

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
CONCENTRATED ANIMAL FEEDING) R-2012-023
OPERATIONS (CAFOS); PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
501, 502 AND 504)

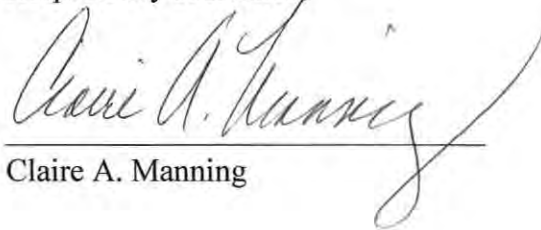
NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board, an ENTRY OF APPEARANCE and PRE-FILED TESTIMONY OF JIM KAITSCHUK, copies of which are also herewith sent to the attached service list.

Dated: June 19, 2012

Respectfully submitted,



Claire A. Manning

BROWN, HAY & STEPHENS, LLP

Claire A. Manning
Registration No. 3124724
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
cmanning@bhslaw.com

Albert Ettinger
53 W. Jackson, Suite 1664
Chicago, IL 60604

Marvin Traylor
Executive Director
Illinois Association of Wastewater Agencies
241 N. Fifth Street
Springfield, IL 62701

Brett Roberts
US Department of Agriculture
2118 W. Park Court
Champaign, IL 61821

Matt Roberts
US Department of Agriculture
2118 W. Park Court
Champaign, IL 61821

Ted Funk
Extension Specialist
University of Illinois Extension
332E Ag Eng Science Bldg.
1304 W. Pennsylvania Avenue
Urbana, IL 61801

Randy Fonner
University of Illinois Extension
332E Ag Eng Science Bldg.
1304 W. Pennsylvania Avenue
Urbana, IL 61801

Jim Fraley
Illinois Milk Producers Association
1701 N. Towanda Avenue
Bloomington, IL 61701

Laurie Ann Dougherty
Executive Director
Illinois Section of the American Water
Works
545 S. Randall Road
St. Charles, IL 60174

Karen Hudson
Families Against Rural Messes Inc.
22514 W. Claybaugh Road
Elmwood, IL 61529

Kendall Thu
Illinois Citizens for Clean Air and Water
609 Parkside Drive
Sycamore, IL 60178

Jeff Keiser
Director of Engineering
Illinois American Water Company
100 North Water Drive
Belleville, IL 62223

Danielle Diamond
Illinois Citizens for Clean Air and Water
3431 W. Elm Street
McHenry, IL 60050

Arnie Leder
1022 N. 40th Road
Mendota, IL 61342

Brian J. Sauder
Illinois Interfaith Power & Light Campaign
1001 South Wright Street, Room 7
Champaign, IL 61802



Claire A. Manning
Brown Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
Springfield, Illinois 62701
(217) 544-8491

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ENTRY OF APPEARANCE

Now comes BROWN, HAY & STEPHENS, LLP (Claire A. Manning, William D. Ingersoll and Stephanie R. Hammer), and enters its appearance on behalf of the Agricultural Coalition (ILLINOIS PORK PRODUCERS ASSOCIATION, ILLINOIS BEEF ASSOCIATION, ILLINOIS MILK PRODUCERS ASSOCIATION and the ILLINOIS FARM BUREAU) in this proceeding.

Dated: June 19, 2012

Respectfully submitted,

BROWN, HAY & STEPHENS, LLP

By: 

Claire A. Manning

BROWN, HAY & STEPHENS, LLP

Claire A. Manning
William D. Ingersoll
Stephanie R. Hammer
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
cmanning@bhslaw.com

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PRE-FILED TESTIMONY OF JIM KAITSCHUK

My name is Jim Kaitschuk and I am the Executive Director of the Illinois Pork Producers Association (“IPPA”). I have been with the IPPA for the past 9 years. I have a Bachelor of Science degree from the University of Illinois.

The Illinois Pork Producers Association (IPPA) is an agricultural trade association representing more than 2,900 pork producers throughout Illinois. IPPA is comprised of county pork producer organizations in more than 20 counties throughout Illinois. IPPA is an affiliate of the National Pork Producers Council and the National Pork Board. Our association represents pork producers and the Illinois pork industry, which contributes more than \$1.7 billion and more than 7,800 jobs to the State’s economy.

Before coming to IPPA I was responsible for legislative affairs for the Governor’s Office (from 2001 through 2002) and for various state agencies (from 1994 through 2001), specifically the Illinois Department of Agriculture and the Illinois Environmental Protection Agency (“IEPA”), where I was Associate Director. During this time, and in my current position, I have had great familiarity with all agricultural legislation, including the development of the Livestock Management Facilities Act (“LMFA”) and amendments, as well as the regulations that were established pursuant to the LMFA. Since coming to IPPA in 2003, legislative and regulatory issues have been in the forefront of my daily responsibilities for the association. I work closely

with the National Pork Producers Council, and with other agricultural organizations, at both the state and federal levels. I am intimately familiar with the background of the federal Concentrated Animal Feeding Operation rules which drive this rule proposal – including the litigation that followed the original rule proposal, and the federal court decisions that followed such litigation. See *Waterkeeper v. U.S. Environmental Protection Agency*, 399 F. 3d 486 (2nd Cir. 2005) and *Nat'l Pork Producers Council, et. al. v. U.S. Environmental Protection Agency*, 635 F. 3d 738 (5th Cir. 2011).

