

ILLINOIS POLLUTION CONTROL BOARD
April 24, 2012

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
CONCENTRATED ANIMAL FEEDING) R12-23
OPERATIONS (CAFOs): PROPOSED) (Rulemaking - Water)
AMENDMENTS TO 35 ILL. ADM. CODE)
PARTS 501, 502, AND 504)

NOTICE OF HEARING

DATE, TIME, AND LOCATION:

WEDNESDAY, NOVEMBER 14, 2012

10:00 AM
Highland Community College, West Campus
Conference Room 129
300 N. West St.
Elizabeth, Illinois

PURPOSE OF HEARING: Merit and Economic
ATTENDING BOARD MEMBER: Thomas A. Holbrook
HEARING OFFICER: Timothy J. Fox

HEARING OFFICER ORDER

On March 1, 2012, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal to amend Parts 501, 502, and 504 of the Board's agriculture related water pollution regulations. *See* 35 Ill. Adm. Code 501, 502, 504. Accompanying the proposal were documents including a Statement of Reasons (SR). The Agency states that the rulemaking proposal has two chief purposes. First, the Agency seeks to amend Parts 501 and 502 "so that they are consistent with, and as stringent as, the current federal CAFO regulations." SR at 32. Second, the Agency seeks "to establish the state technical standards which are mandated by the federal rule, but not prescribed for the states." *Id.* at 33.

In an order dated March 22, 2012, the hearing officer scheduled four hearings: the first in Springfield beginning on Tuesday, August 21, 2012, and continuing until business is complete or until Thursday, August 23, 2012; the second in Belleville on Tuesday, October 16, 2012; the third in Urbana on Tuesday, October 23, 2012; and the fourth in DeKalb on Tuesday, October 30, 2012. The hearing officer order set filing deadlines for each of these four hearings.

On April 5, 2012, the Board received a comment from Representative Jim Sacia (PC 1). Rep. Sacia requested that the Board schedule "a hearing in Jo Daviess County, which as you know has a significant number of livestock to deal with the rulemaking for CAFOs." PC 1 at 1.

He added that “[m]any of my constituents are requesting this hearing as it is very important to us.” *Id.* On April 9, 2012, the Board received a comment from Senator Tim Bivins (PC 2). Sen. Bivins requested that the Board “consider holding a hearing in Jo Daviess County so interested citizens in the area can actively participate in the environmental decision making.” PC 2. On April 18, 2012, the Board received a comment from Mr. Ronald Lawfer, President of the Jo Daviess County Farm Bureau (PC 3). Mr. Lawfer stated that “[m]any of the counties ranked in the top ten livestock counties in Illinois are in the extreme northwestern part of the state.” PC 3 at 1. He expressed disappointment that no hearing was closer to that area than DeKalb. *Id.* Mr. Lawfer stated that “it is a hardship for those producers to travel that distance to go to a meeting.” *Id.* Noting the effect of the Agency’s proposal on livestock producers in the area, he requested that the Board “schedule an additional hearing within Jo Daviess County.” *Id.*

As indicated above in its notice of hearing, the Board grants these requests and will conduct an additional hearing in Jo Daviess County in order to allow any interested participants the opportunity to present testimony and public comments on the merits and economic impact of the proposal. *See* 415 ILCS 5/28(a) (2010); 35 Ill. Adm. Code 101.610, 102.412(b). At hearing, all persons wishing to testify will be sworn in and subject to questioning. The Board will also receive testimony on any economic impact study conducted by the Department of Commerce and Economic Opportunity (DCEO) on the proposed rules or on DCEO’s decision not to perform a study. *See* 415 ILCS 5/27(b) (2010).

Deadline for Jo Daviess County Hearing

Participants who intend to testify at the hearing in Jo Daviess County must pre-file their testimony and are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk’s Office On-Line (COOL) from the Board’s Web site (www.ipcb.state.il.us) or by contacting the Clerk’s Office at 312-814-3629.

Participants, including the Agency, who wish to testify at the Jo Daviess County hearing are directed to pre-file all of their testimony and any related exhibits no later than Wednesday, October 31 2012.

The “mailbox rule” (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of this pre-filed testimony for the Jo Daviess County hearing, and the Board’s Clerk must receive these documents before the close of business on October 31, 2012. However, documents may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk’s Office at (312) 814-3629.

Order of Jo Daviess County Hearing

The hearing officer intends to begin the Jo Daviess County hearing with any participants who pre-filed testimony for the preceding hearing in DeKalb and were not able to testify and respond to questions at that time. Next, participants who pre-filed testimony for the Jo Daviess

County hearing will present that testimony and respond to questions. Participants who do not pre-file testimony for the hearing will then be allowed to testify and respond to questions as time permits after the conclusion of pre-filed testimony and questions based upon it. As at the preceding hearings, all testimony pre-filed for the Jo Daviess County hearing will also be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions.

Participants wishing to offer a public comment at the Jo Daviess County hearing will be allowed to do so if time permits at the close of the testimony and questions. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

Service and Notice Lists

The hearing officer has established and will maintain both a Notice List and a Service List for this proceeding. *See* 35 Ill. Adm. Code 102.422(a), (b). The Notice List includes participants who wish to receive copies only of the Board's opinions and orders and hearing officer orders. 35 Ill. Adm. Code 102.422(a). The Service List for this rulemaking is the list of persons who wish to participate actively in this proceeding and receive not only the Board's opinions and orders but also other documents such as pre-filed testimony, questions, and responses. *See* 35 Ill. Adm. Code 102.422(b).

Note that interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number R12-23. This electronic notice includes notice of the filing of documents that are not typically provided to persons on the Notice List. In addition, COOL provides links to documents filed with the Board, and those documents can be viewed, downloaded, and printed free of charge as soon as they are posted to the Board's Web site. For more information about the option of electronic notice or COOL, please consult either the Board's Web site at www.ipcb.state.il.us or John Therriault, the Board's Assistant Clerk, at (312) 814-3629.

IT IS SO ORDERED.



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