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3. In its Motion, Hamman Farms explained that the Board has held that in actions such as this, the Petitioner bears the burden of showing that the record as it existed at the time of the Agency's decision reveals that issuance of the challenged Agency approval would violate the Act or Board regulations. (See Motion for Hearing Officer's Ruling on Discovery at ¶¶ 2, 3).). In light of that standard (articulated in *Des Plaines*), the Board held that before discovery can commence, the Petitioner must persuasively identify any additional discoverable evidence. As of this filing, Yorkville has not provided any explanation of why the record before the Agency is inadequate, and why discovery of any kind is needed, much less discovery against Hamman Farms.

4. Shortly after Hamman Farms served a copy of its Motion for Hearing Officer's Order on Discovery upon the parties, the Petitioner served Hamman Farms with Interrogatories and Requests to Produce (attached hereto as Group Exhibit A).

5. The discovery served on Hamman Farms graphically demonstrates that Petitioner is not using discovery in this matter to locate information that is relevant to whether IEPA's decision-making process was deficient, but, rather, Petitioner is abusing the discovery process in an effort to troll for information that Petitioner hopes may be useful for other purposes, in other cases, and also to harass and annoy Hamman Farms and to cause Hamman Farms to incur undue and unreasonable expense.

6. A review of the attached discovery (Exhibit A), reveals that the Petitioner's discovery requests to Hamman Farms are not focused on information that would tend to show that the Agency's calculation of the proper rate was incorrect; the discovery propounded on Hamman Farms is instead focused on harassing and imposing an undue burden on Hamman Farms, which is only a party to this action because of the potential impact on Hamman Farms if

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the Board were to reverse the Agency's decision.

7. As an example of Petitioner's improper, irrelevant discovery, Interrogatory No. 7 demands that Hamman Farms:

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.

This overbroad request, which seeks ten years worth of detailed information about farming operations at Hamman Farms, including the identity of Hamman Farms' clients, is not intended to adduce evidence that will show that the Agency's May 1, 2008 calculation of the appropriate agronomic rate for Hamman Farms' soil was performed in a way that "violates the Act" and that IEPA's calculation of the appropriate rate was "not based on Hamman's soil characteristics or crop needs." (*See* Petition at III(J)).

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8. Similarly, Petitioner's Request to Produce demands production of records that are completely unrelated to the Agency's decision-making process (the subject of this action), including production of "[a]ny 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." (See Exh. A, Request to Produce, at Request No. 15). Petitioner also requests production of "[a]ny and all violation notices that Respondent Hamman Farms received from the Illinois Environmental Agency." (*See id.* at Request No. 18). Once again, such requests are not intended to discover information that will reveal the deficiency of the Agency's calculation of the correct agronomic rate for Hamman Farms' soil, which is the sole subject of this action.

9. Yorkville's discovery requests broadly seek information "relied upon" by Hamman Farms, even though the focus of the Petition must legally be on what the Agency "relied upon." Accordingly, these inquiries are therefore completely irrelevant.

10. The discovery sought by Petitioner is an excellent illustration of why discovery is limited in these types of cases, and an even better illustration of why the Board does not entertain challenges to permits issued by IEPA, with rare and specific exceptions. As the Supreme Court has observed, the legislature has made the decision to delegate to IEPA the authority to perform "technical, licensing, and enforcement functions." *Landfill, Inc. v. Pollution Control Bd.*, 74 Ill.2d 541, 554, 387 N.E.2d 258,262-263, 25 Ill.Dec. 602, 606-607 (Ill. 1978). It is therefore the Agency, not the Board, that is solely vested by the legislature with "the duty to collect and disseminate information, acquire technical data, and conduct experiments to carry out the purposes of the Act... [and to] conduct surveillance and inspection of actual or potential pollution sources." *Id.* The Agency has the non-delegable duty to "administer permit systems established by the Act or regulations and has the authority to require permit applicants to submit plans and

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specifications and reports regarding actual or potential violations of the Act, regulations or permits.” *Id.* As such, this effort by Pétitioner to shanghai this decision-making process from the Agency (and, in essence, substitute its judgment for that of the Legislature and the Agency) should not be allowed.

