

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, POST HEARING COMMENTS, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Sara Terranova
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DATED: January 28, 2022

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POST HEARING COMMENTS

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel and hereby submits its Post Hearing Comments.

I. Background

On November 16, 2021, the Agency submitted preliminary comments in this docket. On January 3, 2022, the Board issued a list of questions to the Agency in response. At the January 6, 2022, public hearing, the Agency agreed to address the Board’s questions and to provide a detailed line-by-line review of the proposed rule in post hearing comments. The Agency now provides that detailed line-by-line review of which also addresses the Board’s questions.

II. Line-by-Line Review

PART 501

501.200(a)

Agency Comment: Update with the following language:

"Illinois Agronomy Handbook, 24th Edition," University of Illinois, College of Agriculture, Consumer and Environmental Sciences. Urbana, IL, July 2009; or the most recent edition. Available from University of Illinois, Office of Extension and Outreach, 111 Mumford Hall (MC-710), 1301 W. Gregory Dr., Urbana, IL 61801 (217) 333- 5900.

"NOAA Atlas 14: Precipitation Frequency Atlas of the United States," United States Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Volume 2, Version 3.0 (2004), revised 2006. Available from NOAA, NWS, Office of Hydrologic Development, 1325 East West Highway, Silver Spring MD 20910 (Available online at http://www.nws.noaa.gov/oh/hdsc/PF_documents/Atlas14_Volume2.pdf). <https://hdsc.nws.noaa.gov/hdsc/pfds/docs/NA14Vol2.pdf>.

Reason: To appropriately update language and weblinks.

501.223

Agency Recommendation: Keep “, but is not limited to,”.

Reason: As proposed, the meaning has arguably changed. Limiting what an “animal confinement area” includes 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. Keeping the original wording eliminates the argument that an animal confinement area is exclusive to only what specifically stated.

501.245

Agency Comment: Keep original language or add a comma after “livestock waste-handling facility”. See modified language below.

Reason: Seems to be missing punctuation.

Any livestock management facility and livestock waste-handling facility, the construction or modification which started before the effective date of this Chapter.

501.248

Agency Comment: Keep original language.

Reason: Adopted from 510 ILGS 77/10.23.

501.290

Agency Comment: Keep “but not limited to”.

Reason: As proposed, the meaning has changed. Limiting “livestock shelter” to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional covered structures. Keeping the original wording eliminates this argument.

501.295

Agency Comment: Keep “but not limited to”.

Reason: As proposed, the meaning has changed. Limiting “other materials polluted by livestock” to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional materials. Keeping the original wording eliminates this argument.

501.313

Agency Comment: Keep “but not limited to”.

Reason: As proposed, the meaning has changed. Limiting “manure storage areas” to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional areas. Keeping the original wording eliminates this argument.

501.330

Agency Comment: Keep original language.

Reason: Unnecessary change.

501.333

Agency Comment: Keep original language.

Reason: 35 Ill. Adm. Code 501.333 was adopted from 40 CFR 122.2; Definitions of a “New Source.”

501.359

Agency Comment: Keep “, but is not limited to,”.

Reason: As proposed, the meaning has changed. Limiting a “raw material storage area” to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional areas. Keeping the original wording eliminates any argument.

501.363

Agency Comment: Keep “, but are not limited to,”.

Reason: As proposed, the meaning has changed. Limiting examples of conduits to surface waters to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional conduits. Keeping the original wording eliminates this argument.

501.379

Agency Comment: Keep: “, but is not limited to,”.

Reason: Limiting a “waste containment area” to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional areas. Keeping the original wording eliminates this argument.

501.380

Agency Comment: Keep original language.

Reason: 35 Ill. Adm Code 501.380 was adopted from 415 ILCS 5/3.545.

501.405(b)

Agency Comment: Keep “, but are not limited to,”.

Reason: Limiting odor control methods to only what is specifically stated, arguably does not allow for the consideration of site-specific conditions or circumstances that may require the inclusion of additional methods. Keeping the original wording eliminates this argument.

