

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ORIGINAL

JUN 04 2008

STATE OF 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
Appeal of Agency Decision

NOTICE OF FILING

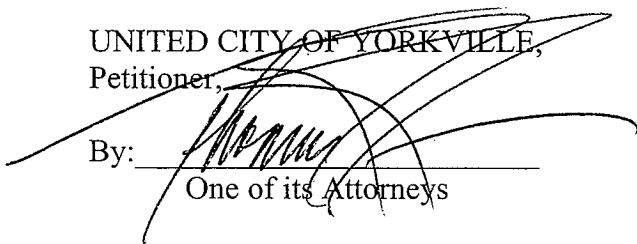
TO: SEE PERSONS ON ATTACHED SERVICE LIST

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 the **PETITION FOR REVIEW of UNITED CITY OF YORKVILLE, ENTRY OF APPEARANCE OF THOMAS G. GARDINER, and ENTRY OF APPEARANCE OF MICHELLE M. LAGROTTA**, copies of which are herewith served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney.

Respectfully submitted,

UNITED CITY OF YORKVILLE,
Petitioner,

By: 
One of its Attorneys

Dated: June 4, 2008

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

CERTIFICATE OF SERVICE

I, Michelle M. LaGrotta, the undersigned certify that I have served the attached PETITION FOR REVIEW of UNITED CITY OF YORKVILLE, ENTRY OF APPEARANCE OF THOMAS G. GARDINER, and ENTRY OF APPEARANCE OF MICHELLE M. LAGROTTA, upon:

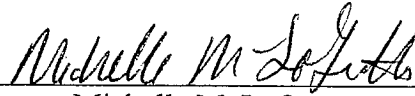
Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

by hand delivery on June 4, 2008; and upon

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Hamman Farms
Attn: Mr. Donald J. Hamman
6275 Route 71
Oswego, Illinois 60543

by registered mail by placing copies in the United States Mail, postage prepaid, in Chicago, Illinois on June 4, 2008.



Michelle M. LaGrotta

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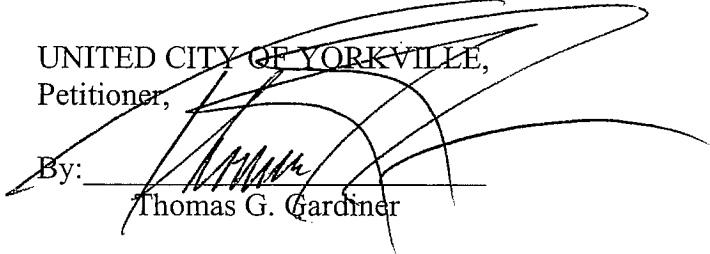
STATE OF ILLINOIS
Pollution Control Board

ENTRY OF APPEARANCE OF THOMAS G. GARDINER

NOW COMES, Thomas G. Gardiner, of the law firm of GARDINER KOCH &
WEISBERG, and hereby enters his appearance on behalf of Petitioner, UNITED CITY OF
YORKVILLE, in the above-referenced matter.

Respectfully submitted,

UNITED CITY OF YORKVILLE,
Petitioner,

By: 
Thomas G. Gardiner

Dated: June 4, 2008

Thomas G. Gardiner
Michelle M. LaGrotta
GARDINER KOCH & WEISBERG
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ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY, and
HAMMAN FARMS,
Respondent.

ENTRY OF APPEARANCE OF MICHELLE M. LAGROTTA

NOW COMES, Michelle M. LaGrotta, of the law firm of GARDINER KOCH &
WEISBERG, and hereby enters his appearance on behalf of Petitioner, UNITED CITY OF
YORKVILLE, in the above-referenced matter.

Respectfully submitted,

UNITED CITY OF YORKVILLE,
Petitioner,

By: Michelle M. LaGrotta
Michelle M. LaGrotta

Dated: June 4, 2008

Thomas G. Gardiner
Michelle M. LaGrotta
GARDINER KOCH & WEISBERG
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Appeal of Agency Decision

PETITION FOR REVIEW

Pursuant to the Illinois Environmental Protection Act and 35 Ill. Admin. Code §105.400 *et seq*, petitioner United City of Yorkville submits this Petition for Review of the Illinois Environmental Protection Agency Decision of May 1, 2008.

I. AGENCY DECISION

The Decision of which review is sought is contained in Exhibit A hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates that it was mailed on May 1, 2008.

