

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A
MUNICIPAL CORPORATION,

Complainant,

v.

HAMMAN FARMS,,

Respondents.

PCB No. 08-96

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on December 6, 2011, we electronically filed with the Clerk of the Illinois Pollution Control Board, ***Respondent Hamman Farms' Memorandum in Support of Motion for Summary Judgment***, a copy of which is attached hereto and hereby served upon you.

Dated: December 6, 2011

Respectfully submitted,

On behalf of HAMMAN FARMS

/s/Charles F. Helsten

Charles F. Helsten

One of Its Attorneys

Charles F. Helsten
Michael F. Iasparro
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

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

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent HAMMAN FARMS, by and through its attorney, Charles F. Helsten of HINSHAW & CULBERTSON LLP, and for its Memorandum in Support of Motion for Summary Judgment, states as follows:

I. FACTS

On May 5, 2009, the State of Illinois ("State") filed a First Amended Complaint in Kendall County Circuit Court, case number 2008 CH 811. Counts I and IV of the State's First Amended Complaint allege open dumping and landscape waste violations against Hamman Farms. Two day later, on May 7, 2009, the United City of Yorkville ("City") filed its Amended Complaint in this matter. Counts I and II of the City's Amended Complaint, alleging open dumping and landscape waste violations, are virtually identical to Counts I and IV of the State's First Amended Complaint in the Kendall County case. Counts III and IV of the City's Amended Complaint allege air pollution violations and water pollution violations, allegedly stemming from the open dumping and landscape waste violations set forth in Counts I and II. (See Exhibit A, State's First Amended Complaint in Kendall County case, and Exhibit B, City's Amended Complaint in PCB action, attached hereto and incorporated herein by reference).

On March 10, 2011, the State and Hamman Farms entered into a Consent Order in the Kendall County case, pursuant to which Hamman Farms paid a civil penalty and agreed to various future compliance provisions addressing open dumping and application of landscape waste at agronomic rates. (See Consent Order dated March 10, 2011, attached hereto as Exhibit C). Among the provisions agreed to by Hamman Farms is the establishment of a load checking program, frequent inspections of deposited landscape waste, and the utilization of an intake system for the acceptance of landscape waste. (Exhibit C, ¶¶ 2(b), 2(c), 3). In addition, Hamman Farms also agreed to apply landscape waste in a manner that prevents the generation of nuisance conditions from flies or odors, to reduce or cease the application of landscape waste to prevent nuisance conditions, and to minimize storm water runoff from fields where landscape waste has been applied. (Exhibit C, ¶¶ 10, 11). This Consent Order, approved by the Court, states that “[i]t is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter.” (Emphasis added).

II. ARGUMENT

A. The Consent Order entered into between the State of Illinois and Hamman Farms constitutes final judgment with respect to the allegations against Hamman Farms by the City of Yorkville; thus, Hamman Farms is entitled to judgment on the basis of the doctrine of res judicata.

The purpose of the doctrine of res judicata is to promote judicial economy and prevent repetitive litigation. *Citizens Opposing Pollution v. Exxon Mobil Coal U.S.A.*, 404 Ill.App.3d 543, 555 (5th Dist. 2010). Under the doctrine, a judgment rendered by a court of competent jurisdiction on the merits is a bar to any future action between the same parties or their privies on the same cause of action, in the same or another court. See, e.g., *Neuberg v. Michael Reese Hosp. and Medical Center*, 118 Ill.App.3d 93 (1st Dist. 1983); *Martin-Trigona v. Gouletas*, 105 Ill.App.3d 28 (1st Dist. 1982). When properly invoked, the judgment in the former suit is

conclusive not only as to all questions actually decided, but also as to all questions which could have been litigated in the action. *Id.*; *People v. Progressive Land Developers, Inc.*, 151 Ill.2d 285, 294, (Ill. 1992). Moreover, the order of time in which suits are commenced is not determinative, as it is the first *judgment* for the same cause of action that constitutes an effective defense. *See Kewanee Lumber & Supply Co. v. Guest Laundry Co., et al.*, 306 Ill.App. 491, 498, 29 N.E.2d 115 (2nd Dist. 1940).

Thus, three elements must be satisfied when arguing res judicata: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there is identity of causes of action; and (3) there is identity of parties or their privies. *Id.* In this case, each of these three elements are satisfied; thus, judgment should be entered in favor of Hamman Farms.

1. Final judgment on the merits was rendered by a court of competent jurisdiction.

The Consent Order entered into on March 10, 2011, constitutes final judgment rendered on the merits by a court of competent jurisdiction. This Consent Order itself, signed by the judge in the Circuit Court action, establishes that this was the parties' intent. (Exhibit C). Thus, the first element under the doctrine of res judicata is clearly established.

Moreover, as noted above, a judgment in a former suit is conclusive not only as to all questions actually decided but to all questions which might properly have been litigated and determined in that action. *Progressive Land Developers, Inc.*, 151 Ill.2d at 294. The City's air and water pollution counts (Counts III and IV, respectively) are clearly based upon the allegations of open dumping and application of landscape waste above the agronomic rate, and thus constitute allegations which "might properly have been litigated and determined" in the State's action. In fact, such allegations were specifically addressed in the Consent Order, despite the fact that the State did not specifically allege air pollution and/or water pollution violations in its First Amended Complaint. (See Exhibit C, § III(C) ¶¶ 10, 11). Under the Consent Order,

Hamman Farms agreed to apply and incorporate landscape waste in a manner that prevents the generation of nuisance conditions from flies or odors, and to reduce or cease the application of landscape waste, as necessary, to prevent nuisance conditions. (§ 10). Hamman Farms also agreed to minimize storm water runoff from fields where landscape waste has been applied, and to maintain buffer strips and field borders and place phosphorous containing material beneath the top two inches of the soil surface. (§ 11). As Count III of the City's Amended Complaint (air pollution violations) is premised on the alleged odor emitted from Hamman Farms' application of landscape waste, and Count IV (water pollution violations) is premised on Hamman Farms' application of landscape waste which is discharged into ground water, identity between the two causes of action exists. In short, there is a single group of operative facts common to both cases, as further evidenced by the fact that the Consent Order specifically addresses such concerns. Thus, the doctrine of res judicata applies equally to the air and water pollution counts as it does to the open dumping and landscape waste violation counts in Counts I and II of the City's Amended Complaint.

2. *Identity of causes of action exists.*

The second element, identity of causes of action, is defined by the facts which give the plaintiff a right to relief. *Progressive Land Developers*, 151 Ill.2d at 295. "If the same facts are essential to the maintenance of both proceedings or the same evidence is needed to sustain both, then there is identity between the allegedly different causes of action asserted and res judicata bars the latter action." *Id.* The question to be answered, then, is whether there is a single group of operative facts common to both cases. *Id.* Here, the answer to that question is yes.

The allegations in the State's First Amended Complaint that supported the open dumping and landscape waste violations are virtually identical to the City's allegations of the same violations in its Amended Complaint. (See Exhibits A and B). For example, the allegations in

both the State's First Amended Complaint and the City's Amended Complaint concern the same timeframe. (See Exhibit A at ¶¶ 7, 18, 19, 20-22, in which the State alleges that "from at least September 21, 2007, or at a time better known to the Defendant...", Hamman Farms violated the Illinois Environmental Protection Act. Similarly, in Exhibit B, the City's allegations center on the EPA inspection which occurred on October 17, 2007 and alleged continuing violations thereafter.). In addition, the State and City seek nearly identical relief for the alleged violations. (See, e.g., the relief sought under Count I of Exhibits A and B, in which both the State and the City request (1) a finding that Hamman Farms violated the Act; (2) ordering Hamman Farms to cease and desist/enjoining it from further violations of the Act; (3) ordering a civil penalty of \$50,000 for each violation, and (4) ordering payment of an additional \$10,000 penalty for each day during which the violation continued. Similar requests for relief are sought pursuant to the State's and City's allegations of landscape waste violations as well.). Moreover, as previously established herein, Counts III (air pollution violations) and IV (water pollution violations) are premised upon the allegations of open dumping and application of landscape waste over the agronomic rate. Again, despite the fact that the State did not specifically allege such violations in its First Amended Complaint, these allegations are specifically addressed within the Consent Order. Thus, the second element under the doctrine of res judicata, identity of causes of action, is similarly established.

3. *There is identity of parties or their privies.*

Finally, an identity of parties or their privies must be established. In this case, privity exists between the City and the State. Although there is no generally prevailing definition of privity which can automatically be applied to all cases, privity is said to exist between parties who adequately represent the same legal interests. *Atherton v. Connecticut General Life Insurance Company*, 2011 WL 3715003 (1st Dist., August 22, 2011); *Progressive Land*

Developers, 151 Ill.2d at 296. It is the identity of interest that controls in determining privity, not the nominal identity of the parties. *Id.* Here, the Illinois Attorney General adequately represented the same legal interests that the City of Yorkville is seeking to represent – namely the public’s interest in maintaining environmental standards and seeing that the environmental laws are followed.

In *Progressive Land Developers*, the court held that the Attorney General’s interests had been adequately represented by the Nation of Islam, a private religious organization, in a prior proceeding relating to the distribution of assets of the estate of the Nation’s former leader. *Id.* at 297. Thus, if the doctrine of res judicata is applicable where a private party adequately represented the interests of the State, it is logical that the State may adequately represent the interests of a municipality.

