



Illinois
Department of
Agriculture

George H. Ryan, Governor • Joe Hampton, Director

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STATE OF ILLINOIS
Pollution Control Board

April 20, 2001

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph, Suite 11-500
James R. Thompson Center
Chicago, IL 60601

Re: Livestock Waste Regulations
35 Ill. Adm. Code 506
R01-28 (Rulemaking-Land)

Dear Ms. Gunn:

Enclosed with this cover letter please find an original and nine (9) copies of the following documents for the above-stated rulemaking:

Notice of Filing
Answers to Questions From the Board Presented to the Department
at the First Hearing
Proof of Service

If you have any questions or concerns, please do not hesitate to call me at 785-5713. Thank you for your assistance in this matter.

Sincerely,

ILLINOIS DEPARTMENT OF AGRICULTURE

Linda Rhodes
Administrative Assistant

Enclosures

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APR 23 2001

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

STATE OF ILLINOIS
Pollution Control Board

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

NOTICE

TO: Dorothy M. Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601-03286
(FEDERAL EXPRESS)

Matthew J. Dunn, Chief
Environmental Control Division
Office of the Attorney General
James R. Thompson Center
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IL Environmental Protection Agency
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Brent Manning, Director
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Carol Sudman, Hearing Officer
Illinois Pollution Control Board
600 South Second, Suite 402
Springfield, IL 62704
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Service List
(FIRST CLASS)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Illinois Department of Agriculture's (Department) Answers to Questions From the Board Presented to the Department at the First Hearing, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS DEPARTMENT OF AGRICULTURE
OF THE STATE OF ILLINOIS

By Cynthia Ervin
Cynthia Ervin
General Counsel

DATED: April 20, 2001

P. O. Box 19281
Springfield, IL 62794-9281

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED
CLERK'S OFFICE
APR 23 2001

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

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

**ANSWERS TO QUESTIONS FROM THE BOARD PRESENTED
TO THE DEPARTMENT AT THE FIRST HEARING**

At the first hearing held in Chicago on April 2, 2001, regarding the rulemaking proposal from the Illinois Department of Agriculture (Department) in the above-captioned rulemaking, the Illinois Pollution Control Board (Board) presented a list of questions to the Department. Due to the lack of time to review the questions prior to the hearing, the Department requested additional time to review and respond to the Board's questions. The following is the Department's answers to those questions. The Board's questions have been reproduced, and Department's response to those questions follow in italics.

Before responding to the specific questions, the Department notes that several questions from the Board pertained to statutory language in the proposed amendments. The Board questioned why some sections of statutory language were not reiterated in their entirety in the proposed rulemaking or was not included at all. The following is an explanation of the Department's decision to include only certain provisions of the statute in the proposed rulemaking.

Rules to implement the Livestock Management Facilities Act (Act) (510 ILCS 77/1 *et seq.*) have been divided into two separate rulemakings. These two rules will replace the Board's existing 35 Ill. Adm. Code 506 (Part 506). The Department's rules, found at 8 Ill. Adm. Code 900 (Part 900, contain provisions for the administration and operation of the Act, including the requirements for facility siting including the notice of intent to construct and setback distances, public informational meetings, lagoon financial responsibility, livestock waste handling facility registration and inspections, the certified livestock manager program, and waste management plans. The amendments to Part 506 contain the requirements dealing with the construction of livestock waste handling facilities. The intent of the Department when developing the Part 900 rules and the amendments to Part 506 was to include the siting criteria in Part 900 and the construction standards in Part 506. The siting criteria dealt with setback distances and siting restrictions and prohibitions when in environmentally sensitive areas such as floodplains, karst areas, or shallow aquifer material. Since the

construction standards for livestock waste handling facilities is proposed to be dependant upon some of the same siting criteria, similar statutory language is included in the amendments to Part 506. In this proposal, the Department reiterated the statutory language pertinent to the design standards of livestock waste handling facilities.

