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BEFORE THE POLLUTION CONTROL BOARD JUN 04 2001
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

LIVESTOCK WASTE REGULATIONS)
35 ILL. ADM. CODE 506)

) R01-28

) (Rulemaking - Land)

) *P.O.#7*

NOTICE

TO: Dorothy M. Gunn, Clerk
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100 W. Randolph, Suite 11-500
Chicago, IL 60601-03286

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Carol Sudman, Hearing Officer
Illinois Pollution Control Board
600 South Second, Suite 402
Springfield, IL 62704

Service List

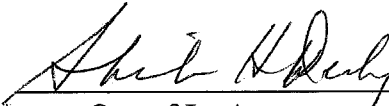
PLEASE TAKE NOTICE that on **Monday, June 4, 2001**, we filed the attached
Motion to File Instantly The Post Hearing Comments of the Illinois Farm Bureau,
Illinois Beef Producers and Illinois Pork Producers with the Clerk of the Illinois Pollution
Control Board, a copy of which is herewith served upon you.

THIS FILING IS BEING SUBMITTED ON RECYCLED PAPER

Respectfully submitted,

**ILLINOIS FARM BUREAU, ILLINOIS BEEF
ASSOCIATION, ILLINOIS PORK PRODUCERS.**

By:



One of Its Attorneys

Roy M. Harsch
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321 North Clark Street
Chicago, Illinois 60610
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JUN 04 2001

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
June 4, 2001

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

MOTION FOR LEAVE TO FILE INSTANTER

Now come the Illinois Farm Bureau, Illinois Beef Producers and Illinois Pork Producers by its Attorneys Roy M. Harsch and Gardner, Carton & Douglas and request that the Hearing Officer allow the filing of these Post Hearing Comments instanter for the reasons set forth herein.

1. On Thursday, May 31, 2001 the undersigned counsel spoke with the Hearing Officer regarding the June 1, 2001 due date for submitting post-hearing comments and was directed to file these comments with a Motion For Leave to File Instanter.

2. Because of absence from the office on business, the undersigned counsel has been unable to complete these comments and to have them reviewed by his clients in time to meet the June 1, 2001 deadline.

3. The Board has an interest in developing a full and complete record. The members of the three organizations represented by the undersigned are some of the producers directly impacted by these proposed rules.

4. Because there is no statutory deadline and no response provided to other members of the public to respond to these Post-Hearing Comments, no members of the public or a regulatory agency have been or will be adversely impacted by filing the comments several days late.

Therefore, for the reasons set forth herein, we request that the hearing officer grant this Motion for Leave to File Instantly authorizing the filing of the attached post-hearing comments.

Respectfully Submitted,
Illinois Farm Bureau, Illinois Beef
Association, Illinois Pork Producers.

By: 

One of Their Attorneys

Roy M. Harsch
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321 North Clark Street
Chicago, Illinois 60610
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ILLINOIS POLLUTION CONTROL BOARD
June 4, 2001

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STATE OF ILLINOIS
Pollution Control Board

POST-HEARING COMMENTS

The Illinois Farm Bureau, Illinois Beef Producers and Illinois Pork Producers respectfully submit these post-hearing comments on the amendments to the Livestock Waste Regulations, 35 Il. Adm. Code 506.

1. The members of the three organizations listed above are directly impacted by the proposed construction standards under consideration by the Board in this matter. As the Board is aware, these three organizations were actively involved when the original Part 506 rules were enacted by the Board on May 15, 1997, as mandated by the Livestock Management Facilities Act (510 ILCS 77/1 *et seq.*) ("LMF Act"). Since the adoption of the Part 506 rules, the Legislature amended the LMF Act (See Public Act 90-565, eff. January 2, 1998 and Public Act 91-110, eff. July 13, 1999). The amended LMF Act creates the Livestock Management Facilities Act Advisory Committee ("Advisory Committee") to assist the Department of Agriculture ("Department") in the development and adoption of rules to implement the amended LMF Act. These rules include proposed design and construction standards for livestock waste handling facilities and waste lagoons. Our organizations have worked closely with the Department and the Advisory Committee throughout the Department's development of the implementation rules.

2. In large part, we believe that the current Department rules and the proposed revised Part 506 rules currently in consideration by the Board represent an improvement and refinement over the original regulations. We would like to take this opportunity to commend the Department and all of the members of the Advisory Committee who have worked diligently to develop the proposed regulations and see them to their final adoption. We would also like to commend all of the participants before the Department and before the Board for their work in presenting their views in an effective and cordial manner so as to allow the agencies the opportunity to fully consider all of the comments and to develop sound, workable rules.