“A nonparty may be bound under privity if that nonparty’s interests are so closely aligned to those of a party that the party is the virtual representative of the nonparty.” *Purmal v. Robert N. Wadington & Associates*, 354 Ill.App.3d 715, 723-24 (1st Dist. 2004) (citing R. Michel, Illinois Practice, § 41.5 at 317 (1989)). “Privity is defined as ‘[d]erivative interest founded on, or growing out of, contract, connection, or bond of union between parties; mutuality of interest.’” *Purmal* at 723 (quoting Black’s Law Dictionary 1199 (6th ed. 1990)). Here, the mutuality of interest of the State and the City of Yorkville in maintaining environmental standards and seeing that the environmental laws are followed is clearly illustrated through various documents produced by the City in the course of discovery. These documents, which the City verified were responsive to Hamman Farms’ production requests (see Exhibit D), specifically Hamman Farms’ request for all documents which the City relied upon when formulating or drafting the Complaint, show that the City and State worked in tandem, and thus were in privity with one

another, in bringing their respective enforcement actions. These documents, attached hereto as Exhibit E, include the following:

- Memorandum from Bart Olson, Interim City Administrator, dated July 1, 2007, reflecting the fact that information was shared among IEPA, the City, Kendall County and the Attorney General's office, with the expectation that a joint meeting would occur between the three. (Exhibit E, Bates 958-960¹);
- Memorandum from Gary Williams, Inspection Services (City), reflecting a teleconference between the City and IEPA concerning Hamman Farms. (Exhibit E, Bates 1907-09);
- Letter from Valerie Burd, Mayor of the City of Yorkville, to Matt Dunn with the Illinois Attorney General's Office, dated April 1, 2008. The letter references joint field inspections (the City of Yorkville and IEPA) concerning Hamman Farms. (Exhibit E, Bates 1472-1473);
- News article published in Beacon News, dated April 1, 2008, reporting that IEPA agreed to pursue a cooperative relationship with the County and Yorkville as it related to Hamman Farms (Exhibit E, Bates 133-34); and
- IEPA Open Dump Checklist drafted by Gino Bruni and Mark Retzlaff, IEPA, dated October 17, 2007. The State's Notice of Violation was based upon this checklist; the City also relied on this checklist in alleging open dumping and landscape waste violations. (Exhibit D, Bates 2196-2203; see also Exhibit B at ¶ 13, illustrating the City's reliance on the October 17, 2007 IEPA inspection).

Each of these documents establishes privity between the State and the City in bringing their respective enforcement actions, and illustrates their unity of interest with respect to the allegations against Hamman Farms. The City verified that the documents were responsive to Hamman Farms' production requests, and that their response was complete. (See Exhibit D). Thus, privity between the State and the City does exist. Therefore, the doctrine of res judicata

¹ The Bates numbers identified herein were marked for purposes of discovery. Therefore, reference to such numbers in this Memorandum is for ease of identification within Exhibit E.

applies, the City should be barred from pursuing action against Hamman Farms, and summary judgment should be entered in favor of Hamman Farms.²

B. Permitting suit by the City of Yorkville against Hamman Farms after resolution of the State's complaint is contrary to the intent of the Illinois Environmental Protection Act.

The Illinois Environmental Protection Act sets forth a two-tiered enforcement action structure – (1) State enforcement proceedings, in which the Agency refers violators to the Illinois Attorney General or State's Attorneys, who then file a complaint against the alleged violator (415 ILCS 5/31(c)), and (2) citizen's enforcement proceedings, pursuant to which any person, group, association or corporation can file a complaint with the Board (415 ILCS 5/31(d)). With respect to a citizen's suit filed with the Board, the Board will pursue such allegations *unless it determines that such complaint is duplicative or frivolous*. 415 ILCS 5/31(d)(1). A complaint need not be similar to another action brought before the Board in order to be rendered "duplicative." See *The Citizen's Guide to the Illinois Pollution Control Board – Enforcement Actions*, www.ipcb.state.il.us. Rather, "[a] complaint is duplicative if it is already being heard by the Board *or in another forum*." (emphasis added). *Id.*

Thus, while there are two avenues to seek enforcement against an alleged violator of the Act, the Act specifically carves out an exception with respect to citizen's suits alleging violations of the Act which have been or currently are pending in another forum. The Board has stated that the reason for the prohibition of duplicative complaints is the apprehension that private citizens' complaints "might flood the Board with too many cases raising the same issue and [might] unduly harass a respondent." *WIPE v. Pollution Control Board*, 55 Ill.App.3d 475 (1st Dist.

² Should summary judgment not be entered in favor of Hamman Farms pursuant to the instant Motion, Hamman Farms reserves its right to file a subsequent motion for summary judgment, as relevant, based upon subsequent discovery.

1977) (citing *League of Women Voters v. North Shore Sanitary Dist.*, 1 Ill. P.C.B. Op. 35 (1970)); see also *Rocke v. Pollution Control Board*, 397 N.E.2d 51 (1st Dist. 1979). “‘Duplicity’ is defined in part as ‘the quality or state of being double or twofold...the use of two or more distinct allegations or answers where one is sufficient: pleading double....’” *Id.* In other words, where the State has taken it upon itself to initiate and resolve an enforcement action under the Illinois Environmental Protection Act, as in the Kendall County case alleging the same violations as here, the Act does not contemplate or support a duplicitous cause of action under the citizen’s suit provisions. See *WIPE*, 55 Ill.App.3d at 479 (“[W]e are persuaded that the above definitions aptly state the intent of the legislature to empower the Board to dismiss complaints raising allegations identical or substantially similar to matters previously brought before the Board”); see also *The Citizen’s Guide to the Illinois Pollution Control Board – Enforcement Actions*, (clarifying the fact that a complaint is duplicative if it is already being heard by the Board *or in another forum*). This is analogous to the common law doctrine of res judicata, previously discussed herein. It would be illogical for the Act to require that the Board pursue a citizen’s suit with respect to matters which have already been resolved through another means of enforcement, i.e., a State enforcement action.

In this case, the City of Yorkville’s Amended Complaint is duplicative (i.e., identical or substantially similar) of the State’s action. Thus, if the City is permitted to proceed, it will unduly harass Hamman Farms, who has already resolved all the potential violations of the Act raised by the State of Illinois. The same matters that are at issue in the City’s Amended Complaint were referred by the Illinois EPA to the Illinois Attorney General, who filed and resolved a complaint in State court. Pursuant to the State’s enforcement action, Hamman Farms entered into a Consent Order, thereby addressing any potential violations and agreeing to pay a

civil penalty. Thus, the State has taken appropriate action, and Hamman Farms has addressed any potential violations of the Act. It is contrary to the intent of the Act to permit a citizen's enforcement action in the same matter, with the same underlying facts, when appropriate action has already been taken by the State of Illinois. Thus, judgment should be entered in favor of Hamman Farms, on the basis that the City's Amended Complaint is duplicative of the State's enforcement proceeding in the Kendall County case.

WHEREFORE, the Respondent, HAMMAN FARMS, respectfully requests that the Pollution Control Board enter an Order granting summary judgment in its favor as to all counts, and for such further relief as the Board deems necessary and proper.

Dated: December 6, 2011

Respectfully submitted,

On behalf of HAMMAN FARMS LLC

/s/ Charles F. Helsten

Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
Michael F. Iasparro
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois,

Plaintiff,

vs.

DON HAMMAN FARMS LLC, an Illinois
limited liability company,

Defendant.

FILED

12/10/2023

RECEIVED MODERN ARTS,
GREAT BRITAIN, LONDON CO.

No. 2008-CH-0811

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND OTHER CIVIL
PENALTIES

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Defendant, DON HAMMAN FARMS LLC, a limited liability company, as follows:

COUNT I

OPEN DUMPING

1. This Count I is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2006), and is an action to restrain ongoing violations of the Act and for civil penalties.



2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. On information and belief, the Defendant, DON HAMMAN FARMS LLC ("Hamman Farms") at all times relevant to the complaint, was and is an Illinois limited liability company in good standing. The business address is 6110 State Route 71, Oswego, Kendall County, Illinois.

4. On information and belief, the Defendant, Hamman Farms, is an operator of a landscape waste land application facility located on 2300 acres of land at 6275 State Route 71, Oswego, Kendall County, Illinois ("Site"). The land is primarily used for agricultural purposes.

5. Since at least September 2007, or at a time better known to Defendant, and continuing to at least the filing of this complaint, Defendant has conducted an on-farm landscape waste application operation at the Site. Defendant receives monetary fees to accept landscape waste. The landscape waste is then land-applied to the Defendant's farm acreage.

6. Defendant, as owner and/or operator of the Site, is subject to the Act and the Rules and Regulations promulgated by the Illinois Pollution Control Board ("Board"). The Board's regulations for solid waste and special waste handling are found in Title 35, Subtitle G, Chapter 1, Subchapter 1, of the Illinois Administrative Code ("Board Regulations for Solid Waste Handling").

7. From at least September 21, 2007, or at a time better known to the Defendant, and continuing to at least the filing of this complaint, Defendant has caused or allowed thousands of pieces of plastic, metal, paper, and miscellaneous debris mixed with the landscape waste to be

deposited in and around the Site as well as on roads and ditches adjacent to the farm fields of the Site.

8. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

9. Defendant Hamman Farms is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

10. Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 5/21(a), 21(p)(1)(2006), provide, in pertinent part, as follows:

Sec. 21. Prohibited acts. No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

* * *

11. Section 3.535 of the Act, 415 ILCS 5/3.535(2006), provides the following definition:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or

solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

12. Section 3.445 of the Act, 415 ILCS 5/3.445(2006), provides the following

definition:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

13. Sections 3.185 and 3.305 of the Act, 415 ILCS 5/3.185, 5/3.305 (2006),

respectively, provide the following definitions:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

14. The thousands of pieces of plastic, metal, paper, and miscellaneous debris mixed with the landscape waste deposited in and around the Site as well as on roads and ditches surrounding the Site, are "waste" as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2006).

15. The deposition of the landscape waste mixed with plastic, metal, paper, and miscellaneous debris on the Site constitutes “open dumping” as that term is defined in Section 3.305 of the Act, 415 ILCS 5/3.305(2006).

16. Defendant’s Site is a “disposal” site as that term is defined in Section 3.185 of the Act, 415 ILCS 5/3.185 (2006) because of the landscape waste and plastic, metal, paper, and miscellaneous debris placed there.

17. Defendant’s Site is not a “sanitary landfill” as that term is defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2006) and does not have a permit as one.

18. From on or about September 21, 2007, or at a time better known to the Defendant, and continuing at least until the filing of this complaint, Defendant has caused or allowed landscape waste, plastic, metal, paper, and miscellaneous debris to be openly dumped on their Site, without being a permitted landfill in violation of Section 21(a) of the Act, 415 ILCS 5/21(a)(2006).

19. From on or about September 21, 2007, or at a time better known to the Defendant, and continuing at least until the filing of this complaint, Defendant has caused or allowed landscape waste and debris to be openly dumped on their Site, mixed together in a manner creating litter in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1)(2006).

20. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter a preliminary and, after a trial, permanent injunction and an Order in favor of Plaintiff and against the Defendant DON HAMMAN FARMS, LLC on this Count I:

1. Finding that the Defendant has violated Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 21(a), 21(p)(1)(2006);
2. Enjoining the Defendant from any further violations of Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 21(a), 21(p)(1)(2006);
3. Ordering Defendant to take the appropriate corrective actions that will result in the abatement of the violations alleged herein;
4. Assessing a civil penalty of \$50,000.00 against the Defendant for each and every violation of the Act and pertinent regulations and an additional \$10,000.00 for each day during which the violation continues;
5. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendant; and
6. For such other relief as this Court may deem appropriate and just.

COUNT II

**CONDUCTING A WASTE STORAGE OPERATION WITHOUT A DEVELOPMENT
PERMIT**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 9 and 11 through 17 of Count I, as paragraphs 1 through 16 of this Count II.

17. Sections 21(d) and 21(e) of the Act, 415 ILCS 5/21(d), 5/21(e)(2006), provide, in pertinent part, as follows:

No person shall:

- * * *
- d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
- (1) without a permit granted by the Agency...

* * *

- (2) in violation of any regulations or standards adopted by the Board under this Act; ...

* * *

- e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

18. Section 807.201 of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, states, in relevant part, as follows:

Development Permits

...no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency.

19. From some time before September 17, 2007, or at a time better known to Defendant, and continuing at least until the filing of this complaint, Defendant has conducted a waste-storage operation.

20. From some time before September 17, 2007, or at a time better known to Defendant, and continuing at least until the filing of this complaint, Defendant has caused or allowed the development of a solid waste disposal site, and/or modified its waste-storage operation without obtaining a Development Permit for said operation.

21. From some time before September 17, 2007, or at a time better known to Defendant, and continuing at least until the filing of this complaint, Defendant has disposed of waste at a site or facility which has not met the requirements of this Act or of the regulations and standards thereunder.

22. By failing to obtain a Development Permit for a waste storage operation, Defendant has violated Section 807.201 of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201 and, therefore, violated Sections 21(d)(1), (d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006).

23. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter a preliminary and, after a trial, permanent injunction and an Order in favor of Plaintiff and against the Defendant, DON HAMMAN FARMS, LLC on this Count II:

1. Finding that the Defendant has violated 21(d)(1), (d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006), and Section 807.201 of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201;

2. Enjoining the Defendant from any further violations of 21(d)(1), (d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006), and Section 807.201 of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, 807.202(b);

3. Ordering Defendant to take the appropriate corrective actions that will result in the abatement of the violations alleged herein;

4. Assessing a civil penalty of \$50,000.00 against the Defendant for each and every violation of the Act and pertinent regulations and an additional \$10,000.00 for each day during which the violation continues;

5. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendant; and

6. For such other relief as this Court may deem appropriate and just.

COUNT III

**CONDUCTING A WASTE STORAGE OPERATION WITHOUT AN OPERATING
PERMIT**

1-18. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 9 and 11 through 17 of Count I, and paragraphs 17 and 19 of Count II as paragraphs 1 through 18 of this Count III.

19. Section 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.202(b) states, in relevant part, as follows:

Operating Permits

* * *

b) Existing Solid Waste Management Sites.

1) ...no person shall cause or allow the use or operation of any existing solid waste management site without an Operating Permit issued by the Agency not later than one year after the effective date of these Regulations.

20. From some time before September 17, 2007, or at a time better known to Defendant, and continuing at least until the filing of this complaint, Defendant has caused or allowed the use or operation of its waste-storage operation without obtaining an Operating Permit for said operation.

21. From some time before September 17, 2007, or at a time better known to Defendant, and continuing at least until the filing of this complaint, Defendant has stored waste at a site or facility which has not met the requirements of this Act or of the regulations and standards thereunder.

22. By failing to obtain an Operating Permit for a waste storage operation, Defendant has violated Sections 807.201 and 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201, 807.202(b), and, therefore, violated Sections 21(d)(1),(d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006).

23. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of pertinent environmental statutes will continue unless this Court grants equitable relief in the form of permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter a preliminary and, after a trial, permanent injunction and an Order in favor of Plaintiff and against the Defendant, DON HAMMAN FARMS, LLC on this Count II:

1. Finding that the Defendant has violated 21(d)(1),(d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006), and Section 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.202(b);

2. Enjoining the Defendant from any further violations of 21(d)(1), (d)(2), and 21(e) of the Act, 415 ILCS 5/21(d)(1), (d)(2), and (e)(2006), and Section 807.202(b) of the Board Solid Waste and Special Waste Hauling Regulations, 35 Ill. Adm. Code 807.201;

3. Ordering Defendant to take the appropriate corrective actions that will result in the abatement of the violations alleged herein;

4. Assessing a civil penalty of \$50,000.00 against the Defendant for each and every violation of the Act and pertinent regulations and an additional \$10,000.00 for each day during which the violation continues;

5. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendant; and

6. For such other relief as this Court may deem appropriate and just.

COUNT IV

**FAILURE TO MEET THE APPLICATION AT AGRONOMIC RATES
EXEMPTION**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, pursuant to Section 42(d) and (e) of the Environmental Protection Act, 415 ILCS 5/42(d) and (e) (2006) ("Act").

2. The Attorney General is the chief legal officer of the State of Illinois having the powers and duties prescribed by law. ILL. CONST. Article V, Section 15 (1970).

3-16. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 9 and 11 through 17 of Count I, as paragraphs 3 through 16 of this Count IV.

17. Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006), provides, in relevant part, as follows:

Sec. 21. Prohibited acts. No person shall:

* * *

(q) Conduct a landscape waste composting operation without an Agency permit, provided, however, that no permit shall be required for any person:

* * *

(2) applying landscape waste or composted landscape waste at agronomic rates; or

* * *

18. Section 830.102 of the Board Regulations for Solid Waste Handling, 35 of Ill. Adm. Code 830.102, provides the following definition:

"Agronomic Rates" means the application of not more than 20 tons per acre per year, except that the Agency may allow a higher rate for individual sites where the owner or operator has demonstrated to the Agency that the site's soil characteristics or crop needs require a higher rate. (Section 21(q) of the Act.)

19. Section 3.270 of the Act, 415 ILCS 5/3.270 (2006), provides the following definition:

"Landscape waste" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.

20. On September 21, 2007, inspectors from the Illinois EPA Bureau of Land observed landscape waste on the Site that had been applied at a rate of more than 20 tons per acre per year.

21. On October 17, 2007, inspectors from the Illinois EPA observed landscape waste on the Site that had been applied at a rate of more than 20 tons per acre per year.

22. On at least September 21, 2007, October 17, 2007, and at times better known to the Defendant, Defendant had not met the exemption from a permit requirement contained in Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006), and, thus, is required to have a permit for the operation of its landscaping waste application operation. Defendant did not have a permit or permission for said operation, and was not given permission by the Illinois EPA to apply a higher rate of landscape waste per acre per year until May 1, 2008.

23. By applying landscape waste at a rate of more than 20 tons of landscape waste per acre, per year, without first obtaining a permit from the Illinois EPA, Defendant has violated Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006).

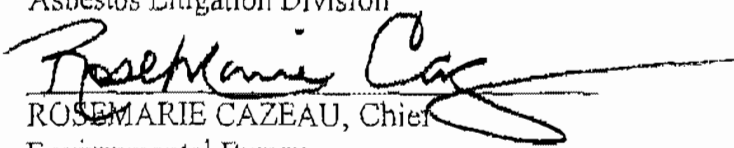
WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter Judgment in favor of Plaintiff and against the Defendant, DON HAMMAN FARMS, LLC, on this Count III:

1. Finding that the Defendant has violated Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006);
2. Enjoining the Defendant from any further violations of Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2)(2006);
3. Assessing a civil penalty of \$50,000.00 against the Defendant for each and every violation of the Act and an additional \$10,000.00 for each day during which the violation continues;
4. Ordering that all costs of this action, including expert witness, consultant and attorney fees, be taxed against the Defendant; and
5. For such other relief as this Court may deem appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

PAULA BECKER WHEELER
VANESSA CORDONNIER
Assistant Attorneys General
Environmental Bureau
69 W. Washington, Suite 1800
Chicago, IL 60602
(312) 814-1511

MAY 11 2009

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Plaintiff,)
)
vs.)
)
DON HAMMAN FARMS, LLC, an Illinois)
limited liability company,)
)
Defendant.)

No. 08-CH-0811

NOTICE OF FILING

TO: Charles Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

George Mueller
George Mueller, P.C.
609 Etna Rd
Ottawa, IL 61350-1071

Please take notice that on May 5, 2009, I filed with the Clerk of the Circuit Court of Kendall County, Illinois, PLAINTIFF'S FIRST AMENDED COMPLAINT, a true and correct copy of which is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS *ex*
rel. LISA MADIGAN, Attorney General of
State of Illinois,

By: Vanessa Cordonnier
VANESSA M. CORDONNIER
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-0608

CERTIFICATE OF SERVICE

I, VANESSA M. CORDONNIER, an Assistant Attorney General, certify that I served the foregoing Notice of Filing, Plaintiff's First Amended Complaint, on the below listed individual(s), by posting same in a postage prepaid envelope by first class mail and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois at or before the hour of 5:00 p.m. on May 5, 2009 and by sending the same via electronic mail.

Vanessa Cordonnier

SERVICE LIST

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

George Mueller, P.C.
609 Etna Rd
Ottawa, IL 61350-1071

Lisa Madigan
ATTORNEY GENERAL

The Honorable Timothy J. McCann
Kendall County Courthouse
807 West John Street
Yorkville, Illinois 60560

Vanessa Adams

506 South Second Street, Springfield, Illinois 65706 • (217) 782-1090 • TTY: (877) 864-3466 • Fax: (217) 782-7046
106 West Randolph Street, Chicago, Illinois 60601 • (312) 814-5000 • TTY: (800) 964-3011 • Fax: (312) 814-3806
1000 East 17th Street, Chicago, Illinois 60605 • (773) 326-6000 • TTY: (877) 376-6976 • Fax: (773) 326-6611

MAY 11 2009

RECEIVED
CLERK'S OFFICE

MAY 17 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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. 08-96
Enforcement-Land, Air, Water

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 AMENDED COMPLAINT, copies of which are herewith served upon you.

