

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

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

NOTICE OF ELECTRONIC FILING

To: **Attached Service List**

PLEASE TAKE NOTICE that on July 17, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, Prefiled Questions from Prairie Rivers Network, Illinois Citizens for Clean Air and Water, Natural Resources Defense Council and Environmental Law & Policy Center (collectively, "Environmental Groups") to **Sanjay Sofat, Bruce Yurdin** and **Dan Heacock**, along with Appearances of Jessica Dexter, Ann Alexander, Kim Knowles and Danielle Diamond, copies of which are attached hereto and herewith served upon you.

Respectfully Submitted,



Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Ste. 1600
Chicago, IL 60601
312-795-3747

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**PRE-FILED QUESTIONS OF ENVIRONMENTAL GROUPS TO
SANJAY SOFAT**

The ENVIRONMENTAL GROUPS hereby file questions to Sanjay Sofat:

1. Have you reviewed USEPA's 2012 Final Action on the 2011 Proposed NPDES CAFO Reporting Rule, published July 16, 2012?
2. Page 92 of the Statement of Reasons states that IEPA has met with USEPA to resolve USEPA's concerns about the draft rule. What changes were recommended by USEPA?
 - a) What changes were made to the rule as a result of those recommendations?
 - b) Does the draft rule incorporate all of the changes recommended by USEPA?
3. Do you agree that the Illinois Environmental Protection Act governs pollution into waters of the state?
4. Does IEPA issue NPDES permits to non-CAFO point source dischargers that discharge into waters of the state?
5. How are waters of the state defined?
6. How does the definition of waters of the U.S. differ from the definition of waters of the state? What waters are excluded?
7. Does IEPA have a process in place to distinguish waters of the US from waters of the state?
8. In this rulemaking why did IEPA choose to use the term waters of the US rather than waters of the state?

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**PRE-FILED QUESTIONS OF ENVIRONMENTAL GROUPS TO
BRUCE YURDIN**

The ENVIRONMENTAL GROUPS hereby file questions to Bruce Yurdin:

QUESTIONS REGARDING INSPECTION/COMPLIANCE:

1. How much livestock waste is generated in Illinois each year? How does that compare to the amount of human waste (sewage) that is generated each year?
2. What pollutants does livestock waste contain? How do these pollutants affect water quality for human health (recreation, drinking water) and aquatic life?
3. Have livestock operations been documented as a source of water quality impairments in Illinois? If so, to what extent?
4. What instances of water pollution has IEPA documented from livestock operations in the state?
5. How many fish kills has IEPA documented from livestock facilities from 1999-2009¹?
6. Does IEPA know of instances where livestock waste has been discharged to surface waters via tile drains?
7. In the past ten years, what is the average annual percentage of livestock operations that are inspected by the Illinois EPA that are found to have at least one regulatory violation?
 - a) In the past ten years, how many inspected facilities were found to be in violation for having discharged without an NPDES permit?

¹ IEPA may elect to share data beyond that decade or from a more recent decade, so long as the data are representative of conditions in the state.

8. In the past ten years, how many livestock operations has the IEPA documented as causing water pollution in Illinois?
 - b) How many of these facilities had NPDES permits when the IEPA initially discovered that they had caused water pollution?
9. How does the IEPA typically discover that an unpermitted livestock operation has caused water pollution?
10. Is it possible that there have been other incidents of water pollution caused by livestock operations that were not discovered by IEPA?

QUESTIONS REGARDING REPORTING/RECORDKEEPING/INVENTORY OF FACILITIES:

11. How many livestock operations are there in the state of Illinois?
12. For what percentage of Illinois livestock operations does IEPA have complete and current information regarding the location, the number and type of animals housed, annual waste production, available land application acreage and types of waste storage structures?
13. Under the current rules, what percentage of Illinois livestock operations have a waste management plan that has been reviewed and approved by IEPA?
14. What percentage of livestock operations in Illinois does IEPA estimate will require NPDES permits under the draft rule?
15. What percentage of large CAFOs does IEPA estimate will require NPDES permits under the draft rule?
16. Aside from what is proposed in the draft rule, what other approaches to a livestock facility inventory has IEPA considered? Has IEPA considered adopting Minnesota's approach to livestock facility inventory, found at MN ADC 7020.0350?
17. Page 90 of the Statement of Reasons states that IEPA "is attempting to construct [a CAFO] inventory from an Illinois Department of Public Health database of over 800 dairy operations which are inspected by that agency and a list of 1400 permits that have been issued by the Illinois Department of Agriculture under the LMFA since 1996." Do either of these data sets represent the complete universe of CAFOs in Illinois?
 - a) What will IEPA have to do to merge these data together?
 - b) How can IEPA ensure that a comprehensive inventory of facilities subject to this regulation will result from this effort?