11. While Pétitioner’s discovery effectively tries to lay out what Pétitioner thinks the Agency should have examined in determining the appropriate agronomic rate for Hamman Farms’ soil, “if the Board were to become involved as the overseer of the Agency's decision-making process through evaluation of challenges to permits, it would become the permit-granting authority, a function not delegated to the Board by the Act.” *Citizens Utilities Co. of Illinois v. PCB*, 265 Ill.App.3d 773, 780, 639 N.E.2d 1306, 203 Ill.Dec. 487 (3rd Dist. 1994), citing *Landfill*, 74 Ill.2d at 557.

12. In light of the irrelevant and abusive discovery propounded by Pétitioner, Hamman Farms renews its opposition to discovery, which is unauthorized in this type of action and which is clearly being sought by Pétitioner for improper purposes, most notably to harass and annoy.

13. In the event the Hearing Officer nevertheless concludes that discovery is authorized and appropriate in this action, Hamman Farms respectfully requests that the Hearing Officer enter an order limiting the scope of discovery to the material in the record at the time IEPA made the challenged decision, in accordance with very recent Board precedent. (*See, e.g., Des Plaines River Watershed Alliance v. IEPA*, PCB 04-088, at *11 (April 19, 2007, *aff’d* July 12, 2008).

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

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alternative, that the Hearing Officer enter an order limiting the scope of discovery to the material that was considered by the IEPA at the time it made the decision that is challenged by Petitioner in this action.

Dated: July 24, 2008

Respectfully submitted,

On behalf of Hamman Farms

151
One of Its Attorneys

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notices, opinions, orders, organizational charts, pamphlets, papers, patents, periodicals, personnel records, phono-records, photographic negatives, photographs, pleadings, pocket calendars, policies, press releases, profit and loss statements, prints, procedures, prototypes, publications, purchase orders, receipts, records, regulations, reports, resumes, rolodex cards, rules, samples, schedules, searches, security agreements, shipping orders, shop drawings, slides, specifications, statements, statements of account, statements of assets and liabilities, statistics, studies, summaries, surveys, tangible things, tape recordings, tax returns, telegrams, telephone bills, telephone lists, telephone logs, telexes, test results, time cards, time sheets, trade letters, transcripts, travel vouchers, treatises, trip reports, warranties, work orders, work sheets, wrappers and writings, or other such items.

“Identify” when used in reference to a document, means to state its title; type (e.g, letter, memorandum, etc.); author(s) or originator(s); addressee(s) or recipient(s); subject matter; any file numbers which may be used in locating same; the name, present or last known address and phone number of all persons having possession, custody or control of same; and its disposition, if no one presently has possession, custody or control of same.

“Individual” or “Person” means any individual, partnership, corporation, company, association, firm, organization, trust or other legal entity, including governmental entities.

“Petition” means the United City of Yorkville’s Petition in the above-captioned case.

INTERROGATORIES

INTERROGATORY NO. 1: Identify the name, address, telephone number and job title 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, and describe the extent of his/her knowledge and the basis for that knowledge.

ANSWER:

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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 and documents that Petitioner relied upon to support the allegation of Paragraph III(E) of the Petition.

ANSWER:

INTERROGATORY NO. 5: Identify any and all information and documents that Petitioner relied upon to support the allegation of Paragraph III(G) of the Petition.

ANSWER:

INTERROGATORY NO. 6: Identify any and all information and documents that Petitioner relied upon to support the allegation of Paragraph III(H) of the Petition.

ANSWER:

INTERROGATORY NO. 7: Identify any and all information and documents that Petitioner relied upon to support the allegation of Paragraph III(I) of the Petition.

ANSWER:

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INTERROGATORY NO. 8: Identify any and all information and documents that Petitioner relied upon to support the allegation in Paragraph III(J) of the Petition that the Agency's Decision was not based on Hamman's soil characteristics or crop needs.

INTERROGATORY NO. 9: Identify any lay witnesses expected to testify at the hearing, and identify with specificity the subject matter of each individual's testimony.

ANSWER:

INTERROGATORY NO. 10: Identify any expert witnesses consulted by Petitioner with respect to each allegation of the Petition, and for each witness, identify with specificity:

- a. the subject matter of each witness's testimony; and
- b. any opinions Petitioner expects to elicit from each.