Respectfully submitted,

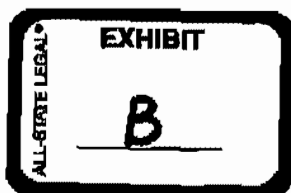
UNITED CITY OF YORKVILLE,
Petitioner,

By: [Signature]
One of its Attorneys

Dated: May 7, 2009

Thomas G. Gardiner
Michelle M. LaGrotta
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



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 17 2009

UNITED CITY OF YORKVILLE, A)
MUNICIPAL CORPORATION,)
Complainant,)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 08-96

v.)

(Enforcement-Land, Air, Water)

HAMMAN FARMS,)
Respondents.)

AMENDED COMPLAINT

NOW COMES the Complainant, UNITED CITY OF YORKVILLE, by its attorneys, GARDINER KOCH & WEISBERG, pursuant to Section 31(d) of the Illinois Environmental Protection Act (415 ILCS 5/31(d)), and 35 Ill. Admin. Code § 103.200, and for its Amended Complaint against HAMMAN FARMS, states as follows:

GENERAL ALLEGATIONS

1. Complainant, UNITED CITY OF YORKVILLE, (hereinafter referred to as "Yorkville") is an Illinois municipal corporation in Kendall County, Illinois.
2. At all times relevant, HAMMAN FARMS (hereinafter referred to as "HAMMAN") is a farm, located on approximately twenty-two hundred acres of land in Kendall County.
3. On this land, HAMMAN grows crops of soybeans, wheat and corn.
4. Starting in or around 1993, HAMMAN registered with the Illinois Environmental Protection Agency ("Agency") as an On-Site Compost Landscape Waste Compost Facility (hereinafter referred to as "Compost Facility") pursuant to section 21(q)(3) of the Illinois Environmental Protection Act (hereinafter referred to as "Act").

13. On October 17, 2007. Agency inspectors, Gino Bruni and Mark Retzlaff, conducted an inspection of HAMMAN. During the inspection, the inspectors observed the following:

- a. The application rate was two and one half inches to three inches thick using a ruler;
- b. Numerous flies were at the field where landscape waste had been applied; and
- c. General refuse was in the landscape waste.

14. On November 15, 2007, the Agency issued HAMMAN a violation notice. The notice cited the following violations:

- a. Section 21(a) of the Act: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic rates.
- b. Section 21(d) of the Act: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic rates. HAMMAN conducted the aforementioned activities without a permit issued by the Agency.
- c. Section 21(p) of the Act: HAMMAN openly dumped litter, and litter was commingled with the landscape waste.
- d. 35 Ill. Admin. Code §807.201: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic rates. HAMMAN conducted the aforementioned activities without a developmental permit granted by the Agency.
- e. 35 Ill. Admin. Code §807.202: HAMMAN openly dumped landscape waste and general refuse. HAMMAN did not apply landscape waste at agronomic

- b. HAMMAN failed to calculate on a daily basis the percentage of non-landscape waste.

18. On April 10, 2008, HAMMAN 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.

19. 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 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.

20. 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 waste application and former Agency investigator, recommends using a sampling of two tests from each one acre area.

21. On April 16, 2008, HAMMAN filed a supplemental application.

22. On May 1, 2008, the Agency approved HAMMAN's request to raise the agronomic rate.

COUNT I
OPEN DUMPING VIOLATIONS

23. Section 21 of the Act, 415 ILCS 5/21(2008), provides in pertinent part as follows:

"No person shall:

27. Section 3.305 of the Act, 415 ILCS 5/3.305 (2008), provides:
“‘Open dumping’ means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.”
28. Section 3.385 of the Act, 415 ILCS 5/3.385 (2008), provides:
“‘Refuse’ means waste.”
29. Section 3.445 of the Act, 415 ILCS 5/3.445 (2008), provides:
“‘Sanitary landfill’ means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation, or by such other methods and intervals as the Board may provide by regulation.”
30. Section 3.470 of the Act, 415 ILCS 5/3.470 (2008), provides:
“‘Solid waste’ means waste.”
31. Section 3.480 of the Act, 415 ILCS 5/3.480 (2008), provides:
“‘Storage’ means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.”
32. Section 3.535 of the Act, 415 ILCS 5/3.535 (2008), provides in pertinent part:
“‘Waste’ means any garbage...or other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities...”
33. Section 3.540 of the Act, 415 ILCS 5/3.540 (2008), provides:
“‘Waste disposal site’ is a site on which solid waste is disposed.”
34. On October 23, 2007 the Agency inspected HAMMAN and found refuse mixed in with the landscape waste.

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Ordering the Respondent to pay a civil penalty of \$50,000 for each such violation, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a);
- E. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II
LANDSCAPE WASTE VIOLATIONS

43. Section 21 of the Act, 415 ILCS 5/21(2008), provides in pertinent part as follows:

"No person shall:...

(q) Conduct a landscape waste composting operation without an Agency permit, provided, however, that no permit shall be required for any person:...

(2) applying landscape waste or composted landscape waste at agronomic rates; or

(3) operating a landscape waste composting facility on a farm, if the facility meets all of the following criteria:

(A) the composting facility is operated by the farmer on property on which the

45. Section 830.102 of the Illinois Administrative Code Title 35, ILL. ADMIN. CODE

TIT. 35, §830.102, provides in pertinent part:

"Except as stated in this Section, the definition of each word or term used in this Part, 35 Ill. Adm. Code 831 and 35 Ill. Adm. Code 832 shall be the same as that applied to the same word or term in the Environmental Protection Act...

'Agronomic Rates' means the application of not more than 20 tons per acre per year, except that the Agency may allow a higher rate for individual sites where the owner or operator has demonstrated to the Agency that the site's soil characteristics or crop needs require a higher rate. (Section 21(q) of the Act.)...

'Compost' means the humus-like product of the process of composting waste, which may be used as a soil conditioner. (Section 3.70 of the Act.)

'Composting' means the biological treatment process by which microorganisms decompose the organic fraction of the waste, producing compost. (Section 3.70 of the Act.)
Land application is not composting....

'Land application' means the spreading of waste, at an agronomic rate, as a soil amendment to improve soil structure and crop productivity....

'Landscape waste compost facility' means an entire landscape waste composting operation, with the exception of a garden compost operation....

'On-farm landscape waste compost facility' means a landscape compost facility which satisfies all of the criteria set forth in Section 830.106."

46. Section 832.109 of the Illinois Administrative Code Title 35, ILL. ADMIN. CODE

TIT. 35, §832.109, provides:

"The issuance and possession of a permit shall not constitute a defense to a violation of the Act or any Board regulations, except for the development and operation of a facility without a permit."

WHEREFORE, Complainant, UNITED CITY OF YORKVILLE, respectfully requests that the Board enter an order against the Respondent,

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering the Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Ordering the Respondent to pay a civil penalty of \$50,000 for each such violation, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a);
- E. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III
AIR POLLUTION VIOLATIONS

54. Section 9 of the Act, 415 ILCS 5/9 (2008) provides in pertinent part:

“No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act...”

55. Section 3.115 of the Act, 415 ILCS 5/3.115 (2008), provides

odor so offensive that she called emergency services because she thought the odor resulted from an accident. Although police officers came out to investigate the odor, Ms. Gilbert did not learn the source of the smell until several weeks later.

- a. From 1994 until 2006, Ms. Gilbert noticed the odor a several times per month from May until October.
- b. As a result of the odor, Ms. Gilbert began to use air conditioning instead of leaving the windows of her home open.
- c. In May 2008, Ms. Gilbert noted the odor on at least three occasions. Ms. Gilbert noted the odor again on at least four occasions in June 2008 (on or about, June 18th, 19th, 20th, and 30th) and once in July 2008 (on or about, July 31st).
- d. On those occasions, Ms. Gilbert informed the Illinois Environmental Protection Agency.

61. Diane Pobol, a former Yorkville resident, resided on property surrounded by Hamman Farms from early 2006 until fall of 2008.

- a. Ms. Pobol noticed the odor for the first time in spring 2006. When Ms. Pobol first noticed the odor, she thought that there was a problem with the septic tank on her property. Ms. Pobol later learned that that the odor came from Hamman Farms.
- b. Ms. Pobol's home did not have air conditioning, and she was forced to leave windows open despite the smell. As a result of the odor, Ms. Pobol's eyes were often irritated and continually teared.

- a. The Smiths notice the odor on a daily basis from April to November; however, they note that the odor can be particularly bad when the wind directs the odor toward their home.
- b. The Smiths describe the odor as a sour smell that is worse than typical farm smells.
- c. The Smiths held family reunions on their property annually over the last three years. Each year, approximately two thirds of their guests left early due to the odor.
- d. The Smiths find that they are unable to enjoy outdoor activities on their property and are unable to leave their windows open when they otherwise would.

64. Larry Alex, who has resided at 2108 Bernadette Lane, Yorkville, Illinois for the last two years, has noticed the odor since moving into his home.

- a. Mr. Alex finds the intensity of the odor is dependent upon the wind direction.
- b. Mr. Alex finds the odor particularly strong about two to three times per month during the months of April through November.
- c. The odor has negatively affected Mr. Alex's outdoor activities.

65. William Fowler, who has resided at 8577 W Highpoint Road, Yorkville, Illinois since 1998, has noticed the odor every summer since moving into his home.

- a. Mr. Fowler finds the odor present from April to October or November.
- b. Mr. Fowler finds the odor to have a fowl, moldy grass smell that is not typical of farms.
- c. Mr. Fowler is unable to enjoy outdoor activities on his property.

COUNT IV
WATER POLLUTION VIOLATIONS

68. Section 12 of the Act, 415 ILCS 5/12 (2008), provides in pertinent part:

“No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act...

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.”

69. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides:

“‘Contaminant’ is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.”

70. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), provides:

“‘Water pollution’ is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.”

71. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), provides:

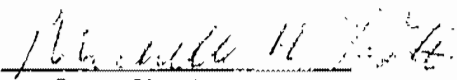
“‘Waters’ means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.”

