having reviewed the Board's recent decision in *Des Plaines River Watershed Alliance v. IEPA*, PCB 04-088, which was cited by IEPA's counsel during the conference, Respondent Hamman Farms believes that IEPA's position opposing discovery in the instant action is well taken.
- 2. In particular, Hamman Farms notes that the Board explained in *Des Plaines River Watershed Alliance* that the Petitioner alone bears the burden of establishing that, <u>based on the record as it existed at the time of the Agency's decision</u>, issuance of the challenged permit will violate the Act or Board regulations. *Id.* at 11.
- 3. Although Hamman Farms reiterates its position that the Board lacks jurisdiction to hear this case, given that no permit was issued in the instant action, and although the *Des Plaines Watershed Alliance* case involved the issuance of a NPDES permit, Hamman Farms

nevertheless agrees that under *Des Plaines Watershed Alliance*, in an appeal challenging the issuance of a permit (which is how the Petitioner characterizes this action), the <u>only</u> relevant evidence is that which was included as part of the record at the time of the Agency's decision.

- 4. Accordingly, Hamman Farms believes that discovery is unauthorized in this particular case, and, in addition, would unnecessarily and improperly increase the burden of this litigation on Respondents.
- 5. Hamman Farms therefore requests issuance of an Order by the Hearing Officer declaring that discovery is inappropriate in this action.
- 6. If, however, the Hearing Officer finds and orders that discovery is appropriate in this action:
 - a. Respondent Hamman Farms proposes that written discovery be propounded by the end of the day on July 24, 2008.
 - b. Respondent Hamman Farms and Petitioner City of Yorkville have conferred and are in agreement that written discovery should be answered no later than Friday, August 1, 2008, with depositions, if any, to be conducted between August 4, 2008 and August 13, 2008. (See email to counsel for Hamman Farms, sent by counsel for the City of Yorkville, attached hereto as Exhibit A).
- 6. Respondent Hamman Farms makes no representation herein concerning the position of IEPA with respect to appropriate discovery deadlines.

WHEREFORE, Respondent HAMMAN FARMS respectfully requests that the Hearing Officer enter an order declaring that discovery is inappropriate in this action, or in the alternative, that the Hearing Officer enter an order declaring that:

- 1. Written discovery be propounded by the end of the day on July 24, 2008;
- 2. Written discovery be answered by August 1, 2008; and
- 3. Depositions, if any, be conducted between August 4, 2008 and August 13, 2008.

Dated:

Respectfully submitted,

On behalf of Hamman Farms

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

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"Michelle Lagrotta " <mlagrotta @gkw-law.com> 07/23/2008 11:44 AM To "Nicola Nelson" <NNelson@hinshawlaw.com>

cc "Thomas Gardiner" <tgardiner@gkw-law.com>

bcc

Subject Yorkville v. Hamman- Proposed discovery schedule

Here is our proposed discovery schedule:

Complete written discovery by Friday, August 1, 2008. Oral discovery take place August 4-12th/13th.

Michelle M. LaGrotta Gardiner Koch & Weisberg 53 W Jackson Blvd., Ste. 950 Chicago, Illinois 60604 (312) 362-0000 mlagrotta@gkw-law.com

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 July 23, 2008, she caused to be served a copy of the foregoing upon:

via e-mail

Thomas G. Gardiner

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
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Hearing Officer
Illinois Pollution Control Board
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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