PART 502

502.101(a)

Agency Comment: Change “must” back to “shall” or in the alternative to “is permitted to”.

Reason: “Must” and “shall” are not interchangeable in this instance and as proposed, the meaning of the sentence has changed.

Agency Comment: Keep “but not limited to”.

Reason: Limiting the federal or State laws which a person shall not violate to only those specifically stated, arguably does not allow for the consideration of other federal or State laws in which a person shall not violate. Keeping the original wording eliminates this argument.

502.101(d)

Agency Comment: Either keep original language regarding the expiring NPDES permit or use the Agency's suggested language below:

Any permitted CAFO must apply for reissuance of the NPDES permit at least 180 days before the NPDES NPDES permit expires unless the CAFO will not discharge after the NPDES permit expires expiring.

502.101(f)

Agency Comment: Keep "the production of" and strike "from producing".

Reason: This is consistent with common language.

502.102(a)

Agency Comment: Keep original language.

Reason: Change unnecessary.

502.102(b)

Agency Comment: Keep "in accordance" and strike "to comply".

Reason: "To comply" and "in accordance" do not necessarily mean the same thing. In this instance, following practices as opposed to a specific regulation directly.

Agency Comment: Keep "...ensure appropriate agricultural utilization of the nutrients in the livestock waste and in compliance with ...". Strike "utilize" and "comply".

Reason: As proposed, the meaning has changed. The management practices are intended to ensure appropriate agricultural utilization of the nutrients. As proposed, the language is confusing, and the intention of the original language is lost.

502.104(d)

Agency Comment: Change "Ageny" to "Agency."

Reason: Incorrect spelling.

502.106(c)

Agency Comment: Add a "." to the end of the sentence.

Reason: Necessary punctuation.

502.106(e)

Agency Comment: Keep "compliance" and strike "to comply" or in the alternative, keep "to comply" and strike "must be achieved."

Reason: As proposed, the sentence is not grammatically correct.

502.303

Agency Comment: Change "enacting date constructing the CWA" to "enactment date of the CWA."

Reason: Incorrect word usage.

502.310(a)

Agency Comment: Change “seeking to authorize” back to “seeking authorization.”

Reason: As proposed, the sentence is not grammatically correct.

502.310(g)

Agency Comment: Keep “a modification of” and strike “modifying”.

Reason: Federal usage refers to “modification of” a permit. *See* 40 CFR 122.62.

502.310(h)

Agency Comment: Add “, are” after “...and conditions of the permit”. *See* the Agency’s revised language below.

Reason: Both the original and proposed language are not grammatically correct.

The Agency must notify the CAFO owner or operator and inform the public that coverage has been authorized and that the terms of the nutrient management plan, incorporated as terms and conditions of the permit, are applicable to the CAFO.

502.315(b)

Agency Comment: Keep original language or use the Agency’s suggested alternative language below:

Requirements for the permittee to create, a complete copy of the records required in 502.320, maintain the records on-site for five years from creation, creating the site, and make the records available to the Agency, upon request, ~~-, a complete copy of the records required in Section 502.320.~~

Reason: As proposed, the intention of the original language is lost: the permittee is to maintain a complete copy of records for 5 years from when they were created and maintain those records on-site.

502.320(d)

Agency Comment: Keep original language.

Reason: Manure and process wastewater are inclusive. As proposed, the meaning has changed.

502.320(w)(6)

Agency Comment: Keep original language or use the Agency’s suggested alternative language:

Leak inspection results of ~~the results inspecting leaks in~~ livestock waste application equipment;

502.325(b)(11)

Agency Comment: Strike “to comply” and add “in compliance”.

Reason: As proposed, the sentence is not grammatically correct.

502.401

Agency Comment: Strike “be” after “An applicant or other who have been a party or participant at an agency hearing are”.

Reason: As proposed, the sentence is not grammatically correct.

502.402(b)

Agency Comment: Keep original language.

Reason: See 33 USC §§ 1342(k) and USEPA Memorandum, Revised Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits (April 11, 1995).

502.402(c)

Agency Comment: Keep original language. In the alternative, change “must” to “will”, strike “to violate”, and keep “for a violation.”