72. Under Section 3.165 of the Act, the landscape waste that HAMMAN is applying is a contaminant.

- E. Ordering the Respondent to pay an additional civil penalty of \$10,000 for each day during which each such violation continued, pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a); and
- F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

UNITED CITY OF YORKVILLE,
Complainant,

By: 
One of its Attorneys

Dated: May 7, 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

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

FILED WITH OPEN COURT
MAR 10 2011
BECKY MORGANEGG
CIRCUIT CLERK KENDALL CO.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois,

Plaintiff,

vs.

DON HAMMAN FARMS LLC, an Illinois
limited liability company,

Defendant.

No. 2008-CH-0811

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, DON HAMMAN FARMS LLC, ("Parties to the Consent Order") have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), and the Illinois Pollution Control Board ("Board") Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter.



A. Parties

1. On May 5, 2009, a First Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2008), against the Defendant.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2008).

3. At all times relevant to the Complaint, Defendant Don Hamman Farms, LLC ("Hamman Farms") was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois and owned and operated an on-farm Landscape Waste application facility at 6275 State Route 71, Oswego, Kendall County, Illinois ("Facility" or "Site").

B. Allegations of Non-Compliance

Plaintiff contends that the Defendant has violated the following provisions of the Act:

Count I: OPEN DUMPING in violation of Sections 21(a) and 21(p)(1) of the Act, 415 ILCS 21(a) and 21(p)(1)(2008).

Count IV: FAILURE TO MEET THE APPLICATION AT AGRONOMIC RATES EXEMPTION in violation of Section 21(q)(2) of the Act, 415 ILCS 5/21(q)(2) (2008).

C. Non-Admission of Violations

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Parties to the Consent Order. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Defendant under this Consent Order. In the event that the Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, the Defendant shall notify the Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant site access and all cooperation necessary for Defendant to perform to completion any compliance obligation(s) required by this Consent Order. The Defendant shall provide a copy of this Consent Order to any such successor in interest and the Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, the Defendant and a proposed purchaser or

operator of the facility may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Penalty

The Defendant shall pay a civil penalty of Seven Thousand Five Hundred Dollars (\$7,500.00). Payment shall be tendered at time of entry of the Consent Order.

B. Payment Procedures

All payments required by this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Defendant's federal tax identification number shall appear on the face of the certified check or money order.

C. Future Compliance

1. The Defendant shall at all times in the future apply only "Landscape Waste," as defined by Section 3.270 of the Act, and biodegradable paper bags used to contain Landscape

Waste to fields at the Site. No non-landscape waste shall be applied to fields at the Site.

2. Immediately upon entry of this Consent Order, the Defendant shall replace its existing Landscape Waste acceptance protocol with a Landscape Waste intake system that includes the following requirements:

a. The acceptance of Landscape Waste for land application that contains only Landscape Waste material.

b. The establishment and operation of a load checking program designed to detect attempts by anyone to dispose of non-landscape waste at the Facility. At a minimum, the load checking program shall consist of the following components:

i. *Routine Inspections*

Defendant shall visually inspect every load of material before its acceptance at the Facility to determine the presence of non-landscape waste in the load. Defendant shall reject any and all load(s) containing non-landscape waste, or shall remove the non-landscape waste.

ii. *Random Inspections*

In addition to the inspections required under section III.C.2., Defendant shall, on a weekly basis, conduct a thorough visual inspection of at least one randomly selected load after it has been delivered and deposited at the Facility. Defendant shall reject any load containing non-landscape waste, or shall remove the non-landscape waste. The Defendant shall also ensure that any rejected

waste is removed from the Facility and properly disposed.

c. *Documentation of Inspection Results*

Defendant shall document the results of all inspections conducted pursuant to Sections III.C.2.b, above. The documentation for each inspection shall contain, at a minimum, the following:

- i. The date and time of the inspection, the name of the hauling firm, the vehicle identification number or license plate number, and the source of the Landscape Waste;
- ii. The results of the routine inspection required under section III.C.2.b.i, whether the load was accepted or rejected, and for rejected loads the reason for the rejection;
- iii. The results of any random inspection required under section III.C.2.b.ii, including, but not limited to, whether the load was accepted or rejected, and for rejected loads the reason for the rejection; and
- iv. The name of the individual who conducted the inspection activities.

d. *Rejection of Loads*

For all rejected loads the Defendant shall record, the date and time of the inspection, the name of the hauling firm, the vehicle identification number or license plate number, and the source of the non-landscape waste.

3. Effective immediately upon entry of this Consent Order, Defendant shall implement and begin utilization of the intake system as outlined in Section III.C.2 above for the acceptance of Landscape Waste at its Facility.

4. At all times in the future, Defendant shall, prior to applying Landscape Waste to fields at the Site, clear all such fields of non-landscape waste and properly dispose of that waste. Additionally, Defendant shall, within twenty-four (24) hours after application of landscape waste to a field, clear that field of non-landscape waste present in the field and properly dispose of such waste.

5. Defendant shall at all times, upon discovery that material other than Landscape Waste has been improperly accepted or deposited at the Facility, within 24 hours remove and properly dispose of such waste material.

6. Effective immediately, the Defendant shall ensure that all appropriate Facility personnel are properly informed in the identification of material that is not Landscape Waste. Defendant shall maintain at its Facility, records of all training activities conducted pursuant to this section III.C.6 and make such records available to Illinois EPA upon its request.

7. Defendant shall keep at the Facility the documentation required under Section III.C herein for a minimum of 3 years, and shall be made available to Illinois EPA upon its request for inspection and copying.

8. At all times in the future, Defendant shall process, apply and incorporate the Landscape Waste the same day it is received on Site. If Defendant is unable to process, apply and incorporate the Landscape Waste on the date it is received, Defendant shall notify Illinois EPA by telephone by close of business that day, document the reason for the failure to process.

apply, and/or incorporate the Landscape Waste, document any steps taken by Defendant to remedy the failure, document the duration that Defendant expects to be unable to process, apply and/or incorporate Landscape Waste and submit that documentation to Plaintiff and Illinois EPA by close of business the next business day.

9. If Defendant is unable to process, apply and incorporate the Landscape Waste within five days after receipt, Defendant shall 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 obviate the requirements of III.C.11, below.

10. At all times in the future, Defendant shall process, apply and incorporate the Landscape Waste in a manner that prevents the generation of nuisance conditions from flies or odors. Defendant shall reduce or cease the application of Landscape Waste, as necessary, to prevent nuisance conditions.

11. At all times in the future, Defendant shall minimize storm water runoff from fields where Landscape Waste has been applied. Defendant shall not apply Landscape Waste within 25 feet of drainage ways. Additionally, Defendant shall maintain buffer strips and field borders and place phosphorous containing material beneath the top two inches of the soil surface at the Site.

12. No later than September 30, 2011, Defendant shall sample and analyze soil on the fields at the Site where Landscape Waste is applied. Soil shall be analyzed for, at a minimum, the following parameters: pH, organic matter, phosphorous, potassium, magnesium, calcium and nitrate-nitrogen. Within 30 calendar days of receipt of the results of the soil sampling and

analysis required herein, Defendant shall submit these results to Plaintiff's representatives, listed in Section III.E, below.

13. No less than thirty (30) calendar days prior to the opening of the facility for receipt of Landscape Waste each calendar year commencing with calendar year 2011, Defendant shall provide written notice to all its Landscape Waste suppliers that only Landscape Waste will be accepted at the Facility. This written notification shall also be provided to all new suppliers of Landscape Waste within fourteen (14) calendar days prior to the first delivery.

14. The Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Defendant's facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

15. This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

16. The Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

D. FORCE MAJEURE

1. *Force majeure* is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters.

and labor disputes beyond the reasonable control of the Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the Illinois EPA (Bureau of Land, Field Operations Section, DesPlaines Office at (847) 294-4000) within forty eight (48) hours of the occurrence. Notwithstanding any oral notification given pursuant to the requirement above, written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order.

4. If the Plaintiff does not accept the Defendant's claim of a *force majeure* event, the Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff

shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

E. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

F. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff

Vanessa Horton
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
FAX: (312) 814-2347

Peter Orinsky
Assistant Counsel
Illinois EPA
9511 W. Harrison
Des Plaines, IL 60016
FAX: (217) 294-4083

As to the Defendant

Don Hamman Farms LLC
Donald J. Hamman
6110 State Route 71
Oswego, IL 60543

George Mueller
609 Etna Road
Ottawa, IL 61350

G. Release from Liability

In consideration of the Defendant's payment of a \$7,500.00 penalty, its commitment to cease and desist as contained in Section III.C.16 above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for the violations of the Act that were the subject matter of the Complaint herein

The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's First Amended Complaint filed on May 5, 2009. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), other than the Defendant.

H. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau

DATE: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA BONNETT, Acting Director
Illinois Environmental Protection Agency

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY


MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

LISA BONNETT, Acting Director
Illinois Environmental Protection Agency

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:


JOHN J. KIM
Chief Legal Counsel

DATE:

3/8/11 ^{me}

DATE:

3/4/11

Asbestos Litigation Division

BY: ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY: JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE DEFENDANT:

DON HAMMAN FARMS LLC

BY: Don Hamman

DATE: March 4, 2011

ENTERED:

FOR THE DEFENDANT:

DON HAMMAN FARMS LLC

BY: _____

DATE: _____

ENTERED:

Timothy J. McCann

JUDGE

DATE: 3/10/11

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE,)	
A municipal corporation,)	
)	
Petitioner,)	PCB NO. 08-96
)	
v.)	(Enforcement-Land, Air, Water)
)	
HAMMAN FARMS,)	
)	
Respondents.)	

PETITIONER'S AFFIDAVIT PURSUANT TO RULE 214

Affiant, Kathleen Field Orr, states the following:

- 1) I, Kathleen Field Orr, am the City Attorney for the Petitioner in the above captioned matter.
- 2) Through my attorneys, Gardiner Koch Weisberg & Wrona, I issued the attached Responses to Production Requests pursuant to Rule 214.
- 3) The production issued is complete in accordance with the request.

Further, affiant sayeth not.

I affirm that the information contained in this Affidavit is true and accurate and sign this under penalty of perjury as provided in 735 ILCS Section 1-109.