The Department believes that this division of the regulations to implement the Act is supported by and fosters the intent of Act. Specifically, Section 55(b) of the Act sets forth that the Department is to adopt rules for "all Sections of this Act other than design and construction standards for livestock waste handling facilities." Section 55(c), on the other hand, provides that the Board is to adopt rules "for the implementation of design and construction standards for livestock waste handling facilities."

**Questions for the Department of Agriculture Concerning the Proposed
Amendments to the Board's Livestock Waste Regulations
(Docket R01-28)**

Section 506.103 Definitions

Please explain the rationale for the proposed animal unit multiplication factor of 0.005 for laying hens or broilers. Clarify whether the multiplication factor was derived from an ASAE document.

In the current Part 506, two different animal unit multiplication factors are listed depending upon the type of watering system or manure handling system. According to the poultry industry, both of these technologies are outdated and very few, if any facilities are being constructed using these technologies. (Testimony of Mr. David E. Thompson of Pearl City, Illinois at the Board's Part 506 hearing at Urbana, Illinois on February 7, 1997) Therefore, a void existed for the determination of animal units for laying hens or broilers. The multiplication factor of 0.005 for laying hens or broilers was not obtained from an ASAE document. A combination of sources were used to determine the factor. Mr. Thompson suggested animal unit factors of 0.0087 for layers and 0.0034 for pullets (young layers). An average of these would yield a value of 0.0061. In Mr. A.G. Taylor's testimony to the Board at the same hearing, he stated that although the records are not clear, it appears previous factors developed by the Board had 1,000 pounds of animal weight as the common denominator. Therefore, the animal weight divided by 1,000 would equal the animal unit factor. Table 2-1 in the Livestock Waste Facilities Handbook, MWPS-18 lists a size for layers of 4 pounds. Dividing 4 by 1,000 yields a factor of 0.004. After consideration of both methods, the Department is suggesting a factor of 0.005 to cover all laying hens or broilers, which is an average of the values from the two methods.

Section 506.104 Incorporations by Reference

1. The American Public Health Association issued the 20th edition of the Standard Methods in 1998. In light of this, please comment on whether the incorporation by reference to "Standard Methods for the Examination of Water and Wastewater" needs to be updated to reflect the most recent edition.

The Department has no objections to updating "Standard Methods for the Examination of Water and Wastewater" to the 20th edition.

2. Please clarify whether the publication date of the ASAE standard EP403.2 is 1998 or 1993.

EP403.2 was published in the 1998 edition of the ASAE Standards. The standard was revised in December 1992, approved as an American National Standard in August 1993, revised editorially in March 1995, and reaffirmed by the ASAE in December 1997. In the 1998 book, the standard is listed as ANSI/ASAE EP403.2 AUG93.

Section 506.202 Site Investigation

1. While subsection (a)(2) requires the owner or operator to determine whether the proposed lagoon is located within the floodway or flood fringe of 100-year floodplain, the rules do not prescribe any specific requirements as to how this determination must be made. Please comment on whether the rules should provide additional guidance regarding the determination required by subsection (a)(2).

Section 506.202 requires the owner or operator to conduct a site investigation to determine if the proposed lagoon is to be located within the floodway or flood fringe of a 100-year floodplain. Section 506.202(g) requires that the site investigation be conducted under the direction of a licensed professional engineer or geologist. This requirement is very similar to that of non-lagoon livestock waste handling facilities which is presented at Section 506.302. The Department believes that for the majority of facilities, the determination is a routine procedure when conducted by the identified professionals. Maps and other appropriate information are readily available from the Illinois Department of Natural Resources to aid in the determination of flood plains. Thus, the Department believes that no additional guidance is needed.

2. According to subsection (f)(2), if a void of 1 foot or greater in vertical distance is discovered, the lagoon design plan must include, in addition to those set forth in Section 506.207, the other requirements deemed necessary by the Licensed Professional Engineer or the Department. Please describe the additional requirements that a lagoon design plan should typically include when voids are discovered in the proposed lagoon site.

