

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

DEC 24 2008

STATE OF ILLINOIS
Pollution Control Board

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 Complainant's Motion for Leave to File Reply in Support of its Motion for Leave to File Amended Complaint and Complainant's Reply in Support of its Motion for Leave to File Amended Complaint, copies of which are herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE,
Petitioner,

By: _____

One of its Attorneys

Dated: December 24, 2008

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

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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JAN 14 1994
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CERTIFICATE OF SERVICE

I, Thomas G. Gardiner, the undersigned certify that on December 24, 2008, I have served the attached **Complainant's Motion for Leave to File Reply in Support of its Motion for Leave to File Amended Complaint** and **Complainant's Reply in Support of its Motion for Leave to File 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. 22-500
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)



Thomas G. Gardiner

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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A MUNICIPAL CORPORATION,)

Complainant,)

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STATE OF ILLINOIS
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**COMPLAINANT'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

NOW COMES, the Complainant, UNITED CITY OF YORKVILLE, by and through its attorneys, Gardiner Koch Weisberg & Wrona, and for its Reply in Support of its Motion for Leave to File Amended Complaint, it states as follows:

**BECAUSE COMPLAINANT'S AMENDED COMPLAINT CURES THE DEFECT,
THE BOARD SHOULD GRANT ITS MOTION FOR LEAVE**

Factors to consider when ruling on a Motion for Leave to File an Amended Complaint are: (1) if the proposed amendment would cure a defect in the pleadings; (2) if the proposed amendment would prejudice or surprise other parties; (3) if the proposed amendment is timely; and (4) if there were previous opportunities to amend the pleading. Clemens v. Mechanical Devices Co., 781 N.E.2d 1072, 1080 (Ill. 2002). In this case, the proposed amendment cures the defects in the Original Complaint by providing facts describing the effect of the odor on the residents of Yorkville, rather than solely relying on a legal conclusion for its allegation that the odor unreasonably interferes with the lives and property of Yorkville residents. Moreover, the proposed Amended Complaint is timely; is Yorkville's first attempt to amend the Original

Complaint; and would not prejudice or surprise Respondent, Hamman Farms. As a result, the Board should grant Yorkville's Motion for Leave to File Amended Complaint.

Respondent misstates the Board's basis for dismissing without prejudice Count III of Complainant's Original Complaint and wrongly contends that Complainant's Amended Complaint is deficient. Respondent alleges that Complainant's Original Complaint was dismissed for lack of specificity as to dates and times of the air pollution. Yet, the Board's Order, dismissing Count III without prejudice, focused on Yorkville's reliance on the legal conclusion "that the odor resulted in unreasonable interference with enjoyment of life and property" without factual allegations to support this conclusion. See page 21 of the Board's Order and Opinion dated October 16, 2008. Paragraph 59, when taking all well-plead allegations in the complaint as true, provides sufficient facts to meet the pleading requirements and reasonably allow Hamman Farms to prepare a defense. Specifically, paragraph 59 documents how Yorkville residents reacted to the odor emitted from Respondent's land. These reactions indicate the nature, extent, duration, and strength of Respondent's emissions. Because the Amended Complaint cured the defects of the Original Complaint, the Board should allow Yorkville to file its Amended Complaint.

Furthermore, the Amended Complaint includes the necessary facts that Respondent requests. For example, Paragraph 2 of the Amended Complaint explains that the odor arises from the location of "approximately 2200 acres of land in Kendall County," referred to as Hamman Farms. Paragraphs 13 and 34 of the Amended Complaint discuss specific dates and events when Respondent was found to have improperly disposed of waste material, and thus, creating the odor. Paragraph 14 of the Amended Complaint explains that on November 15, 2007, the Illinois Environmental Protection Agency issued Respondent a notice for numerous

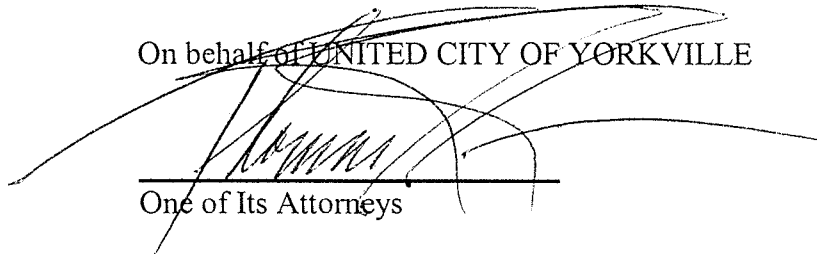
waste dumping violations; these violations detail the nature and extent of the illegal disposals, which led to the odor. Likewise, paragraph 17 of the Amended Complaint explains other events that contributed to the odor. The Amended Complaint cures the defects of the Amended Complaint, and as a result, the Board should grant Yorkville leave to file its Amended Complaint.

WHEREFORE, the United City of Yorkville respectfully requests the Board grant United City of Yorkville's Motion for Leave to File Amended Complaint, and grant such other relief as the Board deems just and equitable.

Dated: December 24, 2008

Respectfully submitted,

On behalf of UNITED CITY OF YORKVILLE



One of Its Attorneys

Thomas G. Gardiner
Nathan P. Lusignan
Michelle M. LaGrotta
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**COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF ITS
MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

NOW COMES the Complainant, UNITED CITY OF YORKVILLE, by and through its attorneys, GARDINER KOCH WEISBERG & WRONA, pursuant to 35 Ill. Adm. Code 101.500(e), and hereby requests leave to file Reply in Support of its Motion for Leave to File an Amended Complaint in order to respond to Respondent's Response in Opposition, stating as follows:

1. On December 1, 2008, Complainant UNITED CITY OF YORKVILLE filed a Motion for Leave to File Amended Complaint as well as an Amended Complaint in order to sufficiently plead its position on Count III of the Original Complaint and to satisfy 415 ILCS 5/31(c) and (d)(2), and 35 Ill. Adm. Code 103.204(c)(2).
2. On December 10, 2008, Respondent HAMMAN FARMS filed a Response in Opposition to Yorkville's Motion for Leave to File Amended Complaint, which misrepresents the Board's findings and rulings in its October 16, 2008 Opinion and Order.
3. In the absence of an opportunity to file a Reply in support of its Motion for Leave to File Amended Complaint, United City of Yorkville will be materially prejudiced.

4. Yorkville has prepared a Reply, which addresses the misrepresentations of Hamman Farms' Response, and by this Motion seeks leave to file its Reply with the Board to avoid material prejudice. A copy of the proposed Reply is attached hereto.

WHEREFORE, Complainant United City of Yorkville respectfully requests that the Board grant leave to file its Reply in Support of its Motion for Leave to File Amended Complaint, a copy of which is attached hereto.

Dated: December 24, 2008

Respectfully submitted,

UNITED CITY OF YORKVILLE



One of Its Attorneys

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