

1 ILLINOIS POLLUTION CONTROL BOARD

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3 IN THE MATTER OF:)
)
 4 AMENDMENTS TO LIVESTOCK)
 WASTE REGULATIONS) R01-28
 5 (35 ILL. ADM. CODE 506)) (Rulemaking - Land)

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10 TRANSCRIPT OF PROCEEDINGS had at the
 hearing of the above-entitled matter, taken
 stenographically by Geanna M. Iaquina, CSR,
 11 before HEARING OFFICER CAROL SUDMAN, held at 100
 West Randolph Street, Room 9-040, Chicago,
 12 Illinois, on the 2nd day of April, 2001,
 beginning at 10:00 o'clock a.m.

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1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-8197
7 BY: MS. CAROL SUDMAN

8 ILLINOIS POLLUTION CONTROL BOARD MEMBERS
9 PRESENT:

10 Mr. Samuel Lawton

11 Mr. Anand Rao

12 Ms. Claire Manning

13 Mr. G. Tanner Girard

14 ILLINOIS DEPARTMENT OF AGRICULTURE MEMBERS
15 PRESENT:

16 Ms. Cynthia Ervin

17 Mr. Warren Goetsch

18 Mr. Scott Frank

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1 HEARING OFFICER SUDMAN: Good morning. My
2 name is Carol Sudman. I'm the hearing officer in
3 this proceeding entitled, In The Matter of
4 Amendments to Livestock Waste Regulations, 35
5 Ill. Adm. Code 506, which the Board references as
6 Docket R01-28. Before we begin, I would like to
7 announce the rescheduling of the April 17th
8 hearing to April 30th. There are new hearing
9 officer notices on the rear table, and it is on
10 the Board's web site. I'd now like to introduce
11 Chairman Claire Manning and Board members Tanner
12 Girard and Sam Lawton and the Board's
13 environmental scientist Anand Rao.

14 Chairman, do you have any comments
15 before we begin?

16 MS. MANNING: Just welcome. We look
17 forward to another good proceeding between the
18 Department of Agriculture and the Board and we
19 welcome you. You did a nice job with the
20 proposal, and this should be a fairly
21 straightforward hearing, and we'll give the
22 public an opportunity to ask whatever questions
23 they have.

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1 members have any other opening comments? No.
2 Okay. Before we begin hearing testimony, I would
3 like to make a brief statement regarding the
4 economic impact statement also known as ECIS for
5 this rule. Pursuant to Section 27(b) of the
6 Environmental Protection Act, the Board said to
7 the Department of Commerce and Community Affairs
8 DCCA, on February 6th, 2001, a request that DCCA
9 conduct an economic impact study on this rule.

10 The request stated that if we did not
11 receive a reply from DCCA within ten days, we
12 would rely on a letter we received from DCCA on
13 March 10th, 2000. That letter stated that DCCA
14 lacked the technical and financial resources to
15 respond to any rulemakings. The Board did not
16 receive a reply from DCCA within ten days. Thus,
17 the Board relies on the March 10th, 2000, letter
18 as an explanation for no ECIS being submitted for
19 this docket. We will allow testimony later from
20 anyone who wishes to comment on DCCA's decision
21 not to conduct an ECIS.

22 Today's hearing will proceed as

23 follows. First, we will hear the Department's
24 justification and explanation of the proposed

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1 rule. Second, the Board and other interested
2 persons will have an opportunity to ask the
3 Department questions, and, finally, we will open
4 the floor to members of the public for
5 testimony.

6 If you do not have an opportunity to
7 testify today, which does not look like it will
8 be a problem, there will be another hearing in
9 Springfield on April 30th or you may submit
10 written public comment until May 14th. We are
11 now ready to begin with the Department's
12 testimony. The Board has received prefiled
13 testimony of Warren Goetsch. The prefiled
14 testimony will be entered into the record as if
15 read. Mr. Goetsch may give an oral summary of
16 that testimony or may read his prefiled testimony
17 into the record.

18 At this time, I would like to ask the
19 Department's general counsel, Ms. Cynthia Ervin,
20 if she would like to make any opening statements
21 before we swear in the witnesses and begin?

22 MS. ERVIN: Just briefly. Good morning.
23 The Department appreciates the opportunity to
24 testify before you this morning regarding the

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1 proposed amendments to the Board's Part 506
2 rules. With me on behalf of the Department is
3 Warren Goetsch. Warren is the division
4 administrator for the division of natural
5 resources for the Department. He was
6 instrumental in doing the proposed regulations
7 before you today as well as working on the
8 amendments to the recent -- the recent amendments
9 to the Livestock Management Facilities Act.