Section 506.202(f)(2) requires the owner or operator to submit a plan of any additional design requirements as deemed necessary by a Licensed Professional Engineer for a lagoon which is located in a karst area and has voids of one foot or greater within 50 feet of the bottom of the lagoon. Section 506.207 requires any portion of a lagoon located below the pre-construction soil surface level to be designed and constructed utilizing a rigid material such as concrete or steel. Further, the Department may require additional borings to determine the extent, location, quantity, size, etc. of the void(s). Additional design requirements not previously mentioned may include, but not be limited to, relocation of the structures, filling the voids beneath the facility with an appropriate material, design of the facilities to span the void(s), and redirection of groundwater and surface water flow. The Department believes it is probable the plan may include a combination of the aforementioned additional design requirements. Each plan presented by the Licensed Professional Engineer would be specific to the site and conditions present. The plan would be evaluated by the Department on a case by case basis.

Section 506.206 Groundwater Monitoring

While this Section references the requirements of 8 Ill. Adm. Code Subpart F, should the rule also cite Section 900.511 of the Department's rules? That Section appears to contain additional groundwater monitoring requirements.

Subpart F of 8 Ill. Adm. Code 900 contains the Department's requirements for lagoon livestock waste handling facilities including the sampling of monitoring wells. The monitoring well sampling, analysis, and reporting procedures for lagoon facilities are presented in Section 900.611 of 8 Ill. Adm. Code 900. Non-lagoon facilities, which have the requirements listed in Subpart E of 8 Ill. Adm. Code 900 and includes Section 900.511, would have the effluent from the perimeter drainage tubing sampled and analyzed if aquifer material was determined during the site investigation to be near the bottom of the facility. The Department drafted the two sections (900.511 and 900.611) to be specific to the types of monitoring at the different facility types and does not believe it is necessary to cite Section 900.511 in Section 506.206.

Another general question about the Department's rules pertains to Sections 900.511(a)(3)(D) and 900.611(f)(3) which state that the Department may require changes to the design, construction, or operation of the facility. As the Board is supposed to maintain the regulations related to design and construction, would the Department please describe how these provisions of the rules will be used?

These provisions are remnants of the existing Part 506 rule found at Section 506.206(h)(3). It was carried forward from the existing rule into both the lagoon and non-lagoon monitoring sections of the proposed amendments. The Department believes that this flexibility is needed to allow for possible design changes which may be needed if monitoring results indicate that the structure is not functioning correctly. The Department views this as an operational issue and as such more appropriately should be located in the 900 rule as opposed to inclusion in the 506 rule.

Section 506.207 Construction in a Karst Area

1. The proposed statutory provision at subsection (a) requires owners or operators to determine the possible presence or absence of karst areas. Please comment on whether the portion of subsection (a) pertaining to the determination of the presence of karst area should be included under the site investigation requirements of Section 506.202.

The statutory language in Section 506.207 dealing with the determination of karst areas through consultation with Soil and Water Conservation Districts, University of Illinois Extension, or other local, county, or state resources could be included in Section 506.202 (Site Investigation). By also placing the language in this Section, owners or operators would be informed of the opportunity more than once. Owners or operators would be utilizing other state resources by the use of the IDNR-ISGS Map 8 that is listed in Section 506.202. This map was produced by the Illinois State Geological Society and identifies the locations where karst areas can be found.

2. Please explain the rationale for requiring only a “portion” of the lagoon to meet design and construction standards instead of the whole lagoon under subsection (b).

The below grade portion is not easily monitored because of its placement “below grade”. Thus the enhanced construction standards provide for a greater level of protection. The above grade portion is more easily inspected and monitored thus the rigid material requirement was thought to be less necessary.

3. Please comment on whether the Department is aware of any environmental problems associated with livestock waste handling facilities located in karst areas. In this regard please provide information as to how many livestock waste handling facilities are located or proposed to be located in karst areas.

