

**Electronic Filing - Received, Clerk's Office, July 7, 2008**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, a )  
municipal corporation, )  
 )  
Petitioner, )  
 ) PCB No. 08-95  
v. )  
 ) (Permit Appeal – Third Party)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY and HAMMAN )  
FARMS, )  
 )  
Respondents. )

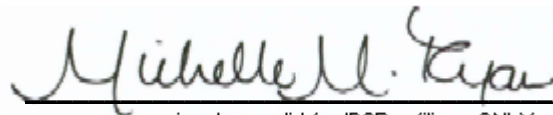
**NOTICE OF FILING**

To: Thomas G. Gardiner  
Michelle LaGrotta  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

Charles F. Helsten  
Nicola A. Nelson  
Hinshaw & Culbertson  
100 Park Avenue  
Rockford, IL 61105-1389

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled APPEARANCE and MOTION TO DISMISS.

Respectfully Submitted,

  
e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

Dated: July 7, 2008

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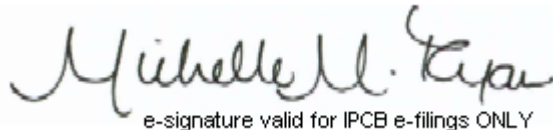
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                              |   |                               |
|------------------------------|---|-------------------------------|
| UNITED CITY OF YORKVILLE, a  | ) |                               |
| municipal corporation,       | ) |                               |
|                              | ) |                               |
| Petitioner,                  | ) |                               |
|                              | ) | PCB No. 08-95                 |
| v.                           | ) |                               |
|                              | ) | (Permit Appeal – Third Party) |
| ILLINOIS ENVIRONMENTAL       | ) |                               |
| PROTECTION AGENCY and HAMMAN | ) |                               |
| FARMS,                       | ) |                               |
|                              | ) |                               |
| Respondents.                 | ) |                               |

APPEARANCE

The undersigned hereby enters her appearance in the above-captioned matter as counsel for the Illinois Environmental Protection Agency.

Respectfully submitted,



e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

DATED: July 7, 2008

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702-4059  
(217) 782-5544

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, a )  
municipal corporation, )  
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Petitioner, )  
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v. )  
 ) (Permit Appeal – Third Party)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY and HAMMAN )  
FARMS, )  
 )  
Respondents. )

RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
MOTION TO DISMISS

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorney, Michelle M. Ryan, Special Assistant Attorney General, pursuant to Section 101.506 of the Illinois Pollution Control Board's ("Board") Rules and Regulations, 35 Ill. Adm. Code 101.506, and respectfully states as follows:

1. On May 1, 2008, Illinois EPA issued a determination to Don Hamman of Hamman Farms that 80 tons/acre per year was the agronomic rate for application of landscape waste at his facility in Kendall County (*See Exhibit A to the Petition*). This determination was made pursuant to Section 21(q) of the Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2006) ("Act"). Petitioner, United City of Yorkville ("Petitioner"), was not a party to this determination.

2. On June 4, 2008, Petitioner filed this appeal as a third party.

3. Petitioner cites to 35 Ill. Adm. Code 105.400 *et seq.* as its only authority to bring this appeal. Said reference relates to appeals of Illinois EPA Leaking Underground Storage Tank ("LUST") decisions, and has no discernable applicability to this case.

4. Any authority to file an appeal to the Board of an Illinois EPA decision must be

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derived originally from Section 40 of the Act. Section 40(a)(1) of the Act states, “If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, *the applicant* may...petition for a hearing before the Board to contest the decision of the Agency”(emphasis added). Petitioner is not the applicant, therefore it lacks standing under this provision to appeal the Illinois EPA decision in this matter.

5. The Act does provide for third party appeals in several instances: RCRA permits (Section 40(b)), new hazardous waste facilities (Section 40(c)), CAAPP permits (Section 40(d)), and NPDES permits (Section 40(e)). All of these situations involve the administration of federally delegated programs by Illinois EPA.

6. Section 21(q) of the Act relates to landscape waste composting, which is solely a State concern. There is no parallel to the third party appeal rights granted by the Act in other situations.

7. The expression of one thing in a statute excludes any other, even though there are no negative words prohibiting it. *City Savings Association v. International Guaranty & Insurance Co.* (1959), 17 Ill.2d 609, 612. Because the Act does not provide for third party appeal in this case, Petitioner has no standing to raise this appeal.

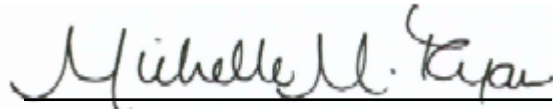
8. Furthermore, the Illinois EPA notes that Petitioner has not presented the Board with any basis to allow the Board to conclude that it has jurisdiction to hear this matter. Thirty years ago, the Illinois Supreme Court found: “A third-party challenge to the allowance of a permit is dissimilar to a hearing upon a permit applicant’s petition to review the Agency’s denial of a permit. ...[T]o permit challenges to the allowance of a permit before the Board undermines the statutory framework.” *Landfill, Inc. v. Illinois Pollution Control Board*, 74 Ill. 2d 541, 387 N .E.2d 258, 265 (1978). “If the Board were to become involved as the overseer of the Agency’s decision-making

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process through evaluation of challenges to permits, it would become the permit-granting authority, a function not delegated to the Board by the Act.” *Id.* at 264. These statements of long-standing law are no less applicable to the case at hand.

WHEREFORE, Illinois EPA respectfully requests that the Board grant Respondent Illinois EPA’s Motion to Dismiss for one or more of the above-stated reasons and dismiss this action in its entirety.

Respectfully submitted,



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Michelle M. Ryan  
Special Assistant Attorney General

DATED: July 7, 2008

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702-4059  
(217) 782-5544

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## PROOF OF SERVICE

I hereby certify that I did on the 6<sup>th</sup> day of February, 2008, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled APPEARANCE and MOTION TO DISMISS

To: Thomas G. Gardiner  
Michelle LaGrotta  
Gardiner, Koch & Weisberg  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604

Charles F. Helsten  
Nicola A. Nelson  
Hinshaw & Culbertson  
100 Park Avenue  
Rockford, IL 61105-1389

Bradley P. Halloran, Hearing Officer  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

and an electronic copy of the same foregoing instrument on the same date via electronic filing

To: John Therriault, Acting Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



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Special Assistant Attorney General

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