By: 

Kathleen Field Orr

Thomas G. Gardiner
Michelle M. LaGrotta
GARDINER KOCH WEISBERG & WRONA
53 W. Jackson Blvd., Suite 950
Chicago, Illinois 60604
Firm No. 29637





United City of Yorkville Memo

800 Game Farm Road

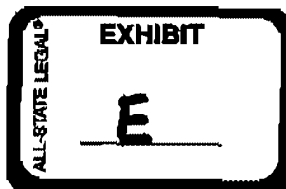
Yorkville, Illinois 60560

Telephone: 630-553-4350

Fax: 630-553-7575

Date: July 17, 2007
To: City Council
From: Bart Olson, Interim City Administrator
CC: Department Heads
Subject: City Administrator information memo

- 1) **Regional Plan Commission meeting** – The Yorkville Plan Commission is hosting a regional planning consortium meeting on July 19th at the Yorkville Public Library at 7 p.m. All elected officials and plan commission members are invited to attend. The meeting is being facilitated by Yorkville's Plan Commission and staff, and will serve the attendees as an opportunity to discuss a variety of regional planning issues. Additional questions on the meeting should be directed to Plan Commission Chairman Anne Lucietto, and Community Development Director Miller.
- 2) **Visit-ability Code Developer's Meeting** – The Visit-ability Code meeting with developers has not been scheduled yet. Staff is currently working on identifying an acceptable time to meet for all interested parties.
- 3) **Economic Development Committee** – The Economic Development Committee meeting for tonight was cancelled due to lack of a physical quorum. Alderman Munns is out of town on vacation, and Alderman Leslie is out of town on business. It was Alderman Leslie's intention to coordinate the meeting via telephone up until we received word from Attorney Roth that the meeting could not take place due to the Open Meetings Act. The Open Meetings Act requires the quorum to be fulfilled by members physically at the meeting; since only two of the four committee members could be present for the meeting, the meeting had to be cancelled. In the future, Attorney Roth and I will be bringing forward a policy discussion on the City's electronic meeting attendance ordinance. More specifically, the issue of whether or not to apply the electronic meeting attendance ordinance to committees of the City Council will need to be discussed (the ordinance is currently silent on allowing a committee member to vote on an agenda item via telephone).
- 4) **Right-of-Way Ordinance** – In keeping with the IML updates on SB 678 (Cable Communications Bill), the Metropolitan Mayor's Caucus sent out an email about a boiler-plate right-of-way control ordinance. The new Illinois bill (waiting to be signed by the Governor) gives telecommunications companies more authority to start and continue projects in the public right-of-way, and allows municipalities some new avenues of control. The City needs to pass an updated version of our right-of-way control ordinance



Yorkville000958

to make sure we take advantage of the new bill. Fortunately for the City, Attorney Roth was one of the original experts on the first right-of-way control regulations, and has a fair amount of knowledge on the topic. He and I will be meeting later this week to discuss the next steps the City should take in passing an updated right-of-way control ordinance.

- 5) **Storm water Management Field Trip** – Mayor Burd, Alderwoman Sutcliff, Community Development Director Miller, City Engineer Wywrot and I met with members from various other organizations at a variety of locations to discuss storm water management. One of the locations was the Oakhurst Forest Preserve of Kane County in Aurora. The Oakhurst Forest Preserve serves as a collection and filtering point of storm water for a four-square-mile area of the east side of Aurora. Mayor Burd and Alderwoman Sutcliff can give more information on some of their ideas and future initiatives if you are interested.
- 6) **Compost Facility report** – Staff from the IEPA, Kendall County, and the Attorney General's office have been in preliminary contact with City staff on the Hamman compost facility regarding various comments and complaints the City has received from surrounding property owners. Staff from all three organizations is reviewing information that has been provided by City staff and information that has been sent to them directly by citizens. After all three organizations have reviewed the information, I expect a joint meeting to discuss areas of authority and enforcement.
- 7) **Job postings** –
 - a. **Mechanic** – [Internal Release from Human Resources] The Public Works Streets department is pleased to announce they have filled their newly created mechanic position. Brian Yarbrough will be starting on August 6, 2007. Brian joins us from the Village of Itasca where he has been employed as the lead mechanic for eleven years. His responsibilities include maintenance and repairs of all village vehicles, truck, equipment, tools, and installation of new equipment on police vehicles. Brian has received various certifications from Ford, Chevy, John Deer, Briggs & Straton. While at Itasca he completely equipped their new 2007 Dodge Charger in hopes of publication in Law and Order magazine. Please join me in welcoming Brian to the City. [Bart's notes] Both Public Works Director Dhuse and Human Resources Manager Kasper gave Brian incredibly high-marks after two rounds of interviews. If anyone has any questions about Brian's employment details (offer, salary range, actual salary), please do not hesitate to contact me.
 - b. **Senior Planner** - Final interviews for the Senior Planner were completed last week. Staff has met to discuss offers, and is in the process of preparing an offer.
 - c. **Civil Engineer** - The Civil Engineer posting window has closed, and staff is scheduling interviews for this week and next week. The job posting drew 6 applicants, and 4 will be interviewed.
 - d. **Receptionist** – City staff is conducting the first round of interviews with 6 finalists this week. I expect to make a decision and an offer by the middle of next week.

- 8) **Montgomery boundary agreement** – Mayor Burd, Community Development Director Miller, and I met last Friday to discuss the boundary agreement with Mayor Michelini, Village Manager Montgomery, and Community Development Director Tompkins. Discussion revolved around commercial and residential design standards, land uses, and density of the properties. Montgomery's staff is in the process of drafting the agreement, which will be sent to Yorkville staff for review later this week or early next week. We have tentatively scheduled a meeting for the first week in August to discuss the draft agreement.
- 9) **Ocean Atlantic payment** - I have not called John Carroll for an update since last week. Attorney Roth is still in the process of reviewing the Westbury/OA annexation and development agreements, and City staff is preparing to meet to discuss options.
- 10) **Meeting with Dr. Engler on streets and July 23rd school board agenda** – Mayor Burd, Public Works Director Dhuse and I will all be attending a School Board meeting on July 23rd to discuss future City plans for street repair and improvements in some of the older subdivisions in the City. Dr. Engler has reached out to City staff to communicate the school board's and school district's staff's concerns over the road quality along certain bus routes.
- 11) **City Administrator recruitment** – The assessment center will be conducted this Saturday, and four candidates will be participating. The assessment center will be conducted during an executive session, and will not be open to the public. After the assessment center has been completed, mayoral interviews will be scheduled.
- 12) **Caledonia land-cash payment** – No update since last week. I have not been able to coordinate a meeting with Rich Guerard to discuss.



United City of Yorkville Memo

800 Game Farm Road
Yorkville, Illinois 60560
Telephone: 630-553-4350
Fax: 630-553-7575

**Department of Building Safety
And Zoning**

Date: November 2, 2007

To: Brendan McLaughlin, City Administrator and
Travis Miller, Community Development Director

From: Gary R. Williams, Manager, Inspection Services

Subject: Hamman Yard Waste Operation

On November 1, 2007, I met with the County Health Department to discuss the Hamman operation. Following is a summary of that meeting.

Present:

Steve Curatti	Cheryl Johnson
Marlin Hartman	Linda Swanson
Gary Williams	Lora Chapman

Marlin Hartman provided a copy of the agenda for the phone discussion with IEPA (attached). After a brief discussion with Steve Curatti and Marlin Hartman, a call was placed to IEPA. Both Gary Simma and Paul, Field Operations Manager, were available for the conference.

A Notice of Violation will be given to Don Hamman for over application of material. He will have 45 days to respond. Paul stated that he did talk to Gino Bruno and is well aware of the issues, which are:

1. Over Application of Material
2. Odor
3. Flies
4. Litter

County Health Dept. Meeting
Page 2

Mr. Hartman asked if IEPA had asked that Don Hamman stop reporting on his facility. IEPA stated that they did tell Mr. Hamman not to use the composting report since he is not designated as a composting operation. Mr. Hartman asked if the County could make Mr. Hamman file a report under the county level. IEPA stated that under the Violation Notice they can state what violations were made and what correction measures they would like made. It can be suggested that Hamman keep records. They asked the County communicate to Gino Bruno what the County/City would like to have.

Under Item 2:

Inspections – It was asked if IEPA plans to do more inspections now that they are aware of Mr. Hamman's over application. IEPA stated that it would be premature to commit to anything until after the Violation Notice. Mr. Hartman asked about the authority under the County to go on Mr. Hamman's property. They do have the 1995 Court Order, but Mr. Hamman has picked that apart. They would like an additional court order that would mimic the recommendations made by the IEPA.

Mr. Curatti mentioned the odor complaints and stated that he knows what is above the ground, but he does not know what is going into the ground. He would like to have a way of bringing Mr. Hamman into compliance with what he is allowed to do. IEPA stated that the County could get assistance from the State's Attorney if there is good local interest and possibly get a consent decree. IEPA staff would work with the State's Attorney to help them to go forward.

a. Ability to Require Reporting:

The County would like to require reporting measurements. IEPA stated that it would only be an estimate. Mr. Hartman mentioned that he had considered subpoenaing Hamman's tax records to see what income he is reporting. He would like to have proof that Hamman is accepting too much and over applying. IEPA stated that an actual weight or cubic yards would be required on every load. They also suggested that a court order could be entered requiring every truck be weighed.

Mr. Hartman asked if there was a better way of determining the amount applied. IEPA suggested that a third party could be employed to monitor the project. This could be a County employee.

Mr. Curatti mentioned that Hamman had expressed an interest in Bio Solid. IEPA was not aware of this. Mr. Currati stated that the slush user may not be aware of Hamman's other operation.

County Health Dept. Meeting
Page 3

3 – c: Restrictions on property if over applied:

Mr. Hartman asked if Hamman has over applied in an area, if he would be stopped from applying in that area the following year. IEPA suggested that samples of the ground be taken to check the phosphorous and potassium levels. If they are high, this could be an environmental threat. The soils could be “out of whack”. Hamman is allowed to apply 20 tons per acre per year. Anything over this amount would be considered open dumping and would require further permits. A chemistry of the soil could prove that he has over applied.

Mr. Curatti asked if there was anything the County could do to assist the EPA in violations. IEPA stated that the ball is rolling. If there are ongoing and continuous violations, it will show a pattern of knowingly violating standards. Mr. Hartman asked if the bucket method would be upheld in court. IEPA stated that it would only be an estimate.