10 Also with us on behalf of the
11 Department is Scott Frank. Scott is a bureau
12 chief for the bureau of environmental programs.
13 That bureau is the bureau that administers the
14 Livestock Management Facilities Act at the
15 department, and he was also very instrumental in
16 developing the proposal before you today.

17 Scott will not be testifying, but
18 will a part of the panel answering any questions
19 that you may have. I think that Mr. Goetsch, as
20 you said, has prefiled his testimony and will not

21 be reading that, but does have a short summary to
22 provide today.

23 HEARING OFFICER SUDMAN: Thank you. Would
24 you like to swear in the witnesses, please?

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1 (Witnesses sworn.)

2 MR. GOETSCH: My name is Warren Goetsch,
3 and I'm employed at the Illinois Department of
4 Agriculture as the manager of the division of
5 natural resources. As division manager, I am
6 responsible for program areas of the department
7 dealing with various aspects of natural resource
8 protection, including the regulation of livestock
9 waste facilities. I've provided background
10 regarding the history of the Livestock Management
11 Facilities Act in my prefiled testimony. Rather
12 than reiterating it in my summary, I'd like to
13 concentrate my remarks on summarizing the
14 Department's proposed amendments to the Board's
15 506 rule.

16 The current 35 Illinois
17 Administrative Code 506 contains subparts (a)
18 through (g), plus an appendix of financial
19 forms. The proposed rule contains three

20 subparts, (a) through (c), comprising general
21 provisions, construction standards for livestock
22 lagoons, and construction standards for livestock
23 waste facilities other than lagoons. Subpart (a)
24 provided the definitions, incorporations by

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1 reference, and other general items applicable to
2 the entire rule.

3 Since 8 Illinois Administrative Code
4 900 now contains several components of the
5 current 506 rule, including waste management
6 plans, the Certified Livestock Manager Program,
7 financial responsibility, and setbacks, the
8 applicable language for these particular subparts
9 is proposed to be eliminated in Section 506.101.
10 Subpart (a) will remain as general provisions.
11 Subpart (b) would remain as design and
12 construction standards for lagoons, and Subpart
13 (c) would be changed to design and construction
14 standards for livestock waste handling facilities
15 other than lagoons.

16 With the proposed deletion of
17 language from the existing rule, some defined
18 terms that are no longer referenced are proposed

19 for deletion. In addition, the definition of
20 certain terms were expanded in the Department's 8
21 Illinois Administrative Code 900 rule and as a
22 result of statutory changes and the rulemaking
23 process. To maintain consistency between these
24 two rules, these adjusted definitions contained

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1 in the Department's 900 rule have been included
2 in the proposed 506.

3 Specifically, the terms animal unit,
4 livestock waste handling facility, and new
5 facility have been modified in the proposal. The
6 terms flood fringe, flood plain, floodway, karst
7 area, karstified carbonate bedrock, livestock
8 shelter, and void have been added.

9 Section 506.104 incorporations by
10 reference was updated to include more recent
11 standards publications, a map of karst areas
12 acquired from the Illinois State Geological
13 Survey, and construction standard references for
14 nonlagoon facilities. Subpart (b) of the
15 existing part 506 rule provided the design
16 standards for the construction of lagoons,
17 including a site investigation process, liner

18 standards, monitoring wells, related
19 certifications, a closure process, and ownership
20 transfer. The existing language was utilized as
21 the basis for the proposed rules. In many cases,
22 language in the proposed rule was unchanged from
23 the existing rule.

24 In cases where existing language had

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1 previously been included in the new part 900 rule
2 and is therefore no longer necessary for the
3 proposed surviving provisions of part 506, it is
4 then proposed for repeal. The applicability
5 section of the proposed rule, Section 506.201,
6 provides a specific date when these regulations
7 would become effective. The Department proposes
8 that any lagoon for which the construction plan
9 had not been approved by the department prior to
10 the effective date of this amendment to the rule
11 would be subject to these requirements.

12 This would prevent a facility owner
13 who had reached a certain stage in the process
14 from being required to possibly start over.
15 Section 506.202, site investigation, has been
16 expanded to include additional restrictive areas

17 or restricted areas that are listed now in the
18 Act.

19 In addition to the 500 foot -- excuse
20 me, 50-foot boring, the presence or absence of a
21 flood plain and a karst area is to be determined
22 as part of the site investigation. If the
23 results of the soil boring from the site
24 investigation indicates that a karst area is

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1 present or if the proposed location is within a
2 setback or sinkhole area as delineated on the
3 Department of Natural Resources map eight, then a
4 professional engineer or a geologist must
5 evaluate the results of the soil boring.

