

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. 08-96

MOTION TO STAY DISCOVERY

NOW COMES Respondent HAMMAN FARMS, by and through its attorney, Charles F. Helsten of HINSHAW & CULBERTSON LLP, and for its Motion to Stay Discovery, states as follows:

1. On May 7, 2009, Petitioner, the City of Yorkville, filed its Amended Complaint against Respondent, alleging causes of action for (1) open dumping violations, (2) landscape waste violations, (3) air pollution violations, and (4) water pollution violations.

2. On the date even herewith, Respondent, Hamman Farms, has filed its Motion for Summary Judgment with respect to the City of Yorkville's Amended Complaint. This Motion is based on two dispositive issues: first, substantially similar allegations were brought by the State of Illinois and a resolution constituting final judgment on the merits has been rendered in such matter, thus barring this proceeding before the Pollution Control Board under the doctrine of res judicata; and second, pursuant to the resolution reached between the State of Illinois and Hamman Farms, this proceeding is contrary to the intent of the citizen's suit provision of the Illinois Environmental Protection Act, pursuant to which the City's Amended Complaint was filed.

3. None of the discovery in this matter is directed to either of the issues raised in Respondent's Motion for Summary Judgment, but is directed to matters concerning the underlying merits of Petitioner's Amended Complaint. Moreover, no discovery schedule is currently in place.

4. Written discovery has been substantially completed in this matter. Oral discovery has not yet begun, despite this matter having been filed by the City in 2008. The City has not diligently prosecuted this matter over that period of time, instead relying upon the State of Illinois to prosecute virtually identical allegations in an action filed in the Circuit Court of Kendall County in case number 2008 CH 811 (see Motion for Summary Judgment and Memorandum in Support, being filed contemporaneously herewith, including the documents attached as Exhibit E to said Memorandum, showing the collaboration between the City and State in their respective enforcement proceedings). In short, the City has neither sought nor identified any separate or necessary remedy, apart from those sought by the State in its enforcement proceeding, that would require discovery to move forward in this case pending the Board's ruling on Hamman Farms' Motion for Summary Judgment.

5. The time and expense that would be required of Respondent to proceed with further discovery in this matter prior to the Board's ruling on Hamman Farms' Motion for Summary Judgment would be prejudicial and create an undue burden upon Respondent, who has already resolved these same alleged violations with the State of Illinois. Conversely, staying discovery while Hamman Farms' Motion is pending will not prejudice Petitioner in any way, given the City's failure to pursue oral discovery for over three years.

WHEREFORE, Respondent, HAMMAN FARMS, prays that all further discovery be stayed pending the Pollution Control Board's ruling on Hamman Farms' Motion for Summary Judgment.

Dated: December 6, 2011

Respectfully submitted,

On behalf of HAMMAN FARMS LLC

/s/ Charles F. Helsten

Charles F. Helsten
One of Its Attorneys

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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on December 6, 2011, she caused to be served a copy of *Respondent Hamman Farms' Motion to Stay Discovery* upon the following:

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(via electronic filing)

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/s/Rhonda I. Young

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