III. GROUNDS FOR APPEAL

A. Section 21(q) of the Illinois Environmental Protection Act ("Act") prohibits persons from conducting landscape waste compost operations without a permit. However, section 21(q) does not require a permit for the application of landscape waste at agronomic rates. That section of the Act and section 830.102 of Title 35 of the Illinois Administrative Code ("Code") define the agronomic rate as twenty (20) tons per acre per year. These sections also give the Illinois Environmental Protection Agency ("Agency") the authority to allow greater rates of landscape waste application *upon a showing that the soil characteristics or crop needs require a higher rate.* (emphasis added)

B. On April 10, 2008, Hamman Farms (“Hamman”), a farming operation located on 2200 acres of land in Kendall County, filed a request for permission to apply landscape waste at rates greater than the agronomic rate of twenty (20) tons per acre per year. Hamman included with its application the following documents: (1) Land Application Plan; (2) USDA Soil Conservation Service Soil Survey; (3) Chemical Analysis of Soil/Compost; (4) Calculations regarding Nitrogen Demand and Expected Nitrogen and Potassium Loading; and (5) Opinion of Dr. Razvi.

C. On April 16, 2008, Hamman filed a supplemental application.

D. On May 1, 2008, the Agency approved Hamman’s request to raise the agronomic rate. See Exhibit “A.” The Decision allows Hamman to apply landscape waste at rates up to eighty (80) tons per acre per year and includes several conditions.

E. The Agency’s review of Hamman’s application was deficient and failed to utilize the investigation necessary to evaluate whether Hamman’s soil characteristics or crop needs required the application of greater amounts of landscape waste. Consequently, the Agency’s Decision is erroneous and must be reversed.

a. First, the Chemical Analysis of Soil/Compost included four (4) soil samples and one (1) sample of leaves with mixed forage. Midwest Laboratories, who performed the tests, received the four soil samples and conducted the analyses on December 7, 2007. Midwest Laboratories’ report did not identify the location from where the samples were taken. Midwest Laboratories, Inc. received the sample of leaves with mixed forage on December 5, 2007.

b. The Illinois Agronomy Handbook recommends using a sampling of one composite from each two and one half (2 ½) acre areas when conducting soil test

analysis. Mr. Gary Cima, an expert in landscape application and former Agency investigator, recommends using a sampling of two composites from each one acre area. Hamman's soil tests were insufficient for the Agency to thoroughly evaluate Hamman's soil and crop needs.

c. Additionally, the few soil tests that were included in Hamman's request should have alerted Agency investigators to the need for additional investigation. The test results showed high levels of potassium and phosphorus. These results indicate that either Hamman used additives or that he was already applying sufficient amounts of landscape waste.

d. The sample test of the leaves with mixed forage is not representative of the nutrient availability in the landscape waste that will be applied to Hamman's land. The analysis was conducted on sample of leaves with mixed forage from December when the leaves are dead and thus nutrient deficient. The landscape waste, which Hamman applies to its fields, is landscape waste collected in the spring and summer. The nutrient availability of such landscape waste is higher than the nutrient availability of landscape waste in December. Thus, the Agency's calculations of the amount of landscape waste needed to meet Hamman's soils needs are erroneous.

e. Finally, the Agency's conditions included in the Decision are completely unworkable and inadequate to protect the environment and ensure Hamman's compliance.

F. Petitioner, United City of Yorkville ("Yorkville"), is an Illinois municipal corporation located in Kendall County, Illinois. Hamman is located in and near Yorkville.

G. Prior to the Agency's Decision, Hamman has admitted to applying landscape waste at rates greater than agronomic rates without a permit.

H. Since Hamman began applying landscape waste to its fields in the early 1990's, Yorkville residents have complained of a strong and offensive odor coming from Hamman's lands.

I. Yorkville has made complaints to the Agency regarding Hamman's application of landscape waste.

J. Pursuant to section 5(d) of the Act, the Illinois Pollution Control Board ("Board") has the authority to conduct proceedings upon complaints charging violations of the Act and upon petitions for review of final determinations which are made pursuant to this Act. As a result, the Board has the authority to review the Agency's Decision because it is a final determination made pursuant to 21(q) of the Act. It also has the authority because the Agency's Decision was made in violation of the Act and was not based on Hamman's soil characteristics or crop needs.

WHEREFORE, Petitioner, United City of Yorkville, respectfully requests the Illinois Pollution Control Board to reverse the Agency's Decision; order the Agency to deny Hamman Farm's request to apply landscape waste at a rate greater than the agronomic rate; and grant such other relief it deems just and equitable.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: 

One of its Attorneys

Thomas G. Gardiner
Michelle M. LaGrotta
Gardiner Koch & Weisberg
53 W Jackson Blvd., Ste. 950
Chicago, IL 60604
Atty ID: 29637



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300. CHICAGO. IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/524-3300

May 1, 2008

Certified Mail

7007 0220 0000 0040 2655
7007 0220 0000 0040 2662

Don Hamman
Hamman Farms
6275 Route 71
Oswega, Illinois 60543

Charles F. Hesten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Re: 0930155023 - Kendall County
Hamman Farms
Log No. PS08-054
Permit Compost
Permit Corr

RELEASEABLE

MAY 05 2008

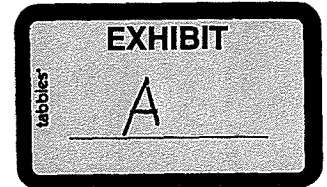
REVIEWER MD

Dear Mr. Hamman:

This letter is in response to your letter, dated April 10, 2008, and received by Illinois EPA on April 14, 2008, requesting an increase to the agronomic rate for application of landscape waste to the fields of Hamman Farms in accordance with Section 21(q) of the Illinois Protection Act.