6 If a void of one foot or greater in
7 vertical distance is detected from the soil
8 boring, additional design requirements, as deemed
9 necessary by the engineer and approved by the
10 department, must be incorporated into the
11 facility design. Whether a void of at least one
12 foot is discovered or not, the additional design
13 requirements as indicated in Section 506.207 must
14 be incorporated into the facility's design. The
15 actual lagoon design standards found in Section

16 506.204 have been changed very little compared to
17 the existing rule, with the exception of updating
18 references, adding statutory language, and
19 deleting an operational requirement which was
20 included in the part 900 rule.

21 Since the initial rulemaking, other
22 statutory requirements pertaining to the design
23 of livestock waste lagoons were amended to the
24 Act. These have been included in the

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1 Department's proposal. These include precharging
2 certain lagoons, construction in sensitive areas,
3 and possible secondary containment requirements.
4 Subpart (c) of the existing part 506 contains
5 requirements for the development and
6 implementation of waste management plants. These
7 provisions have been incorporated into Subpart
8 (h) of the 900 rule and, therefore, are proposed
9 for deletion here.

10 Subpart (c) of the proposed part 506
11 now contains construction standards for nonlagoon
12 facilities. A site investigation is required for
13 newly constructed components of new livestock
14 waste handling facilities to determine whether

15 aquifer material would be present within five
16 feet of the planned bottom of the facility,
17 whether the facility would be located in a
18 portion of a 100 year flood plain, and whether
19 the facility would be located in a karst area.
20 These conditions are listed in Section 13(b) of
21 the amended act. If any of these conditions are
22 met, additional design and construction
23 requirements would be required. These additional
24 requirements are list in Sections 506.310,

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1 506.311, and 506.312 of the Department's
2 proposal.

3 Waste volume requirements and general
4 design construction standards are applicable to
5 all newly constructed components of all livestock
6 waste handling facilities, whether the base
7 facility is new or existing. Standards are also
8 proposed for various types of materials that may
9 be utilized in the construction of waste storage
10 structures. Section 506.301 describes the
11 applicability of this subpart that was noted
12 earlier. An effective date based on design
13 approval by the department was also incorporated

14 into this subpart to allow for consistency
15 between Subparts (b) and (c).

16 Section 506.302 lists the
17 requirements for a site investigation associated
18 with a nonlagoon facility. The site
19 investigation procedures for lagoon facilities
20 were used as a guide for the development of this
21 section. The investigation is required to
22 include an area five feet below the bottom of the
23 proposed facility for the determination of the
24 presence of aquifer material based on Section

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1 13(b)(3) of the Act. As previously noted,
2 additional design and construction standard are
3 required for facilities where aquifer material is
4 encountered within five feet of the proposed
5 bottom and where the facility is proposed to be
6 located in the flood fringe of a 100 year flood
7 plain.

8 The additional requirements are found
9 in Section 506.310 for shallow aquifer material
10 and Section 506.311 for a flood fringe area. A
11 procedure has also been proposed to determine the
12 presence of a karst area on a site-specific

13 basis, again, very similar to a lagoon facility.
14 If the proposed facility is to be located in a
15 karst area as determined by the IDNR-ISGS map
16 eight or the results of the site investigation
17 for the determination of aquifer material, the
18 Department must -- the Department must conduct an
19 inspection for natural depressions and the owner
20 or operator must perform additional soil borings
21 to a depth of at least 20 feet below the planned
22 bottom of the livestock waste handling facility
23 to determine the presence or absence of voids.

24 As was the case with a lagoon, if

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1 voids of one foot or greater in vertical distance
2 are discovered, then further design and
3 construction criteria are required in addition to
4 those listed in Section 506.312. If no voids of
5 foot or greater are discovered, then only the
6 requirements of Section 506.312 must be met. In
7 all cases, however, the general construction
8 standards and material specific standards must be
9 incorporated into the proposed facility design.
10 Manure storage volume requirements are listed in
11 Section 506.303. The statutory requirement of

12 150 days of storage for facilities that handle
13 manure in a liquid form is proposed. Also
14 included are runoff volumes and a free board if
15 precipitation is allowed to enter the structure.
16 These requirements have also been extended to
17 facilities that store manure in a semisolid
18 form. The statutory requirement for storage of
19 solid manure generated during six months of
20 operation have been included in the proposal.