Reason: As proposed, the sentence is not grammatically correct.

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502.403

Agency Comment: Strike “to comply” and keep “in accordance”.

Reason: As proposed, the sentence is not grammatically correct.

Agency Comment: Keep “, but not limited to,”.

Reason: Limiting the options of proof of cause to only what is specifically stated, arguably does not allow for other unique circumstances which may arise. Keeping the original wording eliminates this argument.

502.403(a)

Agency Comment: Strike “(including conditions concerning monitoring, entry, and inspection)” and add a “.” after “Violating any condition of the permit”.

Reason: The listed conditions were meant to be examples of permit condition violations; however, any permit condition violation is a proof of cause for termination or modification of a permit.

502.403(c)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is no longer grammatically correct.

502.500(b)

Agency Comment: Keep original language.

Reason: Unnecessary change.

502.505

Agency Comment: Keep “an a minimum”.

Reason: Removing “at a minimum” arguably limits what information the nutrient management plan may include to only what is specifically stated. There may be site-specific circumstances that require additional information. Keeping the original wording eliminates this argument.

502.505(k)

Agency Comment: The Agency suggests the following language:

An estimate of the livestock waste's nutrient value or the ~~results~~ analysis results determined pursuant to Section 502.625(c).

Reason: As proposed, the sentence is not grammatically correct.

502.505(m)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is not grammatically correct. In addition, "in compliance" and "in accordance" do not necessarily mean the same thing. In this instance, following a chemical test procedure as opposed to a specific regulation directly.

502.505(m)(1)

Agency Comment: Keep original language.

Reason: The Agency prefers the original wording.

502.505(n)(1)

Agency Comment: Keep original language.

Reason: The Agency prefers the original wording.

502.510(a)

Agency Comment: Keep "at a minimum,".

Reason: Limiting the contents of a nutrient management plan to include only what is specifically stated, arguably does not allow for additional site-specific information that could be necessary to meet the requirements of the Section. Keeping the original wording eliminates this argument.

Agency Comment: Keep "the requirements of."

Reason: For clarity and consistency.

502.510(b)(3): Keep original language.

Reason: The Agency prefers the original wording.

502.510(b)(8)

Agency Comment: Change "pollutatnt" to "pollutant."

Reason: Spelling.

502.510(b)(10)

Agency Comment: Keep "in accordance" and strike "compliance".

Reason: As proposed, the sentence is not grammatically correct. In addition, "in compliance" and "in accordance" do not necessarily mean the same thing. In this instance, following management practices as opposed to a specific regulation directly.

Agency Comment: Keep "...ensure appropriate agricultural utilization of the nutrients in the livestock waste and in compliance with ...". Strike "utilize".

Reason: As proposed, the meaning has changed. The management practices are intended to ensure appropriate agricultural utilization of the nutrients. As proposed, the language is confusing, and the intention of the original language is lost.

Agency Comment: Strike “in the livestock waste”.

Reason: Reduces redundancy.

502.510(b)(13):

Agency Comment: Add “for” after “The plan” in the first sentence.

Reason: As proposed, the sentence is no longer grammatically correct.

Agency Comment: Add “managing and repairing”. Strike “management and repair”.

Reason: For grammatic consistency.

Agency Comment: Keep “For purposes of this subsection (b)(13), visual inspection means inspection by a person of the tile inlet, tile outlet, and unobstructed land surface...”

Reason: The Agency prefers the original wording.

502.515

Agency Comment: Keep original language.

“Compliance” and “to comply with” do not mean the same thing in this instance. As proposed, the meaning has changed.

502.515(a):

Agency Comment: Add “are” after “The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan the Agency determines”. Strike “to be”.

Reason: As proposed, the sentence is not grammatically correct.

Agency Comment: Keep “the requirements of”.

Reason: For consistency and clarity.

502.515(b)(2)

Agency Comment: Keep “...ensure appropriate agricultural utilization of the nutrients in the livestock waste and in compliance with ...”. Strike “utilize”.

