

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE	)	R18-25
SUBTITLE E: AGRICULTURE RELATED	)	Rulemaking - Water
POLLUTION	)	

**NOTICE OF FILING**

TO: See Service List

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Sara Terranova  
Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: November 16, 2021

1021 N. Grand Ave. East  
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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PRELIMINARY  
COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, and pursuant to an Illinois Pollution Control Board ("Board") Order dated July 29, 2021, submits the following preliminary comments in the above captioned rulemaking:

**I. Background**

In 2016, the Board began reviewing its rules to identify obsolete, repetitive, confusing, or otherwise unnecessary language. On January 10, 2018, the Agency filed a non-substantive proposal to update the Board’s rules across multiple media and subject areas, including Part 501 of the Board’s agriculture related water pollution rules. On March 22, 2018, the Board split the Agency’s proposal into eight dockets, each one dedicated to considering amendments within a different subtitle of the Board’s rules. In this docket, R18-25, the Board considered the Agency’s proposed amendments to Part 501 of Subtitle E. In addition to the Agency’s proposal regarding Part 501, the Board considered and proposed amendments to Parts 502-506 of Subtitle E. On July 29, 2021, the Board entered an Opinion and Order concerning amendments to Parts 501-506. In its Opinion and Order, the Board welcomed comments on any aspect of its proposal.

## II. Discussion

With similar intent, both the Board and the Agency seek to amend the language in Subtitle E. The Board proposes amendments with the intention to remove redundant or unnecessary language, replace outdated language, update statutory references, and to reorganize provisions for clarity. The Agency proposes amendments with the intention to delete outdated provisions, appropriately match incorporations by reference, eliminate redundancies, and correct citations. The Agency supports the Board's proposed non-substantive amendments that adhere to both the intentions of the Board and the Agency.

While the Agency supports the Board's proposed non-substantive amendments, after a preliminary review, the Agency has concern that some of the Board's proposed amendments may inadvertently substantively change the language in Subpart E. For example, the Agency noted the Board proposed to strike the terms "but is not limited to or "at a minimum." Limiting a definition or the contents of a management plan to only what is specifically stated does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional items or information. *See* proposed Sections 501.223 and 502.505.

The Agency also noted the Board proposed to change every "shall" to "must." While in many circumstances the meaning of "shall" and "must" can be argued to be the same, in some instances they are not equivalent. In the Board's proposed Section 502.101(a), the change from "shall" to "must" leaves the sentence to read: "No person *must* cause or allow a discharge from a CAFO ..." (emphasis added). This is just one example of where "shall" and "must" are not interchangeable.

In addition to the examples above, the Agency found direct quotes from federal regulation or statutory language altered (*See* proposed Sections 501.248, 501.333, and 501.380),

the changing of phrases commonly used by the regulated community (*See* proposed Section 502.315), and grammatical and spelling errors (*See* proposed Sections 502.510(b)(13) and 502.303.) The Agency does not believe these proposed changes meet the intentions of the Board or the Agency.

Although the Agency completed a preliminary review of the Board's proposed amendments for purposes of the November 17, 2021 hearing, the Agency is in the process of conducting a more thorough review and may seek input from the United States Environmental Protection Agency. The Agency intends to provide a Section by Section detailed review of the Board's proposed amendments in the Agency's Post Hearing Comments.

### **III. Conclusion**

Wherefore, the Agency requests the Board accept its Preliminary Comments and allow the Agency to file Post-Hearing Comments following the Board's hearing in this matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Sara Terranova  
Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: November 16, 2021

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**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on November 16, 2021, I served true and correct copies of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS upon the persons and by the methods pursuant to the service list hereto attached.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Sara Terranova  
Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: November 16, 2021

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