21 Also, a staff gauge is required for
22 structures that must include a free board in
23 their design. Section 506.304 contains the
24 general design and construction standards that

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1 are to be applied to all facilities. Many of the
2 standards and specifications were obtained from
3 publications of the Midwest Plan Service and the
4 American Society of Agricultural Engineers as
5 referenced in the Act. Specifications for other
6 specific design types, such as the storage of
7 solid or semisolid manure, were obtained from the
8 USDA NRCS publications. To be consistent with
9 the hydraulic conductivity requirements of lagoon
10 liners and hydraulic conductivity of one times

11 ten to the negative seven centimeters per second
12 or less for storage and transport services,
13 except those constructed of concrete, is
14 proposed.

15 Due to concerns relative to the
16 structural integrity of concrete needed to meet a
17 hydraulic conductivity of that level, the
18 Department proposes the hydraulic conductivity
19 for concrete to be equal to one times ten to the
20 minus six centimeters per second or less.
21 Subservice drain lines currently located around
22 the facility must be removed or relocated to
23 provide at least 50 feet of separation distance
24 between the drain line and the livestock waste

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1 handling facility.

2 Separation distances between
3 facilities and wells and other potential routes
4 of groundwater contamination must be at least 100
5 feet. References are listed for obtaining
6 information pertaining to the design of various
7 types of livestock waste storage structures and
8 handling facilities. To protect the integrity of
9 the waste storage structure in areas where the

10 seasonal water table may be high, a requirement
11 to add perimeter foundation drainage tubing
12 around footings of the facility has also been
13 proposed.

14 Sections 506.305 through 506.309
15 contain additional specifications for specific
16 types of construction media. Construction joints
17 and water stops are required when concrete is
18 utilized. The concrete must meet certain minimum
19 strength requirements and the concrete
20 reinforcement characteristics must be in
21 accordance with Midwest Plan Service
22 specifications. All sections of the proposal
23 dealing with design requirements allow for
24 modifications of the standards if a licensed

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1 professional engineer or geologist certifies that
2 the modification is at least as protective of
3 groundwater, surface water, and the structural
4 integrity of a livestock waste management
5 facility as the stated requirements.

6 Additional requirements are also
7 listed for facilities constructed of metal,
8 synthetic material, and wood. For facilities

9 constructed of earth, compaction must meet
10 certain requirements and minimum berm top widths
11 and April side slopes are also proposed. Section
12 506.307 also propose as a maximum hydraulic
13 conductivity for earth and floors of deep bedded
14 livestock systems and poultry litter systems.
15 Increased construction standards are required for
16 facilities proposed to be located within five
17 feet of aquifer material. Those can be found in
18 Section 506.310. These include greater concrete
19 thickness and installation of a liner if the
20 storage structured is to be constructed of earth
21 and material. As is the case with lagoon liners,
22 a certification from a licensed professional
23 engineer is required. In ground facilities must
24 include perimeter drainage tubing and the

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1 effluent from the tubing must be sampled
2 according to requirements contained in part 900,
3 and, finally, Section 506.311 list additional
4 requirements for facilities in a flood fringe of
5 a 100 year flood plain.

6 Included are design specifications,
7 orientation requirements of the facility, and

8 elevation benchmark requirements. These are all
9 consistent with those pertaining to livestock
10 waste lagoons that could also be constructed in
11 the flood fringe of a 100 year flood plain.
12 Rigid construction material requirements for
13 facilities proposed to be constructed in a karst
14 area are provided in Section 506.312.

15 The existing subparts (d), (e), (f),
16 and (g), as well as Appendix A, all pertain to
17 various aspects of livestock facilities that have
18 been addressed in the recently promulgated 900
19 rules, in many cases having been duplicated word
20 for word. Thus, the existing language in part
21 506 is a proposed rule for deletion.

22 This concludes the summary of the
23 Department's prefiled testimony regarding the
24 Department's proposed amendments to the Board's

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1 506 rule. In summary, the Department has
2 attempted to balance appropriate environmental
3 protection with the economic viability of the
4 livestock industry. We receive very constructive
5 guidance from the members of the Livestock
6 Management Facilities advisory committee,

7 specifically representatives of the Illinois
8 Environmental Protection Agency, the Illinois
9 Department of Public Health, and the Illinois
10 Department of Natural Resources as well as
11 various interest groups.

12 I would like to thank the members of
13 the committee as well as the representatives of
14 the various interest groups for their time and
15 insight that they've provided as this proposal
16 was designed. I'd also like to thank the various
17 staff members of the Department of Agriculture
18 for their tireless efforts on this project. We
19 believe that this rule proposal, coupled with the
20 recently adopted part 900 rules, will implement
21 the Livestock Management Facilities Act in a way
22 which is consistent with the mandate given us by
23 the Illinois General Assembly and Governor George
24 Ryan. Thank you for this opportunity to provide

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1 this summary of our testimony.