3. Though we are in general agreement with the proposed Part 506 changes, we believe certain changes and clarifications are necessary. We raise these issues for the same reasons raised by James R. Scheetz at hearing, namely that producers of livestock do not have the ability to pass along to the purchasers of that livestock the additional costs associated with compliance with these regulations. Accordingly, if livestock is to remain a viable and competitive part of the Illinois economy, both in the production of livestock and as a large consumer of grain produced in Illinois, livestock producers must be spared from compliance costs that are not necessary.

In this regard, we must take exception to Mr. Goetsch's statement that "it is the department's belief that the recent amendments, the recent amendments of the Act suggested enhancements should be required when facilities are proposed in certain areas that are deemed sensitive" (Transcript at 14). This is contradicted by the recent amendments to the Act and the Legislature's explicit finding that the existing rules "are accurate for today's industry with a few modifications." (LMF Act Section 5(a)(5)).

The Department's misleading characterization of the intent of the recent amendments has led to proposal of rules like those at 506.310(b)(1) and (2), which would increase the required thickness of exterior walls and floors from 4 inches to 5 inches and 6 inches to 8 inches respectively. The Department has not cited any environmental justification for this change. In fact, in response to our question, Mr. Goetsch conceded that the Department was not aware of the failure of any facility that was constructed in accordance with the current standards for walls and floor thickness, as found in the Midwest Plan Service standards ("MWPS") (Transcript at 13). As Mr. Scheetz attested at hearing and as further evidenced by the cost figures he provided in his public comments filed on May 15, these types of changes add significant costs to a project that are not justified by any apparent benefit. We echo the request by Mr. Scheetz at hearing for justification for these more stringent standards proposed by the Department.

The MWPS addresses any concerns of the Department. This Document provides that in appropriate instances, additional floor thickness and wall thickness will be required. We therefore request a deletion of the proposed rules' blanket increase. The Department already has the right to require an applicant to construct its facility with appropriate extra precautions. These more stringent requirements may be imposed when justified by site specific conditions that require extra precautions.

4. Our next comment involves a request that the Board embrace the apparent recognition by the Department that the LMF Act was written in a manner that acknowledges the importance of site specific conditions as the key to determine the appropriate construction standards for livestock waste facilities. The LMF Act's reference to the use of MWPS recognizes that a minimum requirement must be established. As set forth in the MWPS, site specific conditions

can require additional protections like thicker floors and walls. As testified to by Mr. Goetsch, the Department has recognized this concept by including a requirement set forth in several design rules that the engineer or consultant may “propose an alternative if the same ... can modify or exceed these standards in order to meet site specific objectives, if they so desire.” Mr. Goetsch also testified that the Department has had “several cases since the amendment took effect for consultants to exercise that option” (Transcript at 15). For example, Mr. Goetsch acknowledged that a consultant could take into consideration local conditions to design an individual facility and propose a continuous concrete floor in lieu of the requirements specified in the proposed Rule 506.305(a) of construction joints and water stops. (Transcript at 15). This concept, to allow a consultant or professional engineer to design a livestock management facility to address site specific conditions, must be carried forward into the new rules. Reference construction standards like the MWPS, and even the construction standard rules themselves, need a measure of flexibility to meet local needs.

5. Our next comment is a request that the Board acknowledge the explanation provided by the Department that these proposed rules were not intended in any way to change the way the Department processes applications for livestock waste handling facilities and lagoons in areas that are designated on the map as “Karst Terrains and Carbonate Rocks of Illinois.” (The map is incorporated by reference in Section 506.104(a)(3)). As explained by Mr. Goetsch, “the purpose of this map is to provide guidance to engineers, the engineers’ consultants or the site owners and operators in determining what their site investigation process will be. It is kind of the first step or the first phase in addressing the issue of karst.” As Mr. Goetsch explained, the results of the site investigation and the Department’s review control whether or not the facility will in fact be

constructed in a Karst area. (Transcript at 12) If the results of the site specific investigation and the Department's review do not show that a specific location is in fact located in a Karst area, then the construction standards for Karst areas would not apply, notwithstanding the designation of the map. (Transcript at 13).