Reason: As proposed, the meaning has changed. The management practices are intended to ensure appropriate agricultural utilization of the nutrients. As proposed, the language is confusing, and the intention of the original language is lost.

502.515(d)(2)

Agency Comment: Keep “At a minimum,”.

Reason: Limiting what must be included in factors that are terms to what is specifically stated arguably does not allow for the consideration of site-specific information. Keeping the original wording eliminates this argument.

502.515(e)(1)(F)(i)

Agency Comment: Keep original language.

Reason: “To comply” and “in accordance” do not mean the same thing. In this instance, following procedures as opposed to a specific regulation directly.

502.515(e)(1)(G)(ii)

Agency Comment: Keep original language.

Reason: “Compliance” and “in accordance” do not mean the same thing. In this instance, following a procedural methodology as opposed to a specific regulation directly.

502.515(e)(3)(A)

Agency Comment: Change “to comply” back to “in accordance.”

Reason: “To comply” and “in accordance” do not mean the same thing. In this instance, following a procedural methodology as opposed to a specific regulation directly.

502.520(d)

Agency Comment. Keep “, but are not limited to”.

Reason: This list provided in 35 Ill. Adm. Code 520(d) is intended to provide examples of substantial changes and not intended to be a fixed list. Keeping the original wording eliminates this confusion.

502.520(d)(1)

Agency Comment: Add “in” before “compliance” in both instances.

Reason: As proposed, the sentence is not grammatically correct.

502.610(c)

Agency Comment: Keep “At a minimum, the”.

Reason: Limiting what must occur during a routine visual inspection to what is specifically stated arguably does not account for additional inspections that may be necessary due to unique occurrences or circumstances. Keeping the original wording eliminates this argument.

502.610(c)(3); Keep “inspections of” and strike “inspecting”.

Reason: As proposed, the sentence is not grammatically correct.

502.610(e)

Agency Comment: Keep original language.

Reason: The Agency prefers the original language.

502.610(k)(3)

Agency Comment: Keep original language.

Reason: As proposed, the meaning has changed.

502.610(l)(2)

Agency Comment: Keep original language.

Reason: For clarity and consistency.

502.615(b)

Agency Comment: The Agency proposes the following language for 502.615(b):

The applicant must use the field assessment information obtained in subsection (a) to determine the appropriate phosphorus-based or nitrogen-based application rate for each assessed field. ~~The determination Determining of phosphorous-based or nitrogen-based application of livestock on an assessed field~~ must be consistent with subsection (c) or (d) and Sections 502.620...

Reason: Both the original and proposed language are confusing. The Agency provides the above language for clarity.

502.615(c)

Agency Comment: Keep original language.

Reason: As proposed, the meaning has changed.

502.615(c)(2)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not mean the same thing. In this instance, following a procedure as opposed to a specific regulation directly.

502.615(c)(3)

Agency Comment: Add “or the most recent USDA/NRCS soil prediction tool” after “(RUSLE2)”.

Reason: Appropriate update.

502.615(c)(4)(B)

Agency Comment: Keep “but not limited to,”.

Reason: Limiting alternative conservation practices to only which is specifically stated, arguably does not allow for the consideration of site-specific considerations. Keeping the original wording eliminates this argument.

Agency Comment: Keep “that would be achieved by,” and strike “achieves”.

Reason: To reduce confusion in an already long sentence, the Agency prefers the original language.

502.615(d)

Agency Comment: Keep original language.

Reason: As proposed, the meaning has changed.

502.615(d)(3)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not necessarily have the same meaning. In this instance, following a procedure as opposed to a specific regulation.

502.615(d)(4)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not necessarily have the same meaning. In this instance, following a procedure as opposed to a specific regulation.

502.615(d)(5)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not necessarily have the same meaning. In this instance, following a procedure as opposed to a specific regulation.

502.620(a)

Agency Comment: Add “water” after “Livestock wastes must not be applied to” in the first sentence.

Reason: Correct wording is “water of the United States.”

502.620(d)

Agency Comment: Keep “application of” and strike “applying.”

Comment: As proposed, the meaning has changed and is no longer correct.