2 HEARING OFFICER SUDMAN: Thank you. Do
3 the Board members have any questions at this
4 time?

5 MS. MANNING: I just have a couple. In a

6 few places in the rules -- first of all, thank
7 you for the presentation. That was excellent.
8 As I said, you did a very nice job presenting us
9 with a rule that covers a lot of different areas.
10 In some of the portions of the rule,
11 we quote -- you're quoting directly from
12 statutory language, but some of the statutory
13 language is not included and is not capitalized,
14 and I'm wondering -- let me give you a specific
15 example. One is in Section 506.207, construction
16 in karst areas, there's a provision in the Act
17 which I recognize is rather confusing, but I know
18 that you recognize as well that nonetheless it's
19 a statutory provision, but it's not included in
20 the proposed regulations.

21 It begins with notwithstanding other
22 provisions of the subsection, no earth and
23 livestock waste lagoon may be constructed within
24 400 feet. That particular part of the statutory

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1 language is not included in the regulatory
2 proposal. Am I right about that?

3 MS. ERVIN: Yes, you are right about that.

4 MS. MANNING: Is there any reason for that

5 short of it being confusing? Would the
6 Department have any problem with us folding that
7 in at some point? My concern simply is that to
8 quote part of the statutory language and not the
9 rest of it may be confusing to the public.

10 MS. ERVIN: We're looking it up.

11 MS. MANNING: Okay.

12 MS. ERVIN: Just a moment.

13 MS. MANNING: It's your 506.207, and I
14 think it's 510 ILCS 7715(a)(5), number two.

15 MR. GOETSCH: It's certainly not our
16 intent to ignore that provision certainly. I
17 mean, our intent is that that prohibition area be
18 included. So I'm not sure at this point -- it
19 could very well be that that provision was
20 included in the R 900 rule.

21 MS. MANNING: Okay.

22 MR. GOETSCH: So let us continue to look.

23 MS. MANNING: Okay. That's fine. I don't
24 know whether we checked to see if it was included

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1 in the part 900. You mean in your department
2 rules?

3 MR. GOETSCH: Yes.

4 MR. RAO: Actually, if you go to Section
5 506.206, Subsection (f), under Subsection (f)(1),
6 you do have a requirement which says construction
7 may not occur within 400 feet of a natural
8 depression or karst area.

9 MS. MANNING: Where is that?

10 MR. RAO: It's under site investigation,
11 506.202, Subsection (f)(1).

12 MS. MANNING: So that pretty much picks it
13 up.

14 MR. GOETSCH: We just did not identify it
15 as statutory language there.

16 MS. MANNING: But that's okay. You picked
17 up the concept it looks like in 506.202(f)(1) as
18 Anand pointed out.

19 Maybe the same is true. The next one
20 I had is with 506.208, construction of flood
21 fringe area. The statutory language -- at the
22 end of this statutory language, there is a
23 reference to the National Flood Insurance
24 Program, and in 506 -- your proposed 506.208 does

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1 not include that statutory language.

2 Perhaps that's included elsewhere as

3 well? There's two portions of that provision
4 missing in your 506.208, the statutory provision
5 found at 15(a)(5)(1) -- actually, it's
6 15(a)(5)(1) that says delineation of flood
7 plains, floodways, and flood fringes shall be in
8 compliance with the National Flood Insurance
9 Program. Maybe I just missed it. Maybe it's in
10 the rules somewhere and I just don't know where
11 it is.

12 MR. GOETSCH: I believe that the statutory
13 language that you reference is included in this
14 case in our 900 rules.

15 MS. MANNING: Okay.

16 MR. GOETSCH: At 900 -- it would be Eight
17 Illinois Administrative Code 900.602(a)(1).

18 MS. MANNING: Okay. Thank you.

19 MR. GOETSCH: I think that's one of the
20 challenges that we faced in trying to put just
21 the construction standard related things in our
22 proposal to the Board, but then have more
23 operational kind of things in our 900 rule, and
24 in trying to define that fine line, it looks like

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1 in some cases we may have gone to the 900 rule

2 and in other cases we included in 506. So it was
3 just a matter of the Department's interpretation.

4 MS. MANNING: So basically your
5 interpretation of this was more operational than
6 it was dealing with a rule that needed to be in
7 the Board's rules?

8 MR. GOETSCH: Uh-huh. It was more
9 related, I think, directly to siting versus
10 construction standards and that's why we opted to
11 put it in the 900 rule.

12 MS. MANNING: Okay.

13 MR. RAO: I had a follow up to Chairman
14 Manning's question, and it refers to the same
15 statutory language under Section 15(a)(5)(1).
16 You know, under Section 506.202 where you have
17 proposed some site investigation requirements,
18 you have proposed requirements for, you know,
19 identifying aquifer material and also identifying
20 karst areas, but I didn't see any, you know,
21 requirements that tells the regulator committee
22 how you, you know, investigate to make a
23 determination whether the site is in the floodway
24 or the flood fringe or, you know, 100 year flood

1 plain.