18. How do the proposed regulations allow IEPA to know whether multiple CAFOs (either permitted or unpermitted) are land-applying on the same fields?

QUESTIONS REGARDING WINTER MANURE APPLICATION:

19. Is it common for livestock operations in Illinois to land apply on frozen, snow-covered, or ice covered ground?
 - a) How many livestock operations do you estimate land apply on frozen, snow covered, or ice covered ground?
20. Is there any agronomic benefit to winter land application of manure?
21. What are the potential environmental risks of winter land application of manure?
 - a) What are the potential environmental risks when manure is injected and/or incorporated?
22. Is IEPA aware of water pollution that has occurred as a result of land application by livestock operations during winter conditions? Please explain.
 - a) What are some of the common reasons winter land application results in discharges to surface waters?
23. Are you aware of livestock operations that have had regulatory violations due to winter application?
 - a) If so, how many of these were following a nutrient management plan or a winter application plan?
24. Do the proposed regulations cap the winter application rate?
 - a) Are you aware of regulations in other Midwestern states that restrict winter application rates?
25. What benefits does IEPA anticipate will result from the requirement that CAFOs develop and follow a winter manure application plan?
26. What practices would be considered “practical alternative measures” to surface application under proposed section 502.630 (a)(1)(A)?
27. What is IEPA’s basis for choosing December 1st as a deadline for providing storage capacity as required under proposed section 502.630 (a)(1)(C)?

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28. What does it mean for a livestock operation to have “taken steps to provide 120 days of available storage capacity,” as required in 502.630 (a)(1)(C) of the proposed rules? What is actually required by this provision?
29. Under the proposed rules, will *unpermitted* large CAFOs be required to submit their winter manure application plans to IEPA?
30. Under the proposed rules, will IEPA review and approve winter application plans for unpermitted large CAFOs prior to surface applying on frozen, ice-covered or snow-covered ground?
31. How will IEPA ensure that the six field requirements for a winter manure application plan (listed in Section 502.630 (b)) are met by an unpermitted Large CAFO?
32. How will IEPA ensure that, where practical alternatives do not exist, unpermitted Large CAFOs have appropriate land available for winter manure application?

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**PRE-FILED QUESTIONS OF ENVIRONMENTAL GROUPS TO
DAN HEACOCK**

The ENVIRONMENTAL GROUPS hereby file questions to Dan Heacock:

QUESTIONS REGARDING PRODUCTION AREA SETBACKS:

1. In the last ten years, about how many livestock operations has IEPA found discharging pollution from their production areas to nearby surface waters?
 - a) Why do such discharges usually occur?
 - b) What is the greatest distance between a surface water and a production area from which IEPA has documented a discharge?
 - c) Have there been instances of production areas becoming flooded or damaged due to high water levels in nearby surface waters?
2. Do existing regulations require a minimum buffer or setback between surface waters and livestock production areas?
 - a) Are there waste storage structures in Illinois that are located next to surface waters?
3. Is IEPA aware of water pollution from the production area of any livestock operation contaminating nearby wells?
 - a) If so, why do such discharges usually occur?
 - b) Have there been instances where wells located more than 200 feet from a production area have been contaminated by livestock waste?
 - c) At what percentage of livestock operations in Illinois is groundwater monitoring required around the production area?

- d) At what percentage of livestock operations in Illinois has IEPA ever done monitoring to determine whether waste storage structures are leaking into groundwater?
- 4. Has IEPA considered a 1000 foot siting setback from community water supply wells, as has been adopted by Minnesota (Minn. R. pt. 7020.2005, Subp. 1) and Wisconsin (NR 243.15)?
- 5. What evidence is there that a 75-foot setback will prevent the discharge of waste from temporary manure stacks into water wells?
- 6. How does IEPA expect producers to determine whether a cover or pad for temporary manure stacks is “needed to prevent runoff and leachate from entering surface waters and groundwater”?