502.620(d)(1)

Agency Comment: Update the Board note to reflect the weblink in CAFO General Permit:

http://www.wpc.ncep.noaa.gov/pqpf.conus_hpc_pqph.php

Reason: Appropriate update.

502.620(d)(2)

Agency Comment: Update the Board note to reflect the weblink in CAFO General Permit:

<https://www.wpc.ncep.noaa.gov/qpf/qpfz.shtml>

Reason: Appropriate update.

502.620(e)

Agency Comment: Keep “Determination of” and strike “Determining”.

Reason: As proposed, the meaning has changed.

Agency Comment: Add “or the most recent USDA/NRCS soil erosion prediction tool.” after “(RUSLE2)”.

Reason: Appropriate update.

502.620(f):

Agency Comment: In each instance (including the Board Note), add “or the most recent USDA/NRCS soil erosion prediction tool.” after “(RUSLE2)”.

Reason: Appropriate update.

502.625(b)

Agency Comment: Keep “of the annual volume” and strike “annual”.

Reason: As proposed, the meaning has changed.

502.625(c):

Agency Comment: Keep “approved by the Agency” and strike “the Agency approves it”.

Reason: The Agency prefers the original language.

502.625(d)(2):

Agency Comment: Keep “mineralization of” and strike “Mineralizing”.

Reason: As proposed, the meaning has changed.

502.625(e)(2)(B):

Agency Comment: Keep “shall be used by the owner or operator”.

Reason: As proposed, the sentence is not grammatically correct.

502.625(g)(1):

Agency Comment: Keep “in” before “compliance”.

Reason: As proposed, the sentence is not grammatically correct.

502.625(g)(3)

Agency Comment: Keep “in accordance” and strike “compliance”.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not necessarily have the same meaning. In this instance, following a procedure as opposed to a specific regulation.

502.630(a)(1)(A):

Agency Comment: Keep “, but are not limited to,”

Reason: As proposed, the meaning has arguably changed. The original language is intended to not only list examples of alternative measures but to also allow for alternative measures which may be available on a site-specific basis. Keeping the original wording eliminates confusion.

Agency Comment: Keep “acquisition of”, “reduction of”, and “protection of”.

Reason: As proposed, the sentence is not grammatically correct.

502.630(a)(1)(C)

Agency Comment: Keep “, but are not limited to,”.

Reason: As proposed, the meaning has arguably changed. The original language is intended to not only list examples of steps that could be taken, but to also allow for alternative steps which may be available on a site-specific basis. Keeping the original wording eliminates confusion.

Agency Comment: Keep “protection of” and strike “protecting”.

Reason: The Agency prefers the original language.

502.630(b)

Agency Comment: Keep “the requirements of”.

Reason: For clarity and consistency, keep the original language.

502.630(b)(3)(A)

Agency Comment: Update the National Weather Service link in the Board note to read:

http://www.wpc.ncep.noaa.gov/pqpf/conus_hpc_pqpf.php

502.630(b)(3)(B)

Agency Comment: Update the National Weather Service link to read:

http://www.wpc.ncep.noaa.gov/pqpf/conus_hpc_pqpf.php

502.630(b)(4)(A)

Agency Comment: Update the National Weather Service link in each Board Note to read:

http://www.wpc.ncep.noaa.gov/pqpf/conus_hpc_pqpf.php

502.630(b)(5)

Agency Comment: Keep “as predicted by”, and strike “predicts”.

Reason: The Agency prefers the original language.

Agency Comment: Update the National Weather Service link in the Board Note to read:

<https://www.weather.gov>

502.630(b)(7)(B):

Agency Comment: Change “disrchage’s” to “discharge”

Reason: Spelling correction.

Agency Comment: Strike “run off” before “turbidity, color, foaming, floatable solids, and other deleterious conditions...”

Reason: The proposed language adds confusion.

502.630(c)(1)

Agency Comment: Keep “but not limited to”.

Reason: As proposed, the meaning has arguably changed. The original language is intended to not only list examples of adequate erosion and runoff control practices, but to also allow for alternative practices which may be available on a site-specific basis. Keeping the original wording eliminates confusion.