2 You know, the proposal is silent on
3 that issue. It says, you know, an owner or
4 operator is required to determine whether the
5 proposed lagoon is located within the floodway or
6 flood fringe of 100 year flood plain, but it
7 doesn't provide any additional guidance as to how
8 they make that determination.

9 MS. MANNING: (Inaudible.)

10 MR. RAO: Yeah, I know. The statute says,
11 you know, delineation of flood plains and
12 floodways shall be in compliance with the
13 National Flood Insurance Program.

14 Would it be something that the
15 department, you know, would be able to propose
16 some guidance as to what kinds of materials an
17 owner or operator can use to make this
18 determination?

19 MS. MANNING: You do have in the
20 definition of floodway a reference to where they
21 have been delineated for regulatory purposes, and
22 I assume that you mean by that where there might
23 be maps that exist from DNR or other sources,
24 those would be used as well; is that correct?

1 MR. GOETSCH: Yes. We attempted to
2 incorporate the applicable definitions from the
3 IDNR rule and act because it's our understanding
4 that the National Flood Insurance Program
5 recognized and accepted that the processes that
6 DNR had in place through the Illinois Rivers,
7 Lakes, and Streams Act. So it would be our
8 assumption that maps or other information that
9 have been developed for that program could also
10 serve to delineate the extent of the floodways
11 and flood fringes for the National Flood
12 Insurance Program.

13 MR. RAO: So would it be acceptable to the
14 Department if we add a provision under 506.202 to
15 that effect saying that, you know, those are the
16 kinds of maps that an owner or operator should be
17 using to make a determination?

18 MR. GOETSCH: Yeah. I believe that would
19 be our intent. I think the only thing that we
20 perhaps should also review more closely is
21 whether we have language to that effect already
22 in the 900 rule, and I'm not sure of that at this
23 point, but that would be our intent.

24 MR. RAO: Okay. If you can take a look at

1 that issue and get back to us at the next
2 hearing, that would be helpful.

3 MS. ERVIN: Madam Hearing Officer, just so
4 I can request that we be able to be allowed to
5 file some additional comments on these
6 questions?

7 HEARING OFFICER SUDMAN: Absolutely.

8 MS. MANNING: That's fine. We don't
9 expect you to have to answer them today.

10 MS. ERVIN: And if you want to give me a
11 time frame, we'll be happy to prefile them on
12 everybody before the next hearing so they do have
13 the opportunity to review our responses as well
14 as give anybody else on the service list the
15 opportunity.

16 HEARING OFFICER SUDMAN: We'd probably
17 like to have them at least one week before the
18 next hearing, April 23rd.

19 MS. ERVIN: Fine.

20 MR. GIRARD: I have a question on 506.202
21 before we get away from it. Going back to
22 506.202(f)(1), the 400 foot exclusion area zone
23 around a natural depression, I notice the way
24 it's drafted now it says construction may not

1 occur within 400 feet, and may sounds
2 discretionary.

3 Should we be using shall or must
4 there since that is a statutory exclusion,
5 construction must not occur within 400 feet?

6 MR. GOETSCH: Yeah. It was not our intent
7 to be discretionary. I believe the Act
8 specifically --

9 MR. GIRARD: And I notice in the section
10 below 506.202(f)(2) when you're talking about the
11 voids of a foot or greater, you're saying the
12 following requirements shall be met. So you've
13 used shall as the term.

14 MR. GOETSCH: I think however the
15 statutory language did include the word may for
16 the 400 foot, but our interpretation is that it
17 is -- it is not discretionary. So to the extent
18 we can do that, that would be fine.

19 MR. GIRARD: Well, the statute uses the
20 word may.

21 MS. MANNING: It does. It says no earth
22 and livestock waste lagoon may be constructed.
23 You're absolutely right. That's what it says.
24 That doesn't mean changing it into regulatory

1 language, you would object to us changing that to
2 shall, shall not be?

3 MR. GOETSCH: That's fine.

4 MS. MANNING: Thank you. There's a
5 prohibition also. I think it's found at Section
6 55 of the Act. The provision that says no new
7 earth and livestock waste lagoon may be
8 constructed within a floodway of a 100 year flood
9 plain.

