

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

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: _____

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AGREED:

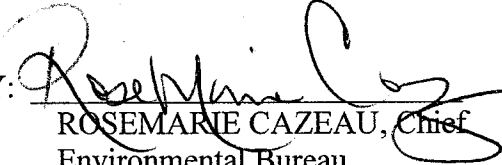
FOR THE PLAINTIFF:

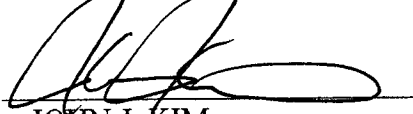
PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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: 3/8/18 ^{Rmc}

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:

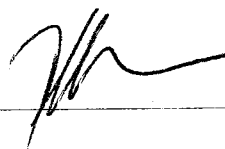
FOR THE DEFENDANT:

DON HAMMAN FARMS LLC

BY: _____

DATE: _____

ENTERED:



JUDGE

DATE: **MAR 10 2011** _____

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Plaintiff

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| Bond Used | |
| Cash | 10.00 |
| Total Tendered | 10.00 |
| Change Due | |
| Balance Due | .00 |

By: _____
Deputy Clerk: HMS YHMS

Batch 03-251-003 Date 03/25/2011 Time 14:46:27