502.630(c)(4)

Agency Comment: Keep “in accordance” and strike “compliance”.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not necessarily have the same meaning. In this instance, following a procedure as opposed to a specific regulation.

Agency Comment: Add “or the most recent USDA/NRCS soil erosion prediction tool” after “Revised Universal Soil Loss Equation” in the first paragraph.

Reason: Appropriate update.

Agency Comment: Add “or the most recent USDA/NRCS soil erosion prediction tool” after “RUSLE2) in the Board Note.

Reason: Appropriate update.

Agency Comment: Strike the typo (quotation marks?) after the last sentence in the Board Note.

Reason: Typo.

502.635(a)(1)

Agency: Keep both instances of “in accordance” and strike “compliance”.

Reason: As proposed, the sentence is not grammatically correct. In addition, “in compliance” and “in accordance” do not necessarily have the same meaning. In both instances, following a protocol/procedure as opposed to a specific regulation.

502.635(b)(1)

Agency Comment: Keep “of the livestock waste to” and strike “livestock waste and its”.

Reason: As proposed, the meaning of the sentence has changed.

502.645(b)(1)

Agency Comment: Keep “, but is not limited to”.

Reason: As proposed, the meaning has arguably changed. The original language is intended to allow flexibility in determining adequate diking measures. Keeping the original wording eliminates confusion.

502.645(b)(3)

Agency Comment: Keep “, but is not limited to”.

Reason: As proposed, the meaning of the sentence has changed. The original language is intended to allow flexibility in the determination of adequate conservation practices. Keeping the original wording eliminates confusion.

502.710(a)

Agency Comment: Keep “application of NSPS as of the date” and strike “NSPS’ application date”.

Reason: As proposed, the meaning has changed.

502.720

Agency Comment: Strike “CAFOs subject to this Section must attain its limitations at the date of permit coverage.” The Agency recommends the following language:

This Section contains the effluent limitations applicable to discharges resulting from the production areas at horse and sheep CAFOs. The limitations and requirements of this Section are applicable on the date of permit coverage. ~~CAFOs subject to this Section must attain its limitations at the date of permit coverage.~~ CAFOs with the capacity to stable or confine fewer than 10,000 sheep or fewer than 500 horses are exempt from these effluent limitations.

Reason: Both the original and proposed language were confusing and inaccurately worded.

502.720(a)

Agency Comment: Keep original language.

Reason: See 40 CFR 412.12.

502.720(a)(2)

Agency Comment: Add “discharged to” following “Process waste pollutants in the overflow may be”. Strike “discharge”.

Reason: Original language was not grammatically correct.

Agency Comment: Correct “waste water” to “wastewater”.

Reason: Incorrect spelling.

502.720(b)

Agency Comment: Keep original language consistent with federal language.

Reason: See 40 CFR 412.12

502.720(b)(1)

Agency Comment: 502.720(b)(1) should read:

Except when subsection (b) ~~applies, apply,~~ any existing point source subject to this Section must not discharge ~~of~~ process wastewater pollutants to waters of the United States.

Achieving no process wastewater discharge to waters of the United States is the effluent limitation representing the application of applying BAT for Horse and Sheep CAFOs.

Reason: Both the original and proposed language were not grammatically correct.

502.730(a)

Agency Comment: Keep original language consistent with federal language.

Reason: See 40 CFR 412.22.

502.800(b)

Agency Comment: Keep original language.

Reason: As proposed, the sentence is no longer grammatically correct. In addition, for clarity and consistency, the Agency prefers to keep the original wording.

502.800(c)

Agency Comment: Keep “and requirements”.

Reason: The Subpart does not contain only limitations. In addition, for clarity and consistency, the Agency prefers to keep the original wording.

Agency Comment: For clarity, the Agency recommends the following language for Section 502.800(c):

The limitations and requirements of this Subpart ~~must be attained by NPDES’ coverage date, are applicable on the date of NPDES permit coverage~~ or within the timelines provided in Section 502.303.

Reason: Both the original and proposed language were confusing and inaccurately worded.