In summary, the County would like the following:

1. Screening of litter.
2. Over application – Use of bucket and scale of trucks
3. Third Party to document how much yard waste is coming in.
4. A chemical application to check on over applying – P & K test.

IEPA reiterated that the weight of the material coming in changes once the material is ground – it would become more dense. He is only allowed ¾ inch of product once a year on each parcel.

Mr. Hartman would like Mr. Hamman to provide a plan as to where he is going to be applying the material to check the acreage and the amount of material received. The amount of yard waste he is receiving now is beyond the amount of acreage he is applying it to.

As for the odor, IEPA stated that he could add saw dust or wood chips to the material to keep the odors down. If he is not over applying, it be dry within 24 hours and there would be no odor. He could also be directed to use a spray (Bravo), which would be an odor sequestering agent.

Mr. Hartman will be speaking to Gino Bruno to set up another meeting. He would like to have the attorneys present at this meeting.



United City of Yorkville

800 Game Farm Road

Yorkville, Illinois 60560

Telephone: 630-553-4350

Fax: 630-553-7575

April 1, 2008

Matthew J. Dunn Assistant Attorney General
Division Chief, Environmental and Asbestos Litigation Division
69 W. Washington Street, 18th Floor
Chicago, IL 60602

Dear Mr. Dunn,

I am writing to you concerning operational and statutory problems with the Hamman Farms composting/land application facility southwest of the City of Yorkville. For many years, residents of the area have contended with the negative issues associated with the improper use of the property, including complaints on operational controls resulting in off-site odors, off-site debris, on-site debris, and over-application of materials for both per acre tonnage and total acres.

The situation has now become critical to this community, as Yorkville's municipal boundaries and associated development has stretched out to this site and beyond it in the past two years. In 1995, the United City of Yorkville was miles away from the site (but still observing some negative externalities), but today the City is now encompassing the site.

For the past two years, the City of Yorkville and its surrounding residents have attempted to get the operator to address these negative issues without success. In the late summer of 2007, Yorkville staff, with help from members of the Kendall County Health Department, conducted a thorough site investigation with inspectors from the IEPA. The investigation revealed that, while the current annual per-acre tonnage of yard waste allowed to be applied for a facility of this kind is 20 tons per acre, field inspections documented areas where the per-acre tonnage was close to 100 tons per acre. Reports from surrounding residents also included evidence that material was being applied to the same area on multiple days, despite the fact that current requirements allow one application annually. During the field inspection, the operator, manager, and owner of the facility relayed that they were unfamiliar with the reporting processes and the operational standards. However, in 1995, the owner and operator petitioned the IEPA for an increase to the maximum annual allowance, indicating that the owner and operator were familiar with the standards. The request was denied.

We have brought these issues to the Kendall County State's Attorney, Kendall County Health Department, IEPA, and Attorney General's office (via former Asst. Attorney General Katherine Hausrath). The IEPA and the Kendall County Health Department have been diligent in assisting us with inspections and enforcement. The Kendall County State's Attorney has indicated their lack of desire to prosecute for administrative and political reasons. We find this

Yorkville001472

unacceptable in the face of the extreme noncompliance and the owner and the operators unwillingness to meet IEPA standards.

For the above reasons, we are seeking your inspection and oversight of this matter, and petitioning for prosecution to achieve compliance with state regulatory operational standards on the Hamman Farms composting/land application facility. As the spring season approaches, keeping this facility operating within state regulation is paramount to the quality of life to many area residents. I appreciate your cooperation in this matter.

Sincerely,



Valerie Burd
Mayor, United City of Yorkville

Cc: City Attorney Kathleen Field Orr
City Administrator Brendan McLaughlin
Paul Purseglove, Field Operations with the IEPA

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Community raises issues to IEPA about compost farm

June 4, 2008 By [CHRISTINE S. MOYER](#)
[cmoyer@scn1.com](#)

[Recommend \(1\)](#)

YORKVILLE – The Illinois Environmental Protection Agency insists it is cracking down on the Hamman Farms compost facility amid scores of residents' complaints.

But agency leaders reminded county residents at a meeting this week that they do not have the authority to just shut down the Kendall County business, which accepts yard waste and then spreads it on the Hamman Farms property on Route 71.

"From what I've seen, there were (past) violations," said Stephen Nightingale, manager of the permit section with the IEPA's Bureau of Land.

"I feel comfortable," Nightingale added, "if all those (yard waste application) conditions (set by the IEPA) are being met, there should not be a problem."

More than 60 residents, as well as Yorkville and Kendall County leaders, attended the meeting to discuss Don Hamman's facility.

In May, the IEPA approved Hamman's request to increase the amount of waste deposited at the site from 20 to 80 tons per acre and thicken the layer spread on his fields from three-quarters of an inch to 3 inches.

This is the largest per-acre land application request approved by the IEPA, according to Jay Timm, one of the agency's community relations coordinators.

Throughout the evening, residents related stories about what they described as pungent odors wafting from Hamman's fields.

Others questioned the IEPA's decision to approve Hamman's request to quadruple the amount of yard waste applied to his land.

"Did you look at his record? Was that taken into consideration?" asked JoAnn Gilbert, who has lived near the site since before its opening as a compost facility in 1993.

The panel of four IEPA employees stressed that soil samples from Hamman's property indicate that the site can handle the approved yard waste levels.

After questioning by Diane Pobol, who said her property is surrounded by Hamman's farm, the IEPA panel acknowledged that these soil samples were taken by Hamman.

Pobol said, "That is a really dicey proposition to believe anything Mr. Hamman tells you."

Applause rippled through the audience.

Since approving the yard waste application increase, the IEPA has been conducting unannounced inspections of Hamman's site weekly, according to Paul Pursaglove, manager of field operations in the IEPA's Bureau of Land.

During an inspection Monday before the meeting, Pursaglove said, litter was found scattered throughout Hamman's fields.

This violates one of the conditions the IEPA gave Hamman when it approved the yard waste application increase. And it is something that Pursaglove said the agency is looking into.

Hamman admitted that litter which people put into their yard waste bags sometimes gets ground up and spread onto his fields.

But he said there are procedures in place to curb this problem, including people who look for this litter as the haulers unload the waste at his site and laborers who walk through the fields picking up the paper, plastic and other man-made waste.

Hamman said the yard waste the IEPA spotted on Monday was "from previous years' application" and was unearthed when the fields were tilled.

A visit one week earlier revealed that Hamman was not maintaining all of the daily records stipulated in the agency's conditions, Pursaglove said.

"What are you going to do about it?" a man in the audience finally asked.

"We'll recommend he gets sued for his violations," Pursaglove said, noting that this is only a recommendation, not a final decision.

As the meeting wrapped up, the IEPA agreed to pursue a cooperative relationship with the county and Yorkville.

And the agency encouraged residents to keep calling with complaints.

Nightingale called the community members the agency's "eyes and ears."

But he assured, "If this is applied as we approved ... we feel it should not be a problem."

compost away!!!

From PositivMedia Online Magazine and Social Network

Solar Energy Facility at Philadelphia, Pa. Navy Yard Site

From Green Technology

The views expressed in these blog posts are those of the authors and not of the Sun-Times

Howe Group

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Open Dump Inspection Checklist

County: Kendall LPC#: 0930155023 Region: 2 - Des Plaines
 Location/Site Name: Yorkville/Hamman Farms
 Date: 10/17/2007 Time: From 11:20AM To 12:30PM Previous Inspection Date: 09/21/2007
 Inspector(s): Gino Brunl, and Mark Retzlaff Weather: Cloudy 60F
 No. of Photos Taken: # 4 Est. Amt. of Waste: ? yds³ Samples Taken: Yes # No ☒
 Interviewed: Larry Cooper Complaint #: See Narrative
 Latitude: 41.36004 Longitude: -88.30213 Collection Point Description: Center of Site -
 (Example: Lat: 41.28493 Long.: -88.36294) Collection Method: - Google Earth

Responsible Party
 Mailing Address(es)
 and Phone Number(s):

Hamman Farms
 6275 Rte. 71
 Oswego, Illinois 60543
 830/562-7371

Hamman Farms
 6275 Rte. 71
 Oswego, Illinois 60543
 830/562-7371

RECEIVED

NOV 16 2007

	SECTION	DESCRIPTION	IEPA/BOL VIOL
ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS			
1.	8(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit	<input checked="" type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input checked="" type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT TO SITES NOT MEETING REQUIREMENTS OF ACT	<input checked="" type="checkbox"/>
8.	21(p)	CAUSE OR ALLOW THE OPEN DUMPING OF ANY WASTE IN A MANNER WHICH RESULTS IN ANY OF THE FOLLOWING OCCURRENCES AT THE DUMP SITE:	
	(1)	Litter	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

RELEASABLE

JAN 17 2008

REVIEWER MD

LPC # 0930155023

Inspection Date: 10/17/2007

	(7)	Deposition of: (i) General Construction or Demolition Debris as defined in Section 3.180(a); or (ii) Clean Construction or Demolition Debris as defined in Section 3.180(b)	<input type="checkbox"/>
9.	55(a)	NO PERSON SHALL:	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS			
SUBTITLE G			
10.	812.101(a)	FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL	<input type="checkbox"/>
11.	722.111	HAZARDOUS WASTE DETERMINATION	<input type="checkbox"/>
12.	808.121	SPECIAL WASTE DETERMINATION	<input type="checkbox"/>
13.	809.302(a)	ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST	<input type="checkbox"/>
OTHER REQUIREMENTS			
14.		APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	<input type="checkbox"/>
15.	OTHER:		<input type="checkbox"/>
	807.201	Failure to obtain a developmental permit	<input checked="" type="checkbox"/>
	807.202	Failure to obtain an operational permit	<input checked="" type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

Revised 6/21/2007

(Open Dump - 2)

Yorkville002197

0930155023 - Kendall County
Yorkville/Hamman Farms
October 17, 2007

RELEASABLE

JAN 17 2008

NARRATIVE
Prepared by Gino Bruni

REVIEWER MD

On October 17, 2007, I conducted an inspection at Hamman Farms. The purpose of this inspection was to determine the site's compliance relating to the application of landscape waste at agronomic rates. This inspection also is a follow-up to numerous (10) odor complaints (C08-039, C08-041, C08-042, C08-043, C08-044, C08-045, C08-046, C08-047, C08-048, and C08-049) that the Illinois EPA received in September 2007. Some of the complainants indicated that the subject site is receiving landscape waste commingled with general refuse. Also some of the complaints identified an increase fly population. Mark Retzlaff of the Illinois EPA accompanied me during the inspection. We met with Larry Cooper employee of Mr. Hamman.