10 Is that particular provision found
11 anywhere in the rules?

12 MR. GOETSCH: What section were you
13 referring to?

14 MS. MANNING: Let me just -- give me a
15 second.

16 MR. GOETSCH: I believe a related
17 reference would be Section 15(a)(5)(1).

18 MS. MANNING: Right. It begins with the
19 language no new earth and livestock waste lagoon
20 may be constructed within the floodway of a 100
21 year flood plain, and I'm wondering if that's
22 picked up anywhere in the regulatory proposal?

23 MR. GOETSCH: I believe that this is
24 another case where the provision is included or

1 the site investigation portion is included in the
2 506 rule, but the actual prohibition is found in
3 the 900 rule at 900.601 -- excuse me,
4 900.602(a)(1) where that statutory language is
5 included, no new or modified earth and livestock
6 waste lagoon may be constructed within the
7 floodway of a 100 year flood plain, but there is
8 that word may again.

9 MS. MANNING: Okay. We'll check for
10 those. Thank you. That's helpful. So some of
11 these you consider really to be siting
12 characteristics and part of the operational sort
13 of the review process that you're going through.
14 So you put the prohibitions in the 900s as
15 opposed to putting them --

16 MR. GOETSCH: In the construction
17 standards.

18 MS. MANNING: I knew that you would
19 realize that the prohibition existed one way or
20 the other. I'm just looking for readability, you
21 know, for the public to understand it. I think
22 that's all I have at this point. Anand had
23 several questions, Anand Rao, our environmental
24 scientist, and if you're not prepared to answer

1 them today, don't worry about it. You can put
2 them in writing or answer them before our next
3 Board meeting.

4 MS. ERVIN: Are these the questions?

5 MS. MANNING: Uh-huh.

6 MS. ERVIN: If we could -- a lot of these
7 are going to refer to other documents that we're
8 going to have to go back and refer to. So if we
9 could provide responses in writing --

10 MR. RAO: That would be fine.

11 MS. ERVIN: And, again, we will include
12 those in our April 23rd submittal.

13 HEARING OFFICER SUDMAN: Great. Thank
14 you.

15 MR. RAO: The questions are, you know, put
16 together in a section-by-section manner. So I'll
17 just go to them. The first one starts at Section
18 506.103, the definition of animal unit, and you
19 have added a multiplication factor for laying
20 hens or broilers as .005.

21 Could you explain, you know, where
22 the number was derived from, whether the
23 multiplication factor was derived from an ASAE

24 document or it was something that was produced by

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1 the department?

2 MS. MANNING: They're going to answer
3 these in writing.

4 MR. RAO: I know. Yeah, I know, but for a
5 minute I thought... Okay.

6 MR. GOETSCH: I could comment on the
7 reason why we proposed it, but not specifically
8 the source of the number, but I think it is
9 important to note that the Act as was
10 originally -- the Act has multiplication factors
11 for the poultry industry and references either
12 the type of manure handling system or the type of
13 watering system, and both of those criteria
14 describe an industry that really doesn't exist
15 anymore.

16 So it became -- it was important in
17 our discussions with our committee that we
18 develop a number that was more representative of
19 the types of livestock waste handling that is
20 currently going on with the poultry industry, and
21 we'll be happy to provide you more detail as to
22 where the actual .005 figure came from.

23 MR. RAO: Okay. Moving on to Section
24 506.104, incorporations by reference, the first

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1 one listed under 506.104 is the standard methods
2 for examination of water and wastewater, 19th
3 edition, dated 1995. We just received a
4 notification saying that the standard has been
5 updated, and I was just wondering if it would be
6 acceptable to the Department if we updated the
7 citation to the 20th edition, which was issued in
8 1998? Again, you can take a look at this and get
9 back to us.

10 I had one more clarification question
11 on the incorporations by reference, and this one
12 is listed as number two, and it's an ASAE
13 document entitled, Design of Anaerobic Lagoons
14 for Animal Waste Management, and there are two
15 dates to this document. It says ASAE Standards
16 1998 and then it goes on to say August 1993. I
17 just wanted to clarify, you know, which is the
18 correct date for this document.

19 Moving on to section 506.202, site
20 suppression. Under Subsection (f)(2), it says if
21 a void of one foot or greater in vertical

22 distance is discovered, the lagoon design must
23 include, in addition to the standards set forth
24 in Section 506.207, other requirements deemed

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1 necessary by a licensed professional engineer or
2 the Department.

3 Could you please describe what these
4 additional requirements that the lagoon design
5 plan should typically include when voids are
6 discovered?

7 HEARING OFFICER SUDMAN: Here's what I'm
8 going to do. The Board has some prepared
9 questions, obviously, that were not prepared
10 really until the end of the day Friday, beginning
11 of this morning. The Department has not had an
12 opportunity to review these questions. Rather
13 than go through them individually, I'm going to
14 issue another hearing officer order with these
15 questions indicating that the Department has
16 requested additional time to respond to these and
17 will respond either in written public comment or
18 at the next hearing, and so we'll have everything
19 in the record, and you'll have some additional
20 time, and we won't need to go through them

21 today.