502.830(a)

Agency comment: Keep “based upon” and strike “through”.

Reason: The meaning of the sentence is changed as “based upon” and “through” do not have the same meaning.

502.830(b)

Agency Comment: “BMP” should read: “BMPs” in both instances.

Reason: Original wording was incorrect.

Agency Comment: Keep “in accordance” and strike “to comply”.

Reason: As proposed, the meaning has changed. “To comply” and “in accordance” do not necessarily have the same meaning. In this instance, following a practice as opposed to a specific regulation.

502.840

Agency Comment: Keep “in accordance” and strike “compliance”.

As proposed, the sentence is no longer grammatically correct. In addition, “in accordance” and “compliance” do not necessarily mean the same thing. In this instance, following measures and records as opposed to a specific regulation directly.

502.840(a)

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has arguably changed. Keeping the original wording eliminates confusion.

502.840(b)

Agency Comment: Keep “in” before “compliance”.

Reason: As proposed, the sentence is not grammatically correct.

Agency Comment: Keep “approved by the Agency”.

Reason: The Agency prefers the original wording.

502.840(d)

Agency Comment: Keep, but not limited to,”.

Reason: As proposed, the meaning of the sentence has arguably changed. Keeping the original wording eliminates confusion.

502.840(f)

Agency Comment: Keep “An evaluation” and strike “Evaluating”.

Reason: As proposed, the sentence is not grammatically correct in the context of the Section.

Agency Comment: Keep “the adequacy of” and strike “how adequate”.

Reason: As proposed, the sentence is not grammatically correct.

Agency Comment: Keep “in accordance” and strike “to comply”.

Reason: As proposed, the sentence is not grammatically correct.

502.840(f)(1)

Agency Comment: Keep original language.

Reason: As proposed, the meaning has arguably changed.

PART 503

503.101(b)

Agency Comment: Add “and” after “United States” in the first sentence.

Reason: Not grammatically correct.

PART 506

506.103

“Livestock shelter”

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has changed. Keeping the original wording eliminates confusion.

“Maintained”

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has changed. Limiting the inspection to only what is specifically stated arguably does not allow for other circumstances that may require inspections. Keeping the original wording eliminates confusion.

“Placed in service”

Agency Comment: Keep “the requirements”

Reason: For consistency and clarity.

506.202(a)

Agency Comment: Keep “the requirements of”.

Reason: For clarity and consistency.

506.202(d)

Agency Comment: Keep “of this Section”.

Reason: For clarity and consistency.

506.202(e)

Agency Comment: Keep “include the additional requirements of”.

Reason: As proposed, the full meaning is lost. The Agency prefers the original wording for clarity and consistency.

506.202(f)

Agency Comment: Strike “Subpart” or keep original language.

Reason: As proposed, the sentence is not grammatically correct.

506.202(f)(2)

Agency Comment: The Agency recommends the following language:

The Licensed Professional Engineer or Licensed professional Geologist must evaluate the results of the soil boring conducted subsection (b) of this Section. If, a void of 1 foot or greater in vertical distance is discovered from the soil boring performed ~~because of the soil boring, a void of 1 foot or greater in vertical distance is discovered,~~ the following requirements must be met:

Reason: For consistency and clarity, and because both the original and proposed language were confusing. *See* 35 Ill. Adm. Code 506.302(g)(4), first paragraph.

506.202(f)(2)(C)

Agency Comment: The Agency recommends the following language:

The Department must review and approve the plan required under subsection (f)(2)(B) of this Section before construction. The Department may also require additional design criteria before the plan is approved and construction may begin. If, no voids of 1 or greater are discovered from the soil boring performed, ~~because of the soil boring, no voids of 1 foot or greater in vertical distance are discovered,~~ the design must include the additional requirements ~~as stated~~ in Section 506.207.

Reason: For consistency and clarity, and because both the original and proposed language were confusing. *See* 35 Ill. Adm. Code 506.302(g)(4), first paragraph.

506.204(d)

Agency Comment: Keep “accordance” and strike “compliance”.