6. Our final two comments concern two of the points in Mr. Heacock's testimony. Mr. Heacock testified that he participated in the Advisory Committee meeting during the development of these proposed rules (Transcript of 21). Our concerns are that Mr. Heacock is now proposing on behalf of the Illinois Environmental Protection Agency ("IEPA") two fundamental changes to the Department's rules after this consultation process. These changes are, first, to the required number of soil borings that must be done if the facility is to be located within certain areas designated in the Map and, second, requiring that perimeter footing drains under Section 506.304 to be equipped with a sampling port and provision for diversion (Transcript at 25). Our problems with the proposed changes at this stage in development of the rules are based on procedural fairness. First, as acknowledged by Mr. Heacock, these suggested changes were already raised as part of the discussions of the Joint Advisory Committee process that led to the development of these proposed rules. (Transcript at 33 and 34). These changes represent fundamental modifications to the proposed rules submitted by the Department. These suggestions were the subject of discussion and were rejected by the Department when they proposed the rules. The IEPA has provided no basis for these changes, either by technical evidence or the environmental need for these changes. The IEPA also does not appear to have examined the economic impact of the additional cost for these changes. As previously stated by Mr. Goetsch, there has been no testimony regarding failure of facilities built in Illinois in

accordance with the previous designed standards. Accordingly, the Board is without the required statutory information or any justification to adopt these changes.

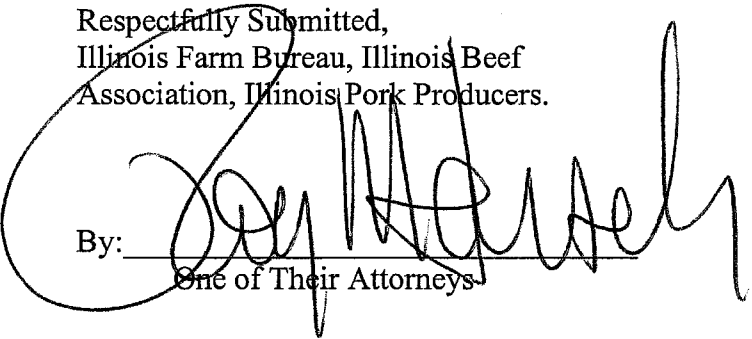
These changes are in fact not appropriate. With respect to Karst areas and the required site investigation, this is highly dependent upon site specific conditions and, as such, is a matter best left to the discretion of the Department and the engineer that prepares the necessary plans for submittal to the Department. It is entirely likely that, in some instances, multiple borings will in fact be required to properly characterize the area. But in cases where substantial information exists regarding the area in question, one boring in fact may suffice.

With respect to perimeter drains, these must be capable of being drained to a waterway or field tile in order to function properly. Mr. Heacock's testimony presupposes that the new structure built to comply with the proposed construction standards will leak or fail, notwithstanding a lack of any evidence regarding such failures. There is no reason for either a sampling port or impoundment of drains. Such an impoundment would hinder the free flow of drainage and thwart the function of the drain, which is to protect the structure. In order to make such a system work, the facility would have to install a sump pump with the potential to operate continuously. This would add significant costs. These costs have not been considered. Again, there is no evidence in the record that any facility built in accordance with the existing design standards failed, nor is there any basis to suppose that any facility which is constructed to meet the potentially heightened requirements of the proposed rules will likewise fail.

7. We would again like to thank the Department and the other participants of the Advisory Committee in the development of these proposed regulations. In summary, we request that the Board acknowledge that site specific conditions should control as to the requirements for

construction standards beyond the minimum referenced in the Act. This concept is clearly included within the MWPS and will be more important in the future, as this is the process that the Department intends to follow. We do not believe that there is any basis for the Department to propose, nor for the Board to enact, what amounts to a unilateral tightening of MWPS without showing an actual need for increased floor thickness and wall thickness. These changes have a substantial cost that will have to be met by the producer, who is not able to pass these costs on to the consumer or purchaser of the livestock in question. We also believe that the only two changes proposed by the IEPA are unwarranted and are in fact significant modifications to the rules developed as a result of the joint committee process in which IEPA participated. There is no evidence in the record to support the adoption of these changes. Accordingly, we request that the Board reject IEPA's request to establish a mandatory number of additional soil boring in potential Karst Areas and arbitrarily require sampling ports and impoundment of perimeter footing drains.

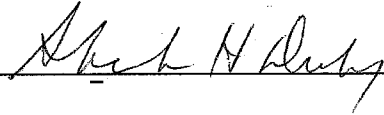
Respectfully Submitted,
Illinois Farm Bureau, Illinois Beef
Association, Illinois Pork Producers.

By: 
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Notice of Filing** and the attached **Motion to File Instantly, The Post Hearing Comments of the Illinois Farm Bureau, Illinois Beef Producers and Illinois Pork Producers** was filed by hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties to whom said Notice is directed by first class mail, postage prepaid, by depositing in the U.S. Mail at 321 North Clark Street, Chicago, Illinois on Monday, June 30, 2001.



R01-28 SERVICE LIST
Livestock Waste Management
Monday, June 4, 2001

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