INTERROGATORY NO. 11: Identify all reports prepared by and any conclusions or opinions reached by the experts identified in Interrogatory #10 of these Interrogatories, and identify all documents those experts relied upon in formulating their conclusions or opinions.

ANSWER:

INTERROGATORY NO. 12: Identify any independent or controlled expert witnesses consulted or retained by Petitioner, and identify with specificity:

- a. the conclusions and opinions of each witness and the bases therefore;
- b. the qualifications of each witness, including a copy of the witness's curriculum vitae;
- c. all reports prepared by each witness concerning the subject of this litigation;

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- d. the rates charged by each witness; and
- e. with respect to each witness, the total amount of charges incurred for his/her services to date.

ANSWER:

INTERROGATORY NO. 13: Identify all documents relied upon by each independent controlled witness identified in Interrogatory #12 of these Interrogatories in reaching his/her opinion or conclusion, or in generating a report.

ANSWER:

INTERROGATORY NO. 14: Identify all documents, reports, opinions or calculations that Petitioner intends to use in support of its Petition, whether by introducing them as evidence or by using them in other ways during the proceedings, and as to each, identify the content and purpose of each such document.

ANSWER:

INTERROGATORY NO. 15: Identify with specificity the statute or regulation relied upon by Petitioner to assert that the Pollution Control Board has authority to reverse a technical determination by the Illinois Environmental Protection Agency concerning the appropriate agronomic rate of application based on a farm's soil characteristics or crop needs.

ANSWER:

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INTERROGATORY NO. 16: Identify the dates on which the Yorkville City Council met to consider the question of pursuing the instant action; the dates and times of such meetings; the persons present during such meetings; whether evidence was presented to the City Council concerning the anticipated cost of such litigation; and if evidence of the cost to the City of pursuing such litigation was presented, identify the person who presented such evidence.


ANSWER:

INTERROGATORY NO. 17: With respect to the meeting(s) identified in your answer to Interrogatory No. 16, identify the individual(s) who made the motion to pursue the action, the outcome of the vote concerning the motion(s), and any resolutions or draft resolutions concerning the City's pursuit of this action.

ANSWER:

Respectfully submitted,

Respondent Hamman Farms

By: 
One of Its Attorneys

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“Identify” when used in reference to a document, means to state its title; type (e.g, letter, memorandum, etc.); author(s) or originator(s); addressee(s) or recipient(s); subject matter; any file numbers which may be used in locating same; the name, present or last known address and phone number of all persons having possession, custody or control of same; and its disposition, if no one presently has possession, custody or control of same.

Person. “Person” as used herein shall be the definition provided in Section 3.315 of the Illinois Environmental Protection Act (as amended).

“Refer or relate” means anything which directly or indirectly concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, or refers to in any way, or was used in the preparation of, appended to, legally, logically, or factually connected with, proves, disproves, or tend to prove or disprove.

All and Any. As used herein “all” refers to any and all, and the term “any” likewise refers to any and all.

And / Or. “And” as well as “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this request any documents which might otherwise be construed to be outside its scope.

INSTRUCTIONS

Any word written in the singular shall be construed as plural and any word written in the plural shall be construed as singular when necessary to facilitate complete answers.

Continuing Responses. This document request shall be deemed to be continuing in nature and if, after serving your responses, additional information becomes known or available to you, that is responsive to this document request, then you are required to reasonably supplement or amend your responses.

Work Product or Privileges. With respect to each document, oral statement, or communication which you claim is privileged or subject to the work product doctrine, identify the document, statement or communications to the fullest extent, including the date, maker, and recipient, the general subject matter, and the basis of the claim of privilege or work product.

If any document requested is withheld on the ground of privilege, provide a log of all such documents, including: (a) a description of the subject of each such document; (b) all persons who have knowledge of each such document, or any having knowledge regarding each such document, including without limitation the author of any document withheld; (c) the date and circumstance of any communication of such document, including without limitation the identification of the author(s), any addressee(s), indicated or blind carbon copy recipient(s), or other recipient(s); and (d) all grounds relied upon for not providing each such document.

If any document described by this request has been lost, destroyed, discarded or otherwise disposed of, that document is to be identified as completely as possible.

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If any information is redacted from a document produced pursuant to this request, that information is to be identified and described generally, and all grounds relied upon for not providing such information are to be fully set forth.