The Department is unaware of any environmental problems of existing or proposed Illinois livestock waste handling facilities located in a karst area. Since the effective date of the amendments to the Illinois Livestock Management Facilities Act (July 13, 1999), no applications for New Facilities which are located in a karst area have been proposed in Illinois. Those livestock waste handling facilities which are not New Facilities are not required to conduct a site investigation. Thus the Department is not certain if these facilities are located within a karst area. As previously stated, the Department is not aware of any environmental problems associated with existing or proposed livestock waste handling facilities located within a karst area in the state.

4. Please comment on whether the Department is aware of any subsidence problems in karst areas that may require additional design requirements such as a foundation mass stability analysis to demonstrate that the material beneath the unit have sufficient strength to support the weight of the lagoon and livestock waste contained in the lagoon.

The Department is unaware of any subsidence problems of existing or proposed Illinois livestock waste handling facilities located in a karst area. Since the effective date of the amendments to the Illinois Livestock Management Facilities Act (July 13, 1999), no applications for New Facilities which are located in a karst area have been proposed in Illinois. The Department is not aware of any mass stability analysis conducted at any livestock waste handling facility located within the State of Illinois.

Section 506.208 Construction in a Flood Fringe Area

Subsection (a) requires lagoon berms to be designed and constructed to withstand hydrostatic pressures from flood waters. Please explain whether any of the technical standards proposed to be incorporated by reference at Section 506.104 address the issue of hydrostatic pressure. If so, would it be appropriate to include a reference to such a standard in subsection (a)?

The Department is unaware of any technical standard as presented at Section 506.104 which refers to hydrostatic pressure due to flood waters.

Section 506.210 Secondary Containment

Please explain for the record the meaning of "grass waterway," "filter strip" and "terrace" and how they are used to contain release of livestock waste from a lagoon.

Definitions for the above terms were obtained from the Resource Conservation Glossary, Third Edition, 1982, published by the Soil Conservation Society of America. "Grass waterway" is defined as a natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from or through cropland. "Filter strip" is defined as a strip or area of vegetation for removing sediment, organic material, organisms, nutrients, and chemicals from runoff or wastewater. "Terrace" is defined as an embankment or combination of an embankment and channel constructed across a slope to control erosion by diverting and temporarily storing surface runoff instead of permitting it to flow uninterrupted down the slope. A grass waterway would be used as a means to convey any release from a lagoon to an area or structure where the release would be contained, such as at an additional berm, or processed, such as at a filter strip, or conveyed to another area, such as by a terrace. The filter strip would have to be sized to effectively process the amount of material that would be expected to be released from the lagoon. A terrace could be used to convey the released material to a grass waterway, to a filter strip, or to a secondary berm.

SUBPART C: STANDARDS FOR THE DESIGN AND CONSTRUCTION OF LIVESTOCK WASTE HANDLING FACILITIES OTHER THAN LAGOONS

Section 506.301 Applicability

For the purposes of the record, please provide examples of the types of structures that would be regulated under Subpart C.

Subpart C presents the design and construction requirements for all non-lagoon livestock waste handling facilities which have not been approved by the Department prior to the effective date of these amendments. A livestock waste handling facility, as defined pursuant to Subpart A, includes certain structures that both store and transport livestock waste. As such, non-lagoon livestock waste handling facilities which store livestock waste and are subject to Department review include, but are not be limited to:

earthen waste holding ponds and waste storage ponds,

reinforced concrete shallow and deep pit below-building storages,

reinforced concrete and mild steel circular exterior tanks,

reinforced concrete stacking structures,

reinforced concrete or earthen indoor poultry waste storage structures.

Non-lagoon livestock waste handling facilities which handle or transport livestock waste and are subject to Department review include, but are not limited to:

reinforced concrete freestall livestock waste handling facilities,

reinforced concrete solid settling basins,

reinforced concrete milking parlor livestock waste handling facilities,

reinforced concrete holding area livestock waste handling facilities.