Based upon the information provided in the April 10, 2008 submittal, the Illinois Environmental Protection Agency is allowing an application rate of no more than 80 tons/acre per year of landscape waste at Hamman Farms, until December 31, 2011, under the following conditions:

- 1. Only landscape waste may be applied to the fields; no man-made or other waste may be applied to the farm fields.
2. Hamman Farms shall not apply landscape waste to any field where the phosphorous content exceeds 400 lbs/acre.
3. Landscape waste may be applied to a maximum depth of 3", unless Hamman maintains appropriate records that demonstrate that the amount of landscape waste applied is less than or equal to 80 tons/acre/year.
4. Hamman Farms shall maintain records, on a daily basis, for:
a. amount of landscape material received (volume)
b. General type of landscape waste applied (grass, leaves, storm debris or other)
c. amount of landscape material applied
d. location (and acreage) where landscape waste applied
e. any other relevant records necessary to demonstrate that the rate of application is less than or equal to 80 tons/acre of landscape waste applied



5. Hamman Farms shall process, apply and incorporate the landscape waste the same day it is received on site. If Hamman Farms is unable to process, apply and incorporate the landscape waste on the date it is received, Hamman Farms shall notify Illinois EPA's Des Plaines Regional Office by phone at 847/294-4000, document the reason for the failure to process, apply and/or incorporate the landscape waste (such as inclement weather or equipment failure), document any steps taken by Hamman Farms to remedy the failure, and document the duration that Hamman Farms expects to be unable to process/apply and/or incorporate landscape waste. If, due to circumstances beyond its control, Hamman Farms finds it is unable to process, apply and incorporate the landscape waste within five days after receipt, Hamman Farms will cease its receipt of landscape waste until such time as its capacity for same-day processing, application and incorporation is restored. This condition does not supersede the requirements of Condition 6 below.
6. Hamman Farms shall process, apply and incorporate the landscape waste in a manner that prevents the generation of nuisance conditions from flies or odors. Hamman Farms shall reduce or cease the application of landscape waste, as necessary, to prevent nuisance conditions.
7. Hamman Farms shall use good agricultural practices to minimize storm water runoff from the fields. The good agricultural practice shall consist of, at a minimum, maintenance of buffer strips and field borders, and placement of phosphorous containing material beneath the top two inches of the soil surface. Landscape waste shall not be applied within 25 feet of drainage ways.
8. In accordance with good agricultural practices, Hamman Farms shall periodically (at least once every four years) perform soil testing on the fields where landscape waste is applied. Soil shall be tested for, at a minimum, the following parameters: pH, organic matter, phosphorous, potassium, magnesium, calcium and nitrate-nitrogen.

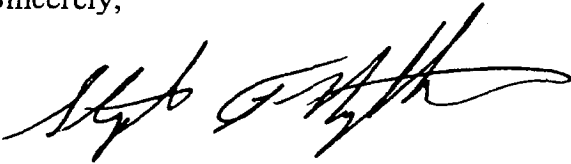
If Hamman Farms would like to continue with an application rate of landscape waste greater than 20 tons/acre per year, for calendar year 2012 and beyond, they must submit a request to continue the use of the increased agronomic rate by December 31, 2011. The request shall contain, at a minimum, the following information:

- A detailed description of all soil additives used between May 2008 and December 2011
- The results of all soil testing as described in Condition 8 above, and any corresponding agronomic recommendations generated as a result of said testing.
- If the soil testing indicates that the soil pH may need to be adjusted, information concerning soil additives that may be used to adjust the pH, including the additives to be used, chemical composition of the additives, and the planned application rate.

- Nitrogen agronomical calculations.
- A discussion the change of organic carbon and phosphorus content of the soil.
- Documentation of the farm production rate (bushels/acre) of the various crops grown at Hamman Farms.
- Any other information, as necessary, to support a request for an increase in the allowable agronomic rate.

If you have any additional questions in this matter, please contact Derek Rompot at 217/558-2150.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

^{SR}
SFN:DCR:bjh\082472s.doc

bcc: Bureau File
Des Plaines Region
DLC – Bill Ingersoll
FOS
Ted Dragovich
Steve Nightingale
Derek Rompot