

JUL 24 2008

**STATE OF ILLINOIS**  
**Pollution Control Board**

ILLINOIS POLLUTION CONTROL BOARD

July 24, 2008

UNITED CITY OF YORKVILLE, a municipal )  
corporation, )  
 )  
Petitioner, )  
 )  
v. ) PCB 08-95  
 ) (Permit Appeal – Land)  
ILLINOIS ENVIRONMENTAL )  
PROTECTON AGENCY, and HAMMAN )  
FARMS, )  
Respondents. )

**HEARING OFFICER ORDER**

On July 22, 2008, all parties participated in a telephonic status conference with the hearing officer. Discussions included discovery schedules. Respondent Illinois Environmental Protection Agency (Agency), citing Des Plaines River Watershed Alliance v. Illinois Environmental Protection Agency and Village of New Lenox, PCB 04-88 (November 17, 2005), made an oral objection that discovery is not appropriate in permit appeal matters such as this. In Des Plaines River Watershed Alliance, the Board, citing Section 40(e)(3) of the Environmental Protection Act, found that it has consistently held that, in permit appeals, its review is limited to the record that was before the Agency at the time the permitting decision was made.

On July 23, 2008, respondent Hamman Farms filed a Motion for Hearing Officer's Ruling on Discovery. Agreeing with the Agency's position that discovery is inappropriate in permit appeals, Hamman requests an order by the hearing officer that discovery is inappropriate in this matter. Mot. at 2. The petitioner has not filed a response to the motion, however, because of the expedited nature of this proceeding, the hearing officer makes the following finding.

Absent an additional waiver, time is of the essence in this particular matter. A hearing has been scheduled for August 14 and 15, 2008. The present statutory decision deadline is October 2, 2008. Prior to issuing an order regarding the parameters of discovery, the Agency's entire record must be filed. Pursuant to Section 105.116 of the Board's procedural rules, the record was due to be filed on or before July 7, 2008. As of today's date, the record has not been filed, nor has the Agency filed a motion for an extension of time to file the record. The Agency is directed to file the record on or before July 28, 2008.

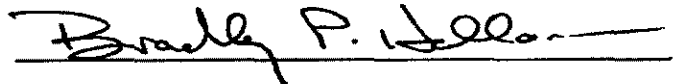
The parties are directed to file a brief elaborating on what information they believe is arguably relevant, discoverable, and admissible in this proceeding that was not before the Agency at the time the permit was issued. The briefs are due to be filed on or before August 1, 2008. The mailbox rule will not apply.

It is also noted that the respondents have filed their respective motions to dismiss and the petitioner has filed its response. The motions to dismiss are therefore ripe to be ruled upon by the Board. The earliest the Board could rule on the motions is August 7, 2008, at their next scheduled Board meeting. Should the Board not rule on the respective motions by that date, and absent an additional waiver of the statutory decision deadline, the hearing will proceed on the scheduled dates.

Finally, the parties are advised that the hearing officer will be out of the office and unavailable from July 29 through August 1, 2008.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on August 5, 2008, at 11:00 a.m. The telephonic status conference must be initiated by the petitioner, but each party is nonetheless responsible for its own appearance. The conference number will be the one used for the July 22, 2008, telephonic status conference. will be used At the status conference, the parties must be prepared to discuss the status of the above-captioned matter.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

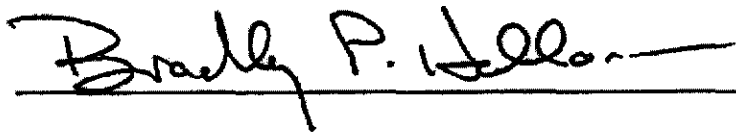
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917

## CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was mailed, first class, on July 24, 2008 to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on July 24, 2008:

John T. Therriault  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath it.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
312.814.8917

PCB 2008-095  
Charles F. Helsten  
Hinshaw & Culbertson  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389

PCB 2008-095  
Nicola A. Nelson  
Hinshaw & Culbertson  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389

PCB 2008-095  
Michelle M. Ryan  
IEPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PCB 2008-095  
Thomas G. Gardiner  
Gardiner Koch & Weisberg  
53 W. Jackson Blvd., Ste 950  
Chicago, IL 60604

PCB 2008-095  
Michelle M. LaGrotta  
Gardiner Koch & Weisberg  
53 W. Jackson Blvd., Ste 950  
Chicago, IL 60604

PCB 2008-095  
Attn: Mr. Donald J. Hamman  
Hamman Farms  
6275 Route 71  
Oswego, IL 60543