

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, )  
A municipal corporation, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, and )  
HAMMAN FARMS, )  
 )  
Respondents. )

PCB NO. 08-95

Permit Appeal

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STATE OF ILLINOIS  
Pollution Control Board

**PETITIONER'S BRIEF IN RESPONSE TO HEARING OFFICER'S  
JULY 24, 2008 ORDER**

NOW COMES, Petitioner, United City of Yorkville, by and through its attorneys,  
Gardiner Koch & Weisberg, and in response to the Hearing Officer's Order of July 24, 2008  
requesting brief, states as follows:

**I. BACKGROUND**

This case stems from the Illinois Environmental Protection Agency's Decision of May 1,  
2008, which grants Hamman Farms ("Hamman") permission to apply landscape waste at rates of  
80 tons per acre per year. Pursuant to section 21(q) of the Illinois Environmental Protection Act  
("Act"), the Illinois Environmental Protection Agency ("Agency") has the authority to allow  
entities to apply landscape waste at rates greater than the agronomic rate (the Act defines the  
agronomic rate as 20 tons per acre per year). The Agency's decision to increase the rate of  
landscape waste to greater than the agronomic rate must be based on the entities' crop needs or  
soil characteristics. On April 11, 2008, Hamman submitted its application to the Agency  
requesting an increase in the rate of landscape waste application from the agronomic rate to 80

tons per acre per year. Although Hamman's application included some nitrogen calculations, the application included only four soil samples for Hamman's 2200 acres.

## **II. INFORMATION THAT PETITIONER BELIEVES TO BE DISCOVERABLE, RELEVANT AND ADMISSIBLE**

Hamman's application was insufficient to address the issue of whether Hamman's crop needs or soil characteristics require an increase in the rate of landscape waste application. To prove that Hamman's application was insufficient and the Agency's review inadequate, the following information is necessary. In order to determine whether Hamman's crop needs or soil characteristics require a higher amount of landscape waste application, it is necessary to have Hamman's records regarding the amount of landscape waste being applied to the fields during previous years. These records will provide background and a comparison with which to determine whether the agronomic rate has adequately met the soil's characteristics and crop needs or whether a higher rate is needed. Additionally, records regarding Hamman's crop yields during previous years are necessary to provide data for accurate nitrogen and potassium calculations. Hamman used 250 bushels per acre to determine its nitrogen requirements, but Hamman did not supply any records that support its fields actually yield that amount or have the potential to yield that amount. Proper review also requires information and records regarding what fertilizers and soil conditioners are being used, where those fertilizers and soil conditioners have been used in the past, and maps of Hamman's fields identifying where landscape waste, fertilizer, and soil conditioners have been applied. All the aforementioned information is relevant, and consequently, it should be discoverable and admissible.

In addition, testimony and evidence discussing the information that the Agency should have obtained is also relevant, and that information should be discoverable and admissible. This information includes recommendations regarding the appropriate number of soil tests that are

needed to complete a proper soil analysis test. Additionally, nitrogen and potassium calculations completed by other experts are necessary to evaluate the Agency's review. Any information with Hamman's ability and tendency to comply with the Act, including violation notices issued to Hamman and complaints regarding Hamman, are relevant. Consequently, the foregoing testimony and evidence should be discoverable and admissible. This would include expert opinions evaluating the Agency's decision and guides and/or handbooks covering landscape waste application.

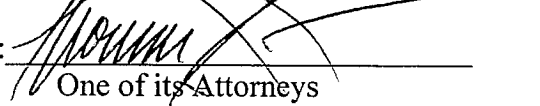
Moreover, even if the Board determines that the scope of the review is limited to the Agency record, the information that Yorkville is requesting relates to the information that the agency had before it or should have had before it. The Agency has information related to numerous complaints regarding Hamman's operations and violation notices issued to Hamman. Additionally, the Agency should have had before Hamman's On-Farm Landscape Waste Compost Facility Annual Reports, which provide data related to the amount of composting material that Hamman used on its property. The Agency's entire file is relevant to the issue of whether Hamman's crop needs or soil characteristics required an increase in the rate of landscape waste application, not just the information that Hamman presented in its initial application and supplemental applications. Therefore, Yorkville should be able to present evidence regarding information that the Agency had before it or should have had before it. This information is relevant, and thus, it should be discoverable and admissible.

Because proper analysis of the Hamman application requires additional discovery outside the Agency record, the Hearing Officer should issue an order compelling the Respondents to answer Petitioner's Discovery and finding that all relevant information be discoverable and admissible.

WHEREFORE, Petitioner respectfully request the Hearing Officer to issue an order allowing the parties to conduct discovery beyond the Agency's record, compelling the respondents to answer written discovery by August 8, 2008, and finding relevant information to be admissible and discoverable, or in the alternative, issue an order allowing parties to conduct discovery regarding the Agency's entire file on Hamman farms, compelling respondents to answer written discovery on the Agency's file by August 8, 2008, and finding relevant information to be admissible and discoverable.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By:   
One of its Attorneys

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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A  
MUNICIPAL CORPORATION,  
Petitioner,

) ORIGINAL

v.

) PCB No. 08-95  
) Appeal of Agency Decision  
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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 PETITIONER'S BRIEF IN  
RESPONSE TO HEARING OFFICER'S JULY 24, 2008 ORDER, copies of which are  
herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE,  
Petitioner,

By: Michelle M. LaGrotta  
One of its Attorneys

Dated: August 1, 2008

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Atty ID: 29637

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AUG 01 2008

CERTIFICATE OF SERVICE

STATE OF ILLINOIS  
Pollution Control Board

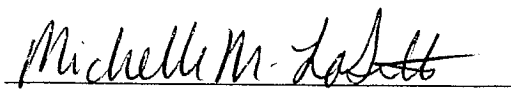
I, Michelle M. LaGrotta, the undersigned certify that on August 1, 2008, I have served the attached PETITIONER'S BRIEF IN RESPONSE TO HEARING OFFICER'S JULY 24, 2008 ORDER, upon:

Mr. John T. Therriault, Assistant Clerk  
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Michelle M. LaGrotta