Hamman Farms is not a landscape waste composting facility. Pursuant to Section 21(q)(2) of the Illinois Environmental Protection Act: landscape waste may be applied at agronomic rates. Pursuant to Section 21(q)(3)(D) of the Illinois Environmental Protection Act: "agronomic rates" means the application of not more than 20 tons per acre per year. No permit is required from the Illinois EPA for this type of activity.

The following information was collected during the Illinois EPA's initial complaint investigation conducted on September 21, 2007:

- * Landscape waste was being processed in a new tub grinder located on the north side of Route 71.
- * Mr. Hamman said that the landscape waste weighs 400 pounds per cubic yard.
- * Mr. Hamman said that he does not weigh any of the loads landscape waste.
- * Approximately, 20 cubic yards of ground landscape waste is placed in a manure spreader and applied in strips across the farm field.
- * The application rate observed was 2.5 to 3 inches thick using a ruler.
- * Gary Cima of the Illinois EPA calculated that landscape waste that weighs 400 pounds per cubic foot would allow an application of $\frac{3}{4}$ of an inch.
- * After speeding up the spreader, the application rate was improved but remained above the allowed maximum - $\frac{3}{4}$ of an inch.
- * Landscape waste that had been applied to the fields adjacent to 9225 Lisbon Road appeared to be over applied. Numerous flies were observed at this location.

**0930155023 - Kendall County
Yorkville/Hamman Farms
October 17, 2007
Page 2**

- * I informed Mr. Hamman that he must apply landscape waste at agronomic rates (applied no greater than $\frac{3}{4}$ of an inch). Mr. Hamman was also informed that litter must be removed from the landscape waste prior to being applied to the fields.
- * I informed Mr. Hamman that I would re-inspect his site within two weeks.

The following information was collected during my re-inspection conducted on October 17, 2007:

- * Over application of landscape waste was observed in the farm field located along the south side of Budd Road. I collected ten (10) measurements using a ruler. The majority of the measurements were between 1 to 4 inches.
- * Over application of landscape waste was observed in the farm field located along the north side of Rte. 71. I collected more than ten (10) measurements using a ruler. The majority of the measurements were between 1 to 2 inches.
- * General refuse that was in the landscape waste was being picked-up by three laborers.

The following violations were observed:

- 1) Section 21(a) of the Illinois Environmental Protection Act - Open dumping of landscape waste and general refuse were observed.
- 2) Section 21(d)(1) of the Illinois Environmental Protection Act - Open dumping of landscape waste and general refuse was being conducted without a permit granted by the Illinois EPA.
- 3) Section 21(d)(2) of the Illinois Environmental Protection Act - Open dumping of landscape waste and general refuse was being conducted in violation of the regulations.
- 4) Section 21(e) of the Illinois Environmental Protection Act - Open dumping of landscape waste and general refuse was being conducted without a permit granted by the Illinois EPA.
- 5) Section 21(p)(1) of the Illinois Environmental Protection Act - Open dumping of landscape waste and general refuse was being conducted without a permit granted by the Illinois EPA.

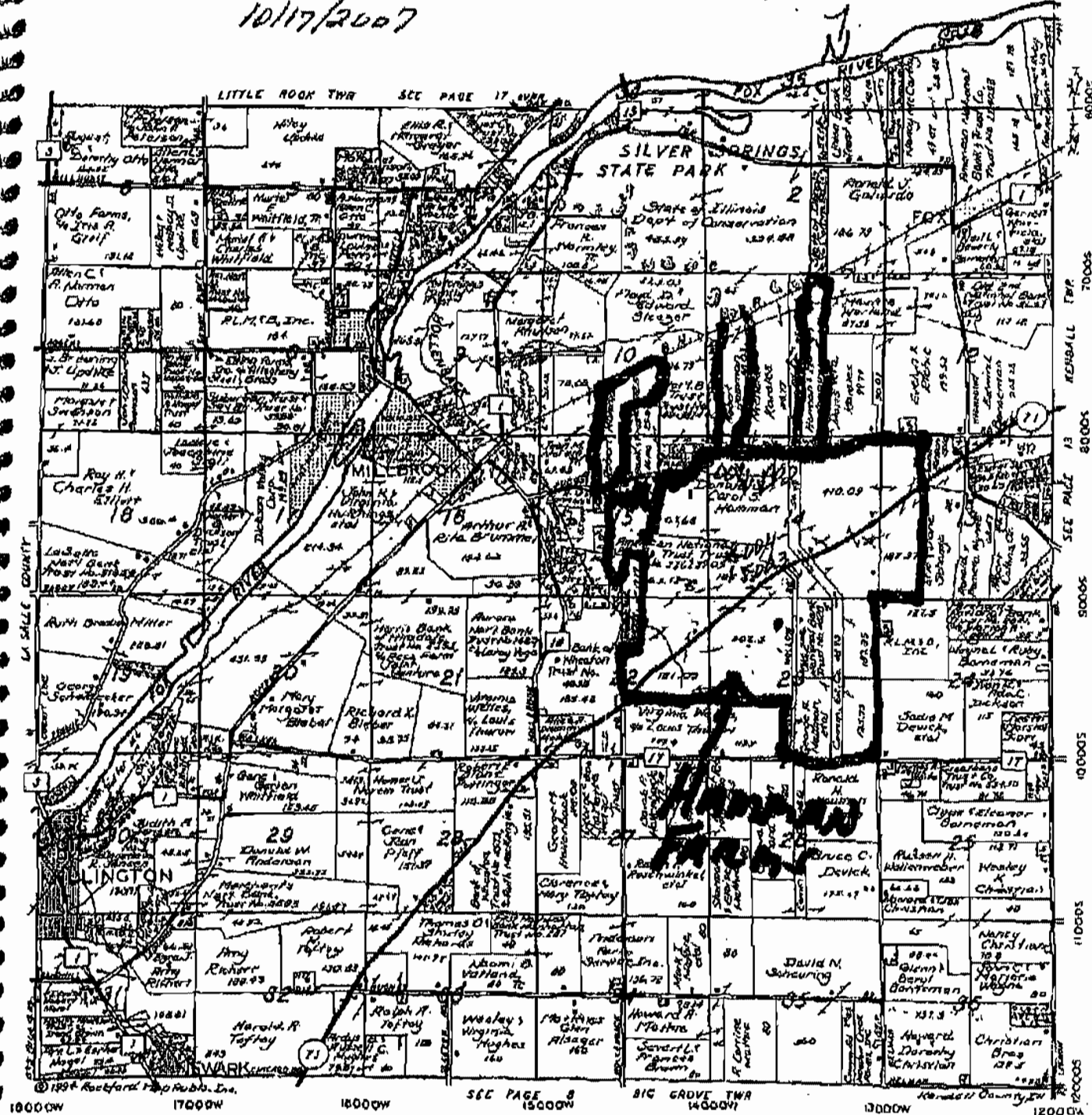
0930155023 - Kendall County
Yorkville/Hamman Farms
October 17, 2007
Page 3

- 6) 35 Illinois Administrative Code 807.201 - The site does not have a developmental permit granted by the Illinois EPA. Open dumping of landscape waste and general refuse was being conducted without a permit granted by the Illinois EPA.
- 7) 35 Illinois Administrative Code 807.202 - The site does not have an operational permit granted by the Illinois EPA. Open dumping of landscaped waste and general refuse was being conducted without a permit granted by the Illinois EPA.

cc: Division File
Des Plaines Region
Gary Cina, BOL/Permit Section

0930155023-Kendall County
Yorkville/Hamma Farms
10/17/2007

T.36-37 N.-R.6 E



001 → Photo Number & Direction

Theodore H. Larson Agency

INSURANCE ♦ REAL ESTATE

Terry Larson

7 EAST MAIN STREET — NEWARK, ILLINOIS 60541 — (815) 695-5173





Illinois Environmental Protection Agency
Bureau of Land
Division of Land Pollution Control

0930155023 -- DuPage County
Yorkville/Hamman Farms
FOS File

DIGITAL PHOTOGRAPHS

File Names: 0930155023 - 10172007-[Exp. #].jpg

Date: 10/17/2007
Time: 11:20AM-
12:30PM
Direction: South
Photo by: G. Bruni
Exposure #: 001
Comments: Located
south of Budd Road.
Over application of
landscape waste.



Date: 10/17/2007
Time: 11:20AM-
12:30PM
Direction: South
Photo by: G. Bruni
Exposure #: 002
Comments: Located
south of Budd Road.
Over application of
landscape waste.





Illinois Environmental Protection Agency
Bureau of Land
Division of Land Pollution Control

0930155023 — DuPage County
Yorkville/Hamman Farms
FOS File

DIGITAL PHOTOGRAPHS

File Names: 0930155023 ~ 10172007-[Exp. #].jpg



Date: 10/17/2007
Time: 11:20AM-
12:30PM
Direction: West
Photo by: G. Bruni
Exposure #: 003
Comments: North of
Rte. 71.
Background: Spreader
applying landscape
waste. Employees
picking up litter.



Date: 10/17/2007
Time: 11:20AM-
12:30PM
Direction: West
Photo by: G. Bruni
Exposure #: 004
Comments: : North of
Rte. 71.
Over application of
landscape waste.

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' Memorandum in Support of Motion for Summary Judgment*** upon the following:

Mr. John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601
(via electronic filing)

Thomas G. Gardiner
Michelle M. LaGrotta
GARDINER KOCH & WEISBERG
53 W. Jackson Blvd., Ste. 950
Chicago, IL 60604
tgardiner@gkw-law.com
mlagrotta@gkw-law.com

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 w. Randolph Street
Chicago, IL 60601
hallorab@ipcb.state.il.us

via electronic filing and/or e-mail delivery.

/s/Rhonda I. Young

PCB No. 08-96
Charles F. Helsten
Michael F. Iasparro
HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900