QUESTIONS REGARDING LAND APPLICATION SETBACKS:

- 7. What is the basis for selecting 200 feet as the proposed land application setback from potable water supply wells?
 - a) Is IEPA aware of instances where water wells in Illinois have been contaminated from livestock waste from land application areas?
 - b) If so, what is the greatest distance between a well and a land application area from which IEPA has documented a discharge?
 - c) Has IEPA reviewed regulations from Indiana (327 Ind. Admin. Code 16-10-4) and Wisconsin (Wisc. Admin. Code NR 243.14(2)(b)(9)) governing land application setbacks from water supply wells?
- 8. Does the land application setback apply to all water wells?
- 9. Has IEPA documented any instances where discharges to surface waters have resulted from land application of livestock waste further than 200 feet from that surface water?
 - a) If so, how does livestock waste typically reach surface waters?
- 10. How does IEPA verify that livestock waste is being applied at agronomic rates and consistent with existing setback regulations?

QUESTIONS REGARDING MANURE APPLICATION RATES:

11. What depth of soil sampling does the proposed rule require to be consistent with the Illinois Agronomy Handbook?
12. Does the proposed requirement that application rates must be neutral when available soil phosphorus is over 50 pounds per acre (Section 502.615 (d)) apply to both phosphorus-based rates of application and nitrogen-based rates of application?
13. The Illinois Agronomy Handbook (Attachment R to the Statement of Reasons, p. 102) states, "There is no agronomic advantage in applying P when P1 values are higher than 60, 65, and 70 for soils in the high, medium and low P-supplying regions, respectively." How does the proposed 300 lbs P/acre threshold soil phosphorus concentration for switching from nitrogen- to phosphorus-based application rates comport with the recommendation from the Illinois Agronomy Handbook?

QUESTIONS REGARDING UNPERMITTED CAFOS:

14. What potential risks to water quality are posed by large unpermitted CAFOs?
15. Are unpermitted CAFOs currently subject to regular inspections, monitoring, and reporting requirements?
16. What portions of Subpart F in proposed Part 502 would unpermitted large CAFOs be subject to in order to claim the agricultural stormwater exemption?
17. Why do the proposed rules require regular inspection of manure application equipment?
 - a) Do unpermitted CAFOs use similar equipment as that used by permitted CAFOs?

QUESTIONS REGARDING WASTE TRANSFERS TO THIRD PARTIES:

18. Under the draft rules, when livestock waste is transferred to third parties, are the land areas where the third party land applies considered part of the permittee's nutrient management plan?
19. Under 502.505(g) of the proposed rule, are off-site land application areas not owned or rented by the operator to be included in the scaled aerial photos or maps?
20. Are third-party manure applicators required to register their land application sites with IEPA?

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21. Are third-party land application fields subject to the technical standards of Subpart F of the proposed rule?
22. Section 502.505(h) of the proposed rule doesn't require statements of consent with owners of land accepting livestock waste to include the duration of time that waste will be accepted. What if a transferee consenting to accept a vast majority of a facility's waste only consents to accept the waste for a period of one year? How would IEPA be able to verify that the CAFO has adequate land for waste disposal at alternate sites for the duration of the permit?
23. Has IEPA considered implementing a livestock waste manifest program like the one adopted in Michigan's Large CAFO General Permit, (MIG019000)?

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APPEARANCE OF JESSICA DEXTER

NOW COMES Jessica Dexter, of the ENVIRONMENTAL LAW & POLICY CENTER,
and hereby enters her appearance in this matter on behalf of the Environmental Law & Policy
Center.

Dated: July 17, 2012

Respectfully Submitted,



Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Ste. 1300
Chicago, IL 60601
312-795-3747

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APPEARANCE OF ANN ALEXANDER

NOW COMES Ann Alexander, of the Natural Resources Defense Council,
and hereby enters her appearance in this matter on behalf of the Natural Resources Defense
Council.

Dated: July 17, 2012

Respectfully Submitted,



Ann Alexander
Senior Attorney, Midwest Program
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606
312-663-9900
AAlexander@nrdc.org

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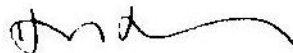
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APPEARANCE OF KIM KNOWLES

NOW COMES Kim Knowles, of the Prairie Rivers Network, and hereby enters her appearance in this matter on behalf of the Prairie Rivers Network.