If any document described by this request no longer exists, or is no longer within your possession, custody or control, identify such document(s).

Identify in writing each paragraph of this request for which no responsive documents are produced.

Documents produced in response to these requests must be organized in categories that correspond to the responsive request, and labeled as such.

In accordance with the foregoing definitions and instructions, please produce the following:

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1: The permit which is the subject of the Petition.

RESPONSE:

REQUEST NO. 2: All documents which Petitioner (including but not limited to its consultants, attorneys or experts) referred to, or on which it/they relied, when formulating or drafting the Petition, including but not limited to:

a. all documents that support Petitioner's allegation that the Agency's conditions are "unworkable";

b. all documents that support Petitioner's allegation that the Agency's conditions are "inadequate to protect the environment";

c. all documents that support Petitioner's allegation that the Agency's conditions are inadequate to "ensure Hamman's compliance."

d. all documents that support Petitioner's allegation that Hamman Farms "has admitted to applying landscape waste at rates greater than agronomic rates without a permit."

e. All documents that support Petitioner's allegation that "Yorkville has made complaints to the Agency regarding Hamman's application of landscape waste."

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f. All documents that support the Petitioner's allegation that "the Agency's Decision...was not based on Hamman's soil characteristics or crop needs."

RESPONSE:

REQUEST NO. 3: All documents referenced in Petitioner's Answers to the Interrogatories propounded by Respondent Hamman Farms.

RESPONSE:

REQUEST NO. 4: All documents relied upon by Mr. Gary Cima, in formulating the opinion referred to in Paragraph III(E)(b) of the Petition.

RESPONSE:

REQUEST NO. 5: All opinions, notes, or reports prepared by Mr. Gary Cima regarding the subject matter of this action.

RESPONSE:

REQUEST NO. 6: All opinions, notes, or reports prepared by persons retained by Petitioner, whether as consultants or as expert witnesses, and all documents reviewed by such persons in forming their opinions, notes, or reports.

RESPONSE:

REQUEST NO. 7: The curriculum vitae of each expert retained or consulted by Petitioner concerning this action.

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RESPONSE:

REQUEST NO. 8: All documents that Petitioner (including but not limited to its consultants, attorneys or experts) utilized or relied upon when drafting the Answers to the Interrogatories propounded by Respondent Hamman Farms in this action.

RESPONSE:

REQUEST NO. 9: With the exception of attorney-privileged communications, all documents that relate to the Yorkville City Council's decision to initiate this litigation, including but not limited to agendas, minutes, resolutions, drafts of resolutions, or notes that relate to the City Council's decision to initiate this action.

RESPONSE:

REQUEST NO. 10: All documents that the Petitioner intends to use and/or enter into evidence in this action, whether at hearing or to support any motion.

RESPONSE:

REQUEST NO. 11: Petitioner is requested to furnish an Affidavit stating whether the production is complete.

RESPONSE:

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Dated: July 16, 2008

Respectfully submitted,

On behalf of Hamman Farms



One of Its Attorneys

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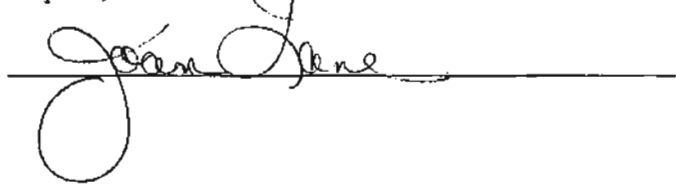
AFFIDAVIT OF SERVICE

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 16, 2008, she caused to be served a copy of the foregoing upon:

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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.

A handwritten signature in black ink, appearing to read "Nicola A. Nelson", is written over a horizontal line. The signature is cursive and includes a large loop at the end.

PCB No. 08-95
Charles F. Helsten
Nicola A. Nelson
HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
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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 24, 2008, she caused to be served a copy of the foregoing upon:

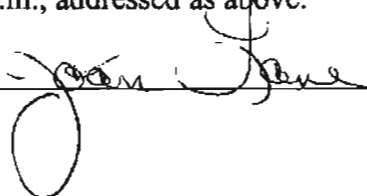
Mr. John T. Therriault, Assistant Clerk
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(via electronic filing)

via e-mail
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via email
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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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
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