22 Do any of the Board members have any
23 other questions or, Anand, do you have any other
24 questions that are not included in here?

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1 MS. MANNING: I do. There's only one
2 other one that I came up with when I was
3 listening to Mr. Goetsch's testimony, and we'll
4 add that to the hearing officer order, so you'll
5 find it in writing, but it has to do with a
6 question that I had as to 506.307, you used the
7 term deep bedded livestock system, and I sort of
8 was hoping you would explain that to us too. I'm
9 not sure what that mean exactly. So we'll add
10 that to the list of questions.

11 MR. GOETSCH: We'll even see if we can
12 find a picture.

13 MS. MANNING: That would be very nice.
14 Poultry litter I think I understood, but that one
15 was -- deep bedded livestock system and poultry
16 litter systems, I kind of got a clue on the
17 second one, but I'm still not sure about the
18 livestock bedded system.

19 MR. GOETSCH: There seems to be a,

20 especially in western Illinois in swine
21 facilities, the use of what are called hoop
22 structures which are somewhat more temporary in
23 nature where the producer uses a large amount of
24 maybe ground corncobs or other cornstalks or

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1 other bedding material and only periodically
2 removes it. It's a similar management system to
3 a poultry litter operation, but used for swine
4 facilities, and that's what we're making
5 reference to, but we'll certainly put together a
6 better explanation and, perhaps, even a picture
7 if we can get one.

8 MS. MANNING: Thank you.

9 HEARING OFFICER SUDMAN: Okay. At this
10 time, I'd like to ask any of our members of the
11 public if you would like to ask the Department
12 any questions at this time? Anything? No. Do
13 you?

14 MS. HANSEN: My question is will the
15 questions that the Department is being asked to
16 answer in writing, will those be posted on the
17 web site?

18 HEARING OFFICER SUDMAN: I'm sorry. Could

19 you please identify yourself for the court
20 reporter?

21 MS. HANSEN: I'm sorry. My name is Pam
22 Hansen. I'm with the Illinois Stewardship
23 Alliance and wanted to know if the additional
24 questions from the Board will be posted

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1 anywhere?

2 HEARING OFFICER SUDMAN: Yes. They'll be
3 in hearing officer order, which will be posted on
4 the web site and sent to everyone on the service
5 list, notice and service list.

6 Okay. Do you have any testimony
7 today, anybody else? Okay. The Department, I
8 guess we are all done with your testimony and
9 nobody else has any testimony. I'll just make
10 some closing comments. The transcript of this
11 hearing will be available on April 11th, on or
12 about April 11th. It will be posted on the
13 Board's web site at no charge or you may get
14 copies from the clerk's office at 75 cents a
15 page.

16 The next hearing will be April 30th
17 at 10:00 a.m. in the Board's hearing room in

18 Springfield. The address is 600 South Second
19 Street, suite 403. At that hearing, we will
20 address any outstanding issues from today's
21 testimony and hear comments from the public.
22 First priority will be given to those who
23 prefiled testimony by April 23rd. For persons
24 who do not wish to prefile testimony, I will give

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1 priority to persons who contact me prior to the
2 hearing.

3 The Board will accept written
4 comments until May 14th. That deadline may be
5 extended, if necessary, and persons on the
6 service list must serve their comments to others
7 on the service list. All comments and testimony
8 will be posted on the Board's web site.

9 Do any of the Board members have any
10 closing comments?

11 MS. MANNING: Thank you for your
12 participation.

13 MS. ERVIN: I have a question. Will you
14 start the hearing then with the Department coming
15 back up --

16 HEARING OFFICER SUDMAN: Yes.

17 MS. ERVIN: -- and answering the questions
18 first before you go to any prefiled testimony?

19 HEARING OFFICER SUDMAN: Yes. Okay. If
20 there are no other questions or comments, I
21 believe we are ready to adjourn. Thank you.

22 (Whereupon, these were all the
23 proceedings held in the
24 above-entitled matter.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, GEANNA M. IAQUINTA, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of Cook,
7 and State of Illinois; that I reported by means
8 of machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a true
10 and correct transcript of my shorthand notes so
11 taken as aforesaid.

12

13

14 _____
GEANNA M. IAQUINTA, CSR
Notary Public, Cook County, IL
15 Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO
before me this ____ day
18 of _____, A.D., 2001.

19 _____
Notary Public

20

21

22

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24

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