Reason: “In accordance” and “in compliance” do not necessarily mean the same thing. In this instance, asking to meet conditions as opposed to a specific regulation directly.

506.204(g)(7)

Agency Comment: Strike “Start Pumping” and keep “START PUMPING”.

Reason: All caps is intentional and consistent with language above in the subsection.

506.204(h)

Agency Comment: Strike the second “must” and add “is” before “least”. Strike “in compliance with” and keep “as the requirements of”. The second sentence should read:

... The owner or operator must demonstrate that such modification ~~is must be~~ at least as protective of the groundwater, surface water, and the structural integrity of the livestock waste management facility ~~in compliance with~~ as the requirements of this Part.

Reason: As proposed, the sentence is not grammatically correct.

506.205(a)

Agency Comment: Keep “the requirements of”.

Reason: For clarification and consistency.

506.205(f)

Agency Comment: Strike the second “must” and add “is” before “least”. Strike “in compliance with” and keep “as the requirements of”. The second sentence should read:

... The owner or operator must demonstrate that such modification ~~is must be~~ at least as protective of the groundwater, surface water, and the structural integrity of the livestock waste management facility ~~in compliance with~~ as the requirements of this Part.

Reason: As proposed, the sentence is not grammatically correct.

506.206(a)

Agency Comment: Strike “use” and keep “implement” or replace with “conduct”.

Reason: As proposed, the sentence is not grammatically correct.

Agency Comment: Keep “the requirements of”

Reason: For consistency and clarity.

506.206(b)

Agency Comment: Modify the last sentence in 506.206(b) to read:

~~For The~~ groundwater monitoring network design, ~~multiple cell lagoons must be considered as a single lagoon~~ must consider multiple cell lagoons as a single lagoon.

Reason: Both the original and proposed language were confusing.

506.302(g)(4)

Agency Comment: The Agency suggests the following language:

~~If, no voids of 1 foot or greater in vertical distance are discovered from the soil boring performed because of the soil boring, no voids of 1 foot or great in vertical distance are discovered,~~ the design must include the additional requirements in Section 506.312.

Reason: For clarity and consistency and, because both the original and proposed language were confusing. *See* 35 Ill. Adm. Code 506.302(g)(4), first paragraph.

506.304(a)(4)

Agency Comment: Keep “at a minimum”.

Reason: As proposed, the meaning has changed. The list contained in 506.304(a)(4)(A)-(E) is intended to be the very least the livestock waste handling facility must withstand. There may be site-specific circumstances that require additional loads a facility must withstand. Keeping the original wording eliminates confusion.

506.304(b)

Agency Comment: Keep “pursuant” and strike “under”.

Reason: “Pursuant” and “under” are not synonymous in this instance.

506.304(b)(2)

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has arguably changed. Settling basins and settling tanks are meant to be examples and not a complete list. Keeping the original wording eliminates confusion.

506.304(b)(3)

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has arguably changed. A picket dam structures is meant to be only one example and not a complete list. Keeping the original wording eliminates confusion.

506.304(b)(4)

Agency Comment: Keep both instances of “, but not limited to,”.

Reason: As proposed, the meaning has arguably changed. A temporary manure stack is meant to be only one example, not a complete list.

506.304(b)(5)

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has arguably changed. Waste Holding Pond, IL425 is meant to be example and not a complete list. Keeping the original wording eliminates confusion.

506.304(c)(4)

Agency Comment: Keep “, but not limited to,”.

Reason: As proposed, the meaning has arguably changed. The measures listed are meant only to be examples and not a complete list. There are other measures that may be required to be included on a site-specific basis. Keeping the original wording eliminates confusion.

506.310(b)

Agency Comment: Correct “b)” to “d)”.

Reason: Original lettering was off.

III. United States Environmental Protection Agency (USEPA)

As to date, the Agency is still waiting for further input from USEPA regarding the proposed rulemaking.

IV. Conclusion

Wherefore, the Agency requests the Board accept its Post Hearing Comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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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)	

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 28, 2022, I served true and correct copies of the POST HEARING 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
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DATED: January 28, 2022

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