The Department notes that the aforementioned examples are presented with a particular construction material simply for presentation and clarification purposes. The Department acknowledges that many non-lagoon livestock waste handling facilities may be constructed of the same, a combination, or other construction materials provided the structures meet the requirements as set forth in Subpart C of the proposed amendments.

Section 506.302 Site Investigation

1. Under subsection (b), please clarify whether the soil sampling is done using a soil boring. If so, would it be acceptable to the Department to replace “soil samples” with “soil boring”?

The soil sampling could be done using a soil boring, but it could be done using other methods. The soil boring procedure was developed for the lagoon regulations several years ago. This involves a boring to at least 50 feet below the planned bottom of the lagoon and involves the use boring equipment. Section 13(b)(3) of the Act states that aquifer material is to be determined within 5 feet of the bottom of the livestock waste handling facility. Depending on the planned depth of the facility, methods other than a soil boring could be used to determine the presence of aquifer material since the investigation may only proceed a short distance below the surface. Some of these methods may include the use of a soil probe or excavation with a backhoe. For these reasons, the Department suggested the use of a term for the soils investigation for non-lagoon facilities different from that used for lagoon facilities.

2. Please explain what “final livestock waste handling area” means in the context of soil sampling.

Section 506.302(b) makes reference to the term Final Livestock Waste Handling Facility Area. The term, although not specifically defined in the proposal, is intended to define the area contained in the outermost footprint (perimeter) of the facility. Each livestock waste handling facility's footprint is developed by constructing a boundary 20 feet from each livestock waste handling facility. Each livestock waste handling facility's boundary is then connected to each other livestock waste handling facility's boundary by the shortest distance possible. The sum of the boundaries then constitutes the outermost footprint or Final Livestock Waste Handling Facility Area. Please note this term is only applicable for livestock waste handling facilities at a single livestock management facility.

3. Please explain the rationale for allowing USDA-NRCS representative to perform the evaluation of the soil boring results under subsection (g)(4). Also, please comment on why a similar provision was not proposed under site investigation requirements for livestock waste lagoons at Section 506.202.

Section 13(c) of the Act states a livestock waste handling facility owner may rely on guidance from certain representatives, including those of the United States Department of Agriculture-Natural Resource Conservation Service, for guidance regarding soil type and associated information. Section 13 is specific to non-lagoon livestock waste handling facilities and does not include lagoons. The Department believes this particular section of the Act was included to allow a facility owner or operator to rely on USDA-NRCS guidance when making determinations about the location of proposed structures in relation to aquifer material, 100-year floodplains, and karst areas. The Department acknowledges the USDA-NRCS has appropriate personnel including, but not limited to,

engineers, geologists, and soil scientists who routinely conduct and report on such investigations.

The Department did not include such language at Section 506.202 because the language from the existing Part 506 was previously adopted by the Board without consideration of other personnel other than a Illinois Licensed Professional Engineer or Geologist and Section 15 of the Act dealing with livestock waste lagoons makes no specific determination regarding the matter as is done at Section 13(c). Therefore, the Department did not find it appropriate or in accordance with the statutory authority to propose to expand the personnel list beyond the original listing for lagoon site investigations. The Department does, however, believe that, in the case of non-lagoon facilities, the list should be expanded.

Section 506.303 Non-lagoon Livestock Waste Storage Volume Requirements

The ASAE standard EP393.2 which is incorporated by reference in Section 506.103 recommends a minimum storage capacity of 210 days in cold climate regions. Please comment on whether the Department considered the ASAE recommendation in proposing the minimum 150-day storage requirement at subsection (a).

The Department acknowledges that ASAE standard EP393.2 does recommend a storage capacity of up to 210 days in cold climates. In Section 506.303(a), the Department has presented a storage volume of not less than the amount generated during 150 days of operation since this requirement is statutorily mandated at Section 13(a)(1)(B) of the Act.

Section 506.304 General Design and Construction Standards

1. Please explain for the record what were the concerns regarding the practicality of achieving a hydraulic conductivity of 1×10^{-7} centimeters per second with concrete.

