

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1998

IN THE MATTER OF:)
)
AMENDMENTS OF 35 ILL. ADM. CODE) R98-26
506 (LIVESTOCK WASTE) (Rulemaking - Land)
REGULATIONS))

Request for Proposal.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

The Board on its own motion today opens a docket to request that the Department of Agriculture submit a rulemaking proposal to the Board to amend the Board's regulations at 35 Ill. Adm. Code 506 to incorporate and implement the recent amendments to the Livestock Management Facilities Act (Livestock Act). See P.A. 90-565, eff. January 2, 1998.

As background, the Livestock Act, effective May 21, 1996, set forth an outline for the proper design, construction, operation, and management of livestock management facilities and associated waste handling structures. It further provided for education and certification of livestock managers, research, proper disposal of livestock waste, and financial responsibility for closure of lagoons. While many provisions of the Livestock Act required no further regulatory implementation, the legislature recognized that some of the provisions would need regulatory implementation. To accomplish this, the Livestock Act directed the Department of Agriculture to seek input from the Livestock Management Facilities Advisory Committee (Advisory Committee)¹ and, based on the recommendations of the Advisory Committee, propose rules to the Board for implementation of the Livestock Act.

On November 21, 1996, the Department of Agriculture timely submitted proposed rules to the Board. Pursuant to the Livestock Act, the Board was required to adopt rules for the implementation of the Livestock Act within six months after the Department of Agriculture filed proposed rules with the Board. On May 15, 1997, the Board adopted such rules for implementation by the Department of Agriculture. See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506 (May 15, 1997), R97-15(A).

Since the adoption of final rules, the legislature has amended the Livestock Act. Specifically, on January 2, 1998, Governor Edgar signed House Bill 1547 into law as Public Act 90-565 (effective January 2, 1998). This new legislation provides, among other things:

- (1) that livestock waste lagoons include a secondary berm, filter, strip, grass waterway, or terrace under certain circumstances;

¹ The Advisory Committee was comprised of the Directors of the Department of Agriculture, Illinois Department of Natural Resources, Illinois Department of Public Health, and the Illinois Environmental Protection Agency (Agency).

- (2) that the Department of Agriculture conduct annual inspections of lagoons that service 1,000 or more animal units;
- (3) that the Department of Agriculture provide an on-site written report of the findings based on the inspection, together with an explanation of any remedial measures needed to enable the lagoon to meet certain standards;
- (4) that the Department of Agriculture provide a seven-day notification to county boards of an intent by developers to construct or modify a lagoon;
- (5) that county boards may, within 30 days of receiving a copy of the lagoon registration form, request a public information meeting concerning a proposed construction or modification of a livestock waste lagoon;
- (6) that lagoon operators or owners report releases of livestock waste to the Environmental Protection Agency within 24 hours of discovering the release;
- (7) that the Department of Agriculture inspect earthen livestock waste lagoons before, during, and after construction; and
- (8) that the Department of Agriculture order an owner or operator of a livestock facility to cease operation if the owner or operator is found to have committed three violations of the Livestock Act within five years. See P.A. 90-565, eff. January 2, 1998.

As noted previously, the Livestock Act provided a procedure for the regulatory implementation of the provisions of the Livestock Act. The amendments to the Livestock Act, however, do not provide such a mechanism. In keeping with the intent of the Livestock Act, the Board believes that it is appropriate to ask that the Department of Agriculture provide a proposal to the Board to incorporate and implement the recent amendments to the Livestock Act into the Board's regulations at 35 Ill. Adm. Code 506.

Accordingly, the Department of Agriculture is hereby requested to file a rulemaking proposal to amend the Board's regulations at 35 Ill. Adm. Code 506 to incorporate and implement the recent amendments to the Livestock Act. The Board currently has a rulemaking open to identify and reconcile any inconsistencies between Board regulations adopted in 1997 pursuant to the Livestock Act (35 Ill. Adm. Code 506) and previously existing regulations concerning agricultural-related pollution adopted by the Board (35 Ill. Adm. Code 501 through 504). See In the Matter of: Amendments to 35 Ill. 501 through 504: Agricultural-Related Pollution (Management of Livestock Waste) (September 4, 1997), R98-11. Because Part 506 will need to be amended to incorporate the recent amendments to the Livestock Act, the Board will not proceed with the rulemaking docket R98-11 until the amendments to Part 506 are completed under this rulemaking docket. Due to the necessity of reconciling any inconsistencies between Part 506 and parts 501 through 504, the Board asks that the Department of Agriculture submit its rulemaking proposal to the Board as soon as practicable in order for the Board to timely proceed with R98-11. Such proposal should reference the

docket number, R98-26, and be directed to the Clerk of the Board, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601.

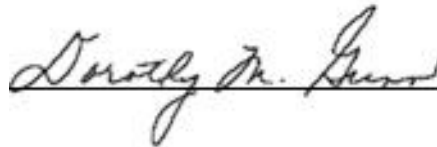
The recent amendments to the Livestock Act also include an amendment to the financial responsibility section (see 510 ILCS 77/17 (1996)). Specifically, the financial responsibility section was amended so that financial responsibility could be shown by participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. Because the Board currently has a rulemaking docket open to deal with the financial responsibility rules (R97-15(B)), the recent amendment regarding financial responsibility will be dealt with in R97-15(B) and the Department of Agriculture will not have to include this amendment in the proposal requested by the Board today.

In opening this rulemaking docket, it is not the Board's intention to reopen the underlying debate regarding the propriety of the provisions of the Livestock Act or Board regulations promulgated thereunder. The Board is simply opening the docket to incorporate the recent changes to the Livestock Act into Part 506.

The Board will assign a hearing officer to this matter. The Board will leave to its hearing officer the establishment of a rulemaking schedule, as well as the scheduling of written comments, a pre-hearing conference, and hearings, as necessary. Any questions concerning this order may be directed to the Board's Springfield office at (217) 524-8509.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 22nd day of January 1998, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board