

RECEIVED  
CLERK'S OFFICE

AUG 28 2009

STATE OF ILLINOIS  
Pollution Control Board

UNITED CITY OF YORKVILLE, )  
A MUNICIPAL CORPORATION, )

Complainant, )

v. )

HAMMAN FARMS, )

Respondents. )

PCB No. 08-96

(Enforcement- Land, Air, Water)

**NOTICE OF FILING**

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on August 28, 2009, we electronically filed with the Clerk of the Illinois Pollution Control Board, **Complainant's Answer to Affirmative Defenses to Count IV**, a copy of which is attached hereto and hereby served upon you.

Dated: August 28, 2009

Respectfully submitted,

UNITED CITY OF YORKVILLE

  
\_\_\_\_\_  
One of Its Attorneys

Thomas G. Gardiner  
Michelle M. LaGrotta  
GARDINER KOCH WESIBERG & WRONA  
53 W. Jackson Blvd., Suite 950  
Chicago, IL 60604  
312-362-0000  
Atty ID: 29637

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

RECEIVED  
JUL 29 2009  
JUL 29 2009

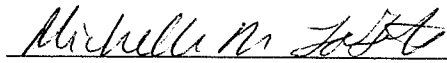
**CERTIFICATE OF SERVICE**

I, Michelle M. LaGrotta, the undersigned certify that on August 28, 2009, I have served the attached **COMPLAINANT'S ANSWER TO AFFIRMATIVE DEFENSES TO COUNT IV** 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. 11-500  
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)**

  
Michelle M. LaGrotta

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

AUG 28 2009

STATE OF ILLINOIS  
Pollution Control Board

UNITED CITY OF YORKVILLE, )  
A MUNICIPAL CORPORATION, )

Complainant, )

v. )

HAMMAN FARMS, )

Respondents. )

PCB No. 08-96

(Enforcement- Land, Air, Water)

**COMPLAINANT'S ANSWER TO AFFIRMATIVE DEFENSES TO COUNT IV**

NOW COMES the Complainant, UNITED CITY OF YORKVILLE, by and through its attorneys, GARDINER KOCH WEISBERG & WRONA, and for its ANSWER TO AFFIRMATIVE DEFENSES TO COUNT IV, it states as follows:

**Affirmative Defense Number 1**

Complainant is precluded from recovery because Hamman Farms' lawful application of landscape waste under the Illinois Environmental Protection Act, 415 ILCS 5/21(q), as specifically approved by the Illinois Environmental Protection Agency, prohibits any finding that Hamman Farms has engaged in water pollution under Section 12 of the Act.

**ANSWER:** Affirmative Defense Number 1 calls for legal conclusion as to which answer is neither necessary nor appropriate under the law so plaintiff moves to strike this affirmative defense. Should the Illinois Pollution Control Board find that Affirmative Defense Number 1 addresses a factual allegation, Complainant denies Affirmative Defense Number 1.

**Affirmative Defense Number 2**

Complainant is precluded from recovery under the doctrine of *laches*, due to their unreasonable delay in bringing an action for relief, which has prejudiced the rights of Hamman Farms.

**ANSWER:** Affirmative Defense Number 2 calls for legal conclusion as to which answer is neither necessary nor appropriate under the law so plaintiff moves to strike this affirmative defense. Should the Illinois Pollution Control Board find that Affirmative Defense Number 2 addresses a factual allegation, Complainant denies Affirmative Defense Number 2.

WHEREFORE, Complainant, UNITED CITY OF YORKVILLE, respectfully requests that Respondent, HAMMAN FARMS' AFFIRMATIVE DEFENSES TO COUNT IV, be stricken and for such other relief as the Board deems just and equitable.

Respectfully submitted,

UNITED CITY OF YORKVILLE,  
Complainant,

By: Michelle M. LaGrotta  
One of its Attorneys

Dated: August 28, 2009

Thomas G. Gardiner  
Kenneth M. Battle  
Michelle M. LaGrotta  
Gardiner Koch & Weisberg  
53 W Jackson Blvd., Ste. 950  
Chicago, IL 60604  
(312) 362-0000