The Department has proposed a hydraulic conductivity performance standard of 1×10^{-6} centimeters per second for those structures constructed of concrete. To minimize leakage, the structures are required pursuant to Section 13 of the Act and Section 506.305(a)(2) of the proposal to contain waterstops at all cold joints. The Department is confident that appropriate waterstops which are installed in a manner consistent with the manufacturer's specifications will allow the cold joints of livestock waste handling facilities to achieve a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second.

The Department is not confident that those remaining portions of the livestock waste handling facility may achieve a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second, after consultation with the American Concrete Institute, without sacrificing structural integrity. Table 1 of MidWest Plan Service-36 presents many of the design criteria by which the majority of the remaining design document's tables are generated. The Department has adopted several of the design criteria and has included them at Sections 506.305(a)(3) and (4) for all concrete non-lagoon livestock waste handling

facilities. Department consultation with a representative of the American Concrete Institute indicated that it is probable routine concrete mixes having a minimum compressive strength (28 day) of 4,000 pounds per square inch would not achieve a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second.

2. Please explain the rationale for not specifying a setback distance for the location of livestock waste handling facility with respect to a potable water supply well. JCAR has asked “shouldn’t the minimum distance between a source of drinking water and potential contamination be greater than the facility’s boundary and non-drinking water?”

The language as presented at Section 506.304(a)(7) is nearly identical to and is modeled after the language that is presented at Section 506.204(g)(6), which was obtained from the existing Part 506. Section 506.204(g)(9) of the proposal does specify that the location of lagoons be in compliance with the setback provisions, including potable wells, of the Illinois Environmental Protection Act. The Department has required and shall continue to require compliance with the applicable setback requirements as presented in the Illinois Environmental Protection Act, Illinois Groundwater Protection Act, and the Illinois Water Well Construction Code.

3. Please clarify whether the additional technical standards listed under subsection (b) are all incorporated by reference in Section 506.103.

The additional technical standards specifically listed in Section 506.304(b) are incorporated by reference in Section 506.103. In Section 506.304(b)(3), reference is made to “similar standards from the USDA-NRCS” without specifically listing a document. In Sections 506.304(b)(4) and (5), a specific document is listed while also not limiting the use of other USDA-NRCS documents. The Department would not object to changing the language in these two subsections to include only the listed documents from USDA-NRCS.

Follow-up to Questions Asked at the First Hearing

At the first hearing, the Board also had questions pertaining to Section 506.307(b) where the term “deep bedded livestock system” was used. A deep bedded livestock system refers to a management system whereby bedding, in a relatively deep layer, is placed on the soil surface. This bedding is covered by a structure to provide the animals protection from the weather. An area, usually constructed of concrete, is provided for the feeding and watering of the animals. Generally, the bedding is not removed until the growing cycle for that particular group of animals is completed, which could span several months. These structures are commonly referred to as hoop structures due to the type cover constructed over the area.

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Answers to Questions From the Board Presented to the Department at the First Hearing, upon the persons to whom they are directed by placing copies in envelopes addressed to:

Dorothy M. Gunn, Clerk
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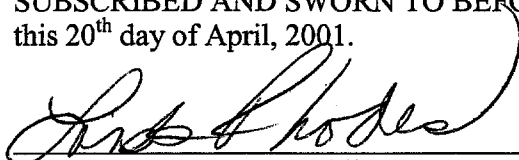
Carol Sudman, Hearing Officer
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Service List
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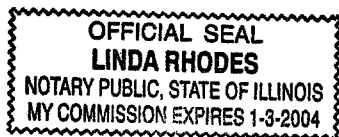
and mailing them from Springfield, Illinois on April 20, 2001, with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME
this 20th day of April, 2001.



Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

R01-28 Service List
Livestock Waste Management
Friday, April 20, 2001

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R01-28 Service List
Livestock Waste Management
Friday, April 20, 2001

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