Dated: July 17, 2012

Respectfully Submitted,



Kim Knowles
Staff Attorney
Prairie Rivers Network
1902 Fox Drive, Suite G
Champaign, IL 61820
217-344-2371

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APPEARANCE OF DANIELLE DIAMOND

NOW COMES Danielle Diamond, of DIAMOND & LESUEUR, P.C., and hereby enters her appearance in this matter on behalf of the ILLINOIS CITIZENS FOR CLEAN AIR & WATER.

Dated: July 17, 2012

Respectfully Submitted:

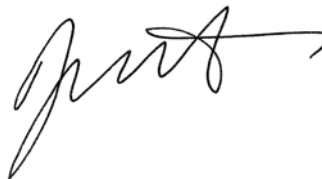


Danielle Diamond
Diamond & LeSueur, P.C.
3431 W. Elm Street
McHenry, IL 60050

CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that I have filed the attached **NOTICE OF FILING** and **ENVIRONMENTAL GROUPS PREFILED QUESTIONS TO SANJAY SOFAT, BRUCE YURDIN** and **DAN HEACOCK**, along with **APPEARANCES OF JESSICA DEXTER, ANN ALEXANDER, KIM KNOWLES and DANIELLE DIAMOND** upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on April 27, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jessica Dexter', with a long horizontal flourish extending to the right.

Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Suite 100
Chicago, IL 60601
312-795-3747

SERVICE LIST

R2012-023

Matthew Dunn, Chief
Division of Environmental Enforcement
Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, IL 60602

Virginia Yang
Deputy Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Brett Roberts
United States Department of Agriculture
2118 West Park Court
Champaign, IL 61821

Ted Funk
Extension Specialist
University of Illinois Extension
332 E. Ag. Eng. Science Building
1304 W. Pennsylvania Ave
MC-644

Warren Goetsch
Illinois Department of Agriculture
P.O. Box 19281
801 East Sangamon Avenue
Springfield, IL 62794-9281

Mitchell Cohen
General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Matt Robert
United States Department of Agriculture
2118 West Park Court
Champaign, IL 61821

Randy Fonner
University of Illinois Extension
332 E. Ag. Eng. Science Building
1304 W. Pennsylvania Ave
MC-644
Urbana, IL 61801

Illinois Department of Public Health
535 West Jefferson
Springfield, IL 62761

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

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

Illinois State University
Campus Box 5020
Normal, IL 61790-5020

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

Alec M. Davis
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, IL 62701

William D. Ingersoll
Brown, Hay & Stephens, LL.P.
700 First Mercantile Bank Building
205 South Fifth Street
P.O. Box 2459
Springfield, IL 62705-2459

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Tim Maiers
Director of Industry & Public Relations
Illinois Pork Producers Associate
6411 5. Sixth Street Frontage Rd. East
Springfield, IL 62707

Nancy Erickson
Illinois Farm Bureau
1701 N. Towanda Ave
P.O. Box 2901
Bloomington, IL 61702

Paul Cope
Illinois Farm Bureau
1701 N. Towanda Ave
P.O. Box 2901
Bloomington, IL 61702

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

Lindsay Record
Executive Director
Illinois Stewardship Alliance
401 W. Jackson Parkway
Springfield, IL 62704

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

Claire A. Manning
Brown, Hay & Stephens, L.L.P.
700 First Mercantile Bank Building
205 South Fifth Street
P.O. Box 2459
Springfield, IL 62705-2459

Jim Kaitschuck
Executive Director
Illinois Pork Producers Associate
6411 5. Sixth Street Frontage Rd. East
Springfield, IL 62707

Bart Bittner
Illinois Farm Bureau
1701 N. Towanda Ave
P.O. Box 2901
Bloomington, IL 61702

Jim Fraley
Illinois Livestock Development Group
1701 N. Towanda Ave
P.O. Box 2901
Bloomington, IL 61702-2901

Illinois Beef Association
2060 West Ties Ave
Suite B
Springfield, IL 62704

Karen Hudson
Families Against Rural Messes, Inc.
22514 West Claybaugh Rd
Elmwood, IL 61529-9457

Jack Darin
Sierra Club
70 East Lake Street
Suite 1500
Chicago, IL 60601-7447

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

Brian J. Sauder
Central Illinois Outreach & Policy
Coordinator
1001 South Wright Street Room 7
Champaign, IL 61802