

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 January 31, 2012, she caused to be served a copy of *Respondent Hamman Farms' Motion for Leave to File Reply to Petitioner's Response to Motion for Summary Judgment* upon the following:

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED CITY OF YORKVILLE, A
MUNICIPAL CORPORATION,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY, and HAMMAN
FARMS,

Respondents.

PCB No. 08-96

**MOTION FOR LEAVE TO FILE REPLY TO PETITIONER'S RESPONSE TO
MOTION FOR SUMMARY JUDGMENT**

NOW COMES Respondent HAMMAN FARMS, by and through its attorneys, Charles F. Helsten and Michael F. Iasparro of HINSHAW & CULBERTSON LLP, and for its Motion for Leave to File a Reply to Petitioner's Response to its Motion for Summary Judgment, states as follows:

1. On December 6, 2011, Respondent filed its Motion for Summary Judgment on Petitioner's Complaint filed with the Illinois Pollution Control Board.
2. On December 8, 2011, the parties participated in a telephonic status conference, after which the Hearing Officer issued an order setting a deadline for Petitioner's response to Respondent's motion for summary judgment and a date for a future status conference (**Ex. A**).
3. On January 19, 2012, Petitioner filed its response to Respondent's motion for summary judgment.
4. 35 Ill.Admin.Code 100.500(e) provides that a moving party will be permitted to file a reply in support of its motion if necessary "to prevent material prejudice." The Board has granted motions for leave to file replies when the response raises issues beyond the scope of the original motion, *In the Matter of: Water Quality Standards and Effluent Limitations for the*

Chicago Area Water System and Lower Des Plaines River..., 2010 WL 2018891 (Ill.Pol.Control.Bd. 2010), and when the reply is necessary to clarify misleading statements. *People of the State of Illinois v. Chiquita Processed Foods, LLC*, 2002 WL 745635 (Ill.Pol.Control.Bd. 2002); compare *Young v. Gilster Mary-Lee Corp.*, 2001 WL 725421 (Ill.Pol.Control.Bd. 2001) (denying motion for leave where all issues were “fully briefed”).

5. Material prejudice would be done to Respondent if it is not given leave to file a reply in this case. Respondent’s motion raises serious and legitimate questions about the efficacy of Petitioner’s claims. In its response to those questions, Petitioner makes several statements that Respondent believes to be misleading¹ and beyond the scope of the original motion.² As a result, if Respondent is not permitted to reply to these arguments, the Board will be left without important information regarding Respondent’s motion and its decision will not be fully-informed.

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¹ For example, Petitioner states that the materials referenced by Respondent from Petitioner’s discovery response are not “representative” of its *entire* response and “as a result,” the documents “fail to establish privity” (Pet.’s Response, p. 7). This misstates Respondent’s argument.

² For example, Petitioner raises the new issue of whether the Board has previously ruled that Petitioner’s cause of action is duplicative, which also is misleading (Pet.’s Response, p. 8). Petitioner apparently misunderstands Respondent’s argument. What was decided in the Board’s prior Order is that the *Complaint* filed with the Board did not render Petitioner’s claims duplicative (Pet.’s Ex. 4, pp. 4-6). Here, Respondent is arguing that Petitioner’s claims are duplicative based not on the *Complaint* in this case, but, rather, on the nature of scope of the protections included in the *Consent Order* entered into between Respondent and the State of Illinois, which did not even exist at the time of the prior Order.

WHEREFORE, Respondent, HAMMAN FARMS, requests that the Board grant it leave to file a reply to Petitioner's response to Respondent's motion for summary, and for such other relief as the court sees fit.

Dated: January 31, 2012

Respectfully submitted,

On behalf of HAMMAN FARMS LLC

/s/ Charles F. Helsten

Charles F. Helsten

One of Its Attorneys

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