In my testimony today, I speak not only for the Illinois Pork Producers, but for the Illinois Agricultural Coalition, which includes the Illinois Beef Association, the Illinois Milk Producers' Association, and the Illinois Farm Bureau. Collectively, this Coalition represents over 80,000 farms and farm families in Illinois. We represent the vast majority of Illinois farmers who raise and market livestock, dairy, and grain, as products for the consuming public. We recognize that, as farmers, we have a responsibility to be good stewards of the land. We want to protect and sustain the environment for our families, our communities, and for future generations. Our member farmers, and our Coalition associations, also understand the need to protect our nation's water, as one of our most valuable resources. To those ends, we consistently support research programs that help us better capture, treat, and recycle the valuable nutrients produced on our farms.

We wish to commend the IEPA for the substantial efforts and cooperation it provided in the stakeholder work group meetings that have preceded this proposal. In large part, we support this rule proposal and support the changes that IEPA made during the stakeholder meetings to address issues we raised.

The Agricultural Coalition is very interested in the outcome of this rulemaking, as agriculture is the “regulated community” to whom these rules will apply. We will be participating throughout the proceeding, with testimony and public comment, as our resources and time allow. Our common interests are in ensuring that the Board is fully informed regarding the value of Illinois agriculture to the state and national economies, and the impact of any promulgated rules on agriculture. We also have a common interest in ensuring that the rules promulgated by the Illinois Pollution Control Board (“Board”) are easily understood, so that compliance is achieved. At the end of the day, we wish to ensure that the Board’s rules are economically reasonable and technically sensible and feasible – as that is the Board’s charge under Section 27 of the Illinois Environmental Protection Act. We also note that we believe this to be a federally required rule, pursuant to Section 28 of the Act.

Our chief interests in this proceeding can be explained as follows:

(1) that the regulations adopted by the State of Illinois parallel those promulgated by the United States Environmental Protection Agency as part of the federal Clean Water Act (“CWA”) initiatives, and adhere to the federal decisions related to NPDES permitting and regulatory authority;

(2) that the regulations adopted by the State of Illinois (here, the Board) in this proceeding segue as best as possible with the existing State of Illinois Livestock Management Facilities Act (LMFA) regulations, originally promulgated by the Board and now administered by the Illinois Department of Agriculture;

(3) that the Board recognize that the federal rules were not only adopted to address agricultural related pollution, but also “as part of an overall

federal strategy to support a vibrant agricultural economy” see 68 Fed. Reg. p. 7176;

4) that the Board’s promulgation of rules in this proceeding be informed by an understanding and appreciation for twenty-first century Illinois agriculture.

Members of the Agricultural Coalition plan to attend each hearing, and are willing to provide information to the Board, on the record, related to any question the Board may have as to these proposed rules which, as we stated, we largely support. We will also provide information related to those particular subjects that we would urge the Board to clarify or modify, so that compliance is achieved as envisioned by the federal rules. A brief sampling of those subjects follows.

➤ Clarification of Certain Regulatory Language

The Agricultural Coalition will seek clarification, and possible modification, where the IEPA proposed language is ambiguous or significantly different or more cumbersome than the parallel federal language. For example, the Agricultural Coalition believes the Board should adopt the more straightforward federal definition of “livestock waste” instead of the IEPA proposed definition (see proposed §501.295). Also, we will seek clarification of the Land Application provisions at proposed §502.103(a) and (b), as they are different than the corresponding federal provisions at 40 CFR 122.23(f), especially as they relate to what constitutes agricultural stormwater exempt from discharge.

➤ Phosphorous and other Application Criteria

Similarly, the Agricultural Coalition needs to understand how IEPA will review Comprehensive Nutrient Management Plans to assure a reasonable land application plan, especially as it involves phosphorous and nitrogen. This is especially important since the

proposed rules conflict with current statutory provisions and rules of the Illinois Department of Agriculture. See 510 ILCS 77/21(f) (3.6) and 8 Ill. Adm. Code, Section 900.813(b) and (c).

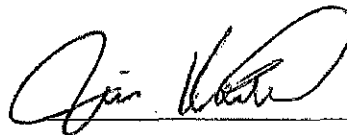
➤ Permit Requirements and Permit Expectations

NPDES permits are only required when a facility is discharging. The IEPA Statement of Reasons correctly embraces this concept, which has been conclusively ruled upon by the courts. *IEPA Statement of Reasons*, at pp. 14 -- 15. Upon promulgation, producers and farmers need to have the same understanding as the IEPA as to what constitutes a discharge because, unless there is an ongoing discharge, a federally-derived NPDES permit is not required. And a farmer who has sought and received an NPDES permit would be governed by the parameters of that permit, in the context of any discharge. Those parameters should relate to “applicable technology based and water quality based effluent limits found in sections 301 and 302 of the CWA. 33 U.S.C. §1342(a) (see 33 U.S.C. §1311, 1312).” *Id.*, at pp. 4 -5. As a delegated state, it is important that the Illinois rules have that same philosophical underpinning.

We look forward to participating in this regulatory proceeding. Again, we appreciate the substantial efforts of IEPA in getting rule proposal before the Board – and we thank the Board for showing great attention and courtesy in this proceeding.

Dated: June 19, 2012

Respectfully submitted,



**JIM KAITSCHUK, Executive Director,
ILLINOIS PORK PRODUCERS
ASSOCIATION, on behalf of THE
ILLINOIS AGRICULTURAL
COALITION**