

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, FIRST NOTICE 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: April 24, 2023

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Sara.Terranova@illinois.gov

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)	

FIRST NOTICE COMMENTS

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

PART 501

501.200(a)

Agency Comment: Missing an “s” after “doc” in the reference below.

"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 <https://hdsc.nws.noaa.gov/hdsc/pfds/docs/NA14Vol2.pdf>)

501.333(a) and (b)

Agency Comment: Capitalize the “s” in “section 306 of the Clean Water Act” in each instance below. Add “of the Clean Water Act” after “306” for clarification.

- a) after promulgation of standards of performance under Section section 306 of the Clean Water Act that apply to the source, or
- b) after proposal of standards of performance in compliance with Section section 306 of the Clean Water Act that apply to the source, but only if the standards are promulgated in compliance with Section section 306 of the Clean Water Act within 120 days after their proposal.

PART 502

502.102(b)

Agency Comment: The intent of this section is to make efficient use of the livestock waste nutrients without overapplication by incorporating site-specific BMPs. The word “use” may change the intent by not necessarily requiring the most efficient site-specific BMPs. Keeping “utilization” would be better and this part of the text mirrors the text in 502.510(b)(10) which keeps “utilization”.

502.303

Board Question: “The Board also seeks comment from IEPA whether the phrase ‘this regulation’ in the first sentence of this section must be replaced with ‘this section’, ‘this Part’, or ‘this Subtitle’”.

Agency Response: The term “this regulation” should be replaced with “Part”.

502.615(b)

Board Question: “The Board asks IEPA to comment on whether the use of term “consistent” in subsections (b), (c), and (d), means “compliance” with the requirements. If so, the Board asks IEPA to comment on whether that term should be replaced with “compliance?”

Agency Response: Yes, the use of the term “consistent” in subsections (b), (c), and (d), means “compliance” with the requirements. The Agency proposes the following the language to demonstrate this:

- 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 must comply ~~be consistent~~ with subsection (c) or (d) and Sections 502.620, 502.625, 502.630, and 502.635.
- c) Nitrogen-based application of livestock waste must comply ~~be conducted consistent~~ with the following requirements:
 - 1) livestock waste application must comply ~~is applied consistent~~ with the setback requirements in Section 502.645;
- d) Phosphorus-based application of livestock waste must comply ~~be conducted consistent~~ with the following requirements:
 - 1) livestock waste application must comply ~~be applied consistent~~ with the setback requirements in Section 502.645.

502.615(c)(3), 502.620(e), 502.620(f), 502.630(c)(4), and several Board Notes under these sections.

Board Question: “The Board welcomes IEPA to provide additional clarification regarding the use of the revised universal soil loss equation as well as the application of the USDA/NRCS prediction tool during first notice.”

Agency Response: The CAFO General Permit allows the use of the most recent USDA/NRCS prediction tool. The most recent prediction tool would be located on the USDA/NRCS website and files for other versions would be removed like RUSLE DOS version 1. If new RUSLE software is made available (RUSLE 3), then specifying RUSLE 2 without “or most recent tool” would add confusion. This was the reasoning for adding it to the CAFO General Permit.

502.620(d)(1)

Agency Comment: Strike “.” after “pqph” and add “/” to the link below.

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

502.620(d)(2)

Agency Comment: Update the link to correspond with the link in the CAFO permit.

<http://www.wpc.ncep.noaa.gov/qpf/qpf2.shtml>

502.625(e)(2)(B):

Agency Comment: While the Agency realizes the language as originally written was very difficult to follow, as proposed, the sentence no longer makes sense. For clarity, the Agency proposes adding punctuation and the following language:

If data is not available on proven yields, crop insurance yields, or Farm Service Agency yields, or if an agronomic basis exists for predicting a different realistic crop yield goal, the owner or operator must use soils based yield data from the University of Illinois "Average Crop, Pasture, and Forestry Productivity Ratings for Illinois Soils; Bulletin No. 810" (Bulletin 810) or "Optimum Crop Productivity Ratings for Illinois Soils; Bulletin 811" (Bulletin 811), incorporated by reference at 35 Ill. Adm. Code 501.200, to comply with subsection (e)(1) to calculate the realistic crop yield goal.

502.625(g)(3)

Agency Comment: Add “the” after “conducted according to”.

502.630(a)(1)(C)

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

Reason: For consistency with 502.625(a)(1)(A) and because the Agency prefers the original language.

502.630(a)(2)(B)

Agency Comment: Update the link in the Board Note to read:

<http://www.isws.illinois.edu/atmos/statecli/newnormals/newnormals.htm> or
<https://www.ncdc.noaa.gov/data-access>

502.630(b)(3)(A)

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

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

502.630(b)(3)(B)

Agency Comment: Update the National Weather Service link in the Board Note to reflect what is in the CAFO General Permit:

<https://www.wpc.ncep.noaa.gov/qpf/qpf2.shtml>

502.630(b)(4)(A)

Agency Comment: Update the National Weather Service link in the Board Note to reflect what is in the CAFO General Permit:

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

502.630(b)(4)(B):

Agency Comment: Update the link in the Board Note to read:

<https://www.wpc.ncep.noaa.gov/qpf/qpf2.shtml>

502.640(b)

Agency Comment: For clarity the Agency proposes the follow language:

The CAFO owner or operator must ensure that the land application equipment is properly calibrated on a routine basis for ~~applying~~ livestock waste application.

502.710(d)

Agency Comment: “Supart” should be corrected to “Subpart”.

PART 506

506.302(g)(4)

Board Question: “[T]he Board asks IEPA to comment on whether the design ‘must include the additional requirements’, or rather ‘must meet the additional requirements’.

Agency Response: The design “must include the additional requirements” because this is pertaining to the submittal of a plan rather than meeting a design requirement.

Wherefore, the Agency request the Board accept its First Notice Comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: April 24, 2023
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
Sara.Terranova@illinois.gov

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 24, 2023, I served true and correct copies of the FIRST NOTICE 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: April 24, 2023

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Sara.Terranova@illinois.gov

SERVICE LIST

Don Brown, Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
Don.brown@Illinois.gov
(electronic filing)

Renee Snow, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702
Renee.Snow@illinois.gov
(electronic filing)

Nancy J. Tikalsky, Assistant Attorney. General
Office of the Attorney General
69 West Washington St., Suite 1800
Chicago, Illinois 60602
Nancy.Tikalsky@ilag.gov
(electronic filing)

Melissa S. Brown
HeplerBroom, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Melissa.brown@heplerbroom.com
(electronic filing)