

RECEIVED
CLERK'S OFFICE

JUL 14 2009

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

v.)

HAMMAN FARMS,)
Respondent.)

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 PETITIONER'S MOTION TO
STRIKE, copies of which are herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE,
Petitioner,

By: Michelle M. LaGrotta
One of its Attorneys

Dated: July 14, 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


CERTIFICATE OF SERVICE

I, Michelle M. LaGrotta, the undersigned certify that on July 14, 2009, I have served the attached **PETITIONER'S MOTION TO STRIKE**, upon:

Mr. John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
(via hand delivery)

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Ste. 22-500
100 W Randolph Street
Chicago, IL 60601
(via hand delivery)

Charles F. Helsten
Nicola A. Nelson
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(via email to: NNelson@hinshawlaw.com and CHelsten@hinshawlaw.com, and U.S. Mail)



Michelle M. LaGrotta

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 14 2009

STATE OF ILLINOIS
Pollution Control Board

UNITED CITY OF YORKVILLE,
A municipal corporation,

Petitioner,

v.

HAMMAN FARMS,

Respondents.

PCB NO. 08-96

(Enforcement-Land, Air, Water)

PETITIONER'S MOTION TO STRIKE

NOW COMES, Petitioner, United City of Yorkville, by and through its attorneys, Gardiner Koch Weisberg & Wrona, pursuant to Ill. Admin. Code § 101.506, hereby moves the Illinois Pollution Control Board to strike Respondent Hamman Farms' Motion to Dismiss Counts I-III of Amended Complaint and Respondent Hamman Farms' Brief in Support of Motion to Dismiss Counts I-III of Amended Complaint, and in support of its motion, Yorkville states as follows:

1. On June 4, 2008, United City of Yorkville ("Yorkville") filed a citizen's enforcement complaint against Hamman Farms ("Hamman") for violations of the Illinois Environmental Protection Act, including prohibitions of land, air, and water pollution.
2. On July 8, 2008, Hamman filed its Motion to Strike and/or Dismiss seeking to strike and/or dismiss Counts II, III, and IV of the Yorkville's Complaint, and on August 1, 2008, Hamman filed its Reply in Support of its Motion to Strike and/or Dismiss. Hamman alleged that the Count II was duplicative and frivolous such that the Board lacked jurisdictional authority to make a ruling. Hamman also

alleged that the Board lacked authority to review Counts III and IV in part because Hamman's conduct was authorized under 415 ILCS 5/21(q).

3. On October 16, 2008, the Illinois Pollution Control Board denied Hamman's Motion as to Counts II and IV, with the exception of striking with prejudice Paragraph 49 of Yorkville's Complaint and Hamman's requests for attorney fees and costs, finding those counts sufficiently pled. The Board granted Hamman's motion as to Count III without prejudice. With the exception of Paragraph 49 of the Complaint, the Board disagreed with Hamman that it lacked jurisdictional authority to review Count II. Moreover, it stated that "the Board cannot conclude that there clearly is no set of facts that could be proven that would entitle Yorkville to prevail on count II." In addition, with respect to Counts III and IV, the Board agreed that "even if there is compliance with Section 21(a) exemption from permitting, the Board does not lack jurisdiction" to make a finding that the Environmental Protection Act was violated. Therefore, it ruled that the Board does have authority to rule upon the Yorkville's Complaint.
4. On November 14, 2008, Hamman filed a Motion for Reconsideration as to the dismissal of Count IV. On November 17, 2008, Hamman filed a Motion to Dismiss Counts I and II as Duplicative. In its Order dated April 2, 2009, the Board denied both motions. The Board also denied Yorkville's Motion for Leave to File Amended Complaint and granted Yorkville leave to file an Amended Complaint with respect to Count III. The Board ordered Hamman to answer the Complaint.

5. On May 7, 2009, Yorkville filed its Amended Complaint. As required by the Board's Order of April 2, 2009, Yorkville amended only Count III of Yorkville's four-count complaint; the remaining counts remained unchanged.
6. On June 18, 2009, the Board accepted Yorkville's Amended Complaint for hearing and directed the hearing officer to proceed expeditiously to hearing. The Board specifically stated, "[w]ithin 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). Hamman has filed no motion responsive to the amended complaint."
7. On June 30, 2009, Hamman filed a Motion to Dismiss Counts I-III of Amended Complaint and Brief in Support of Motion to Dismiss Counts I-III of the Amended Complaint.
8. Hamman's most recent motion attacks, in addition to Count III, Counts I and II, which contained absolutely no amendments. Hamman also includes new arguments in its motion to dismiss, which should have been included in Hamman's prior motions to dismiss. Counts I and II have been subject to prior motions to dismiss, and each time the Board has upheld Count's I and II. Hamman's motion is merely an attempt to relitigate issues that have been decided previously against Hamman so as to prolong litigation and delay hearing on this matter. Hamman should be estopped from making new arguments, which should have been included in Hamman's prior motions to dismiss. In the interest of judicial economy, the Board should strike Hamman's Motion to Dismiss Counts

I-III of the Amended Complaint and Hamman's Brief in Support of Motion to Dismiss Counts I-III of the Amended Complaint.

9. Moreover, pursuant to 35 Ill. Adm. Code 101.506, any motion to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within thirty days after service of the challenged document. Likewise, 35 Ill. Adm. Code 103.212(b) also requires any motions by respondent alleging that a citizen's complaint is duplicative or frivolous to be filed no later than 30 days following the date of service of the complaint.

10. Yorkville's Amended Complaint was served on Hamman on May 7, 2009. Hamman's motion was required to be filed, if at all, no later than thirty days following May 7, 2009, and was time-barred as of the date of its filing on June 30, 2009. Furthermore, Hamman failed to allege any material prejudice, upon which the Board could permit the untimely filing of a motion to dismiss. Therefore, the Board should strike Hamman's Motion to Dismiss as untimely.

11. Should the Board allow the Hamman's untimely Motion to Dismiss to stand, Yorkville requests fourteen days to respond.

WHEREFORE, Petitioner, United City of Yorkville, respectfully requests that the Board strike Respondent Hamman Farms' Motion to Dismiss Counts I-III of Amended Complaint and Respondent Hamman Farms' Brief in Support of Motion to Dismiss Counts I-III of Amended Complaint; in the alternative, grant Petitioner fourteen days to respond to Hamman Farms' Motion to Dismiss; and grant such other relief as the Board deems just and equitable.

Respectfully submitted,

UNITED CITY OF YORKVILLE


One of Its Attorneys

Dated: July 14, 2009

Thomas G. Gardiner
Michelle M. LaGrotta
Gardiner Koch & Weisberg
53 W Jackson Blvd., Ste. 950
Chicago, IL 606104
(312) 362-0000
Law Firm ID: 29637