

ORIGINAL

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 03 2001

STATE OF ILLINOIS
Pollution Control Board

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

P.C. #11

NOTICE OF FILING

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

AND THE ATTACHED SERVICE LIST
(Via U. S. Mail)

Carol Sudman,
Hearing Officer
Illinois Pollution Control Board
600 South Sixth Street, Suite 402
Springfield, Illinois 62704

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Motion for Leave to file Instant and Post-Hearing Comments of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: *Connie L. Tonsor*
Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

DATED: June 29, 2001

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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MOTION FOR LEAVE TO FILE INSTANTER

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Connie L. Tonsor, and requests that the Hearing Officer allow the filing of these Post Hearing Comments instanter for the reasons set forth herein.


1. After the comment period closed, the Illinois EPA received post-hearing comments from the Illinois Department of Agriculture (Department) and post-hearing comments, received June 6, 2001 and June 26, 2001 from Terry Feldmann, P.E.
2. The Illinois EPA received the post-hearing comments of the Department and a copy of its Motion to File Instanter on June 21, 2001.
3. After review of the post-hearing comments, the Illinois EPA believes that the testimony it offering during this proceeding has been misunderstood by the Department and Mr. Feldmann.
4. The Illinois EPA seeks to clarify this misunderstanding.
5. The Illinois Pollution Control Board (Board) has an interest in developing a full, complete and accurate record in this rulemaking.

6. Because there is no statutory deadline and this response will be provided to other members of the public, no members of the public or regulatory agency has been or will be adversely impacted by the late filing of these comments.

Therefore, for the reasons set forth herein, the Illinois EPA requests that the Hearing Officer grant this Motion for Leave to File Instantly authorizing the filing of the attached Post Hearing Comment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Connie L. Tonsor
Associate Counsel

June 29, 2001

Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

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POST HEARING COMMENT OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Connie L. Tonsor, and hereby submits comments in the above rulemaking.

1) The Illinois EPA offers this comment to clarify a misunderstanding concerning its pre-filed testimony and to provide full information for the Illinois Pollution Control Board (Illinois PCB) in the instant rulemaking. After the comment period closed, confusion arose in the interpretation of the Illinois EPA's pre-filed testimony.

2) In its June 19, 2001 post-hearing comments, the Illinois Department of Agriculture ("the Department") refers to Illinois EPA pre-filed testimony of April 24, 2001 on the provision for a perimeter drainage tube, as follows:

"The Department concurs with Mr. Feldmann's comment number 2 with regard to the testimony of the Illinois Environmental Protection Agency. The requirement for a storage facility for perimeter drainage tubing effluent is excessive and unnecessarily expensive."

Mr. Feldmann's comment of June 7, 2001 states "a storage facility for perimeter drain tiles is not feasible," further stating that such releases are not likely given the high standards for new facility construction under the proposed Part 506 rules.

We certainly hope so. Since no rule can be made foolproof and the placement of drainage tubing adjacent to a structure to protect that structure from damage caused by hydraulic uplift also makes that drainage tubing a means to convey livestock waste, we should be cautious about broad statements of feasibility. Mr. Feldmann seems to share our feelings of caution by concluding that if a release to the drainage tubing did occur "the liquid must be captured."

3) Mr. Heacock testified: "[T]he Agency recommends that this subsection [Section 506.304(c)] be revised to include:....A provision for the diversion of livestock waste that may be discharged from the drainage tubing, away from surface waters, to a field or collection area, pending collection and appropriate disposal" (emphasis added).

4) That field or collection area, because of its temporary use in receiving a release of livestock waste, need not meet the permeability, storage volume and other requirements of Part 506. It is something other than "waters of the State."

5) In their simplest forms, the field or collection areas could be:

an area of crop production, naturally lower in elevation than the livestock facility which could, in an emergency, receive livestock waste diverted away from surface waters by means of a gate valve and piping installed downstream of the perimeter drainage tubing; or

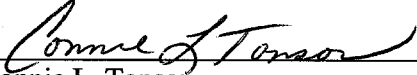
a manhole with a gate valve that could be closed in an emergency, allowing both the manhole and the upstream part of the drainage tubing to fill with livestock waste until appropriate disposal could be affected.

6) Apparently, the Department and Mr. Feldmann understood the term "field or collection area" to mean a permanent, fixed structure of extraordinary price.

7) This interpretation is not consistent with the intention of the Illinois EPA.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Connie L. Tonsor
Associate Counsel

June 29, 2001

Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

STATE OF ILLINOIS

COUNTY OF SANGAMON

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) SS
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)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached MOTION FOR LEAVE TO FILE INSTANTER AND POST-HEARING COMMENT upon the person to whom it is

directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(First Class Mail)

**AND THE ATTACHED SERVICE LIST
(First Class Mail)**

Carol Sudman
Hearing Officer
Illinois Pollution control Board
600 South Second Street
Suite 402
Springfield, Illinois 62704
(First Class Mail)

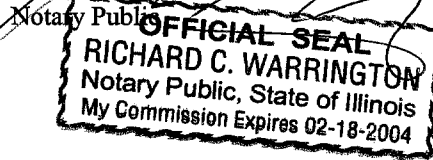
and mailing it from Springfield, Illinois on _____, 2001 with sufficient postage affixed as indicated above.

Nancy J D Lampert

SUBSCRIBED AND SWORN TO BEFORE ME

this 11 day of June, 2001

[Handwritten signature of Notary Public]



**R01-28 Service List
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Friday, June 29, 2001**

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