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Illinois Pollution Control Board  
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PC# 22

**RE: Existing Authority for an Illinois CAFO Registration Requirement – In the Matter of CAFOs: Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504 (R-2012-023)**

The Environmental Integrity Project, Food and Water Justice, Helping Others Maintain Environmental Standards, the Socially Responsible Agriculture Project, Environment Illinois, Rural Residents for Responsible Agriculture, and Concerned Residents Against Pig Confinements hereby submit these comments in support of the Environmental Groups' proposal for the enactment of a registration program for large Concentrated Animal Feeding Operations (CAFOs) in the above captioned matter.

The Illinois Environmental Protection Agency (the Agency) recently issued a memorandum of law analyzing the scope of its authority and the authority of the Illinois Pollution Control Board (PCB) to adopt a CAFO registration program or reporting requirement.<sup>1</sup> The Agency concluded that it cannot "identify an explicit grant of rulemaking authority" applicable to such a requirement and also "cannot successfully argue" that the legislature has granted an implied authority to require information from CAFOs.<sup>2</sup> The Agency's memorandum misinterprets the Environmental Protection Act (the Act), which grants both the Agency and the PCB expansive authority to require such information from all Illinois CAFOs.

1. Illinois Environmental Protection Agency Authority

The Agency is correct that it is not given general rulemaking authority under the Act. The Agency's analysis focuses on the broad authority granted to collect information under section 4 of the Act and which imposes on the Agency:

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<sup>1</sup> Illinois Environmental Protection Agency, Post Hearing Comments, Illinois EPA's Memorandum of Law Regarding Authority for an Illinois CAFO Registration Requirement (Oct. 5, 2012).

<sup>2</sup> *Id.* at 5, 6.

the duty to collect and disseminate such information, acquire such technical data, and conduct such experiments as may be required to carry out the purposes of this Act, including ascertainment of the quantity and nature of discharges from any contaminant source and data on those sources, and to operate and arrange of the operation of devices for the monitoring of environmental quality.

415 ILCS 5/4(b). Though the plain wording of this provision imposes a duty on the Agency to collect and disseminate information, it does not expressly authorize the Agency to impose on others an obligation to provide information.

However, the Agency fails to mention section 4(h) of the Act, according to which “[t]he Agency shall have authority ... to require the submission of such reports regarding actual or *potential* violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, as may be necessary for the purposes of this Act.”<sup>3</sup> 415 ILCS 5/4(h) (emphasis added). This section, in conjunction with section 18(a) of the Livestock Management Facilities Act, 510 ILCS 77/18(a), provided the authority for the Procedures for Reporting Releases of Livestock Waste regulations contained in 35 Ill. Adm. Code 580.100 to 580.106, 580.200 and 580.300.<sup>4</sup> Although the scope of these regulations is narrower than the CAFO registration under consideration, section 4(h) of the Act is sufficiently broad to authorize broader regulations.<sup>5</sup>

## 2. Illinois Pollution Control Board Authority

Section 13(a) of the Act states that “[t]he Board ... may adopt regulations to promote the purposes and provisions of this Title.”<sup>6</sup> 415 ILCS 5/13(a). Section 13 then specifies certain

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<sup>3</sup> The purpose of the Act is “to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.” 415 ILCS 5/2.

<sup>4</sup> Section 18(a) of the Livestock Management Facilities Act requires that “[a]n owner or operator of a livestock waste handling facility shall report to the Agency any release of livestock waste from a livestock waste handling facility or from the transport of livestock waste within 24 hours after discovery of the release. Reporting shall not be required in the case of a release of less than 25 gallons that is not released to the waters of the State or from a controlled and recovered release during field application. For the purposes of this subsection (a), waters of the State do not include small temporary accumulations of surface water from precipitation or irrigation systems. The procedure for reporting releases shall be adopted by the Agency by rule.” 510 ILCS 77/18(a).

<sup>5</sup> A number of Illinois EAD decisions refer to Section 4(h), but they shed no light on this issue.

<sup>6</sup> The purpose of this Title is, in pertinent part, “to restore, maintain and enhance the purity of the waters of this State in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State of Illinois, without being given the degree of treatment or control necessary to

matters which such regulations may prescribe, but expressly does so “[w]ithout limiting the generality of this authority.” According to the Agency, section 13(a) provides “a non-inclusive list.” It is not clear whether they meant to refer to an exclusive list or a non-exclusive list. Clearly any reference to an exclusive list is incorrect. The Agency also states that “[n]one of the topics specifically enumerated in Section 13(a) seem to cover a CAFO reporting or registration program.” While this is true, it is irrelevant in light of the fact that the list is expressly stated *not* to limit the generality of the authority granted in section 13(a).

### 3. Conclusion

The Agency believes that the Act does not provide an explicit grant of rulemaking authority either to itself or to the PCB that would encompass a universal CAFO registration or reporting program. This is incorrect. Although the grants of authority identified above may be broad and non-specific, they are still express grants of authority. It follows that the Agency’s conclusion is based on a misunderstanding of the Act. The same applies to the Agency’s conclusion that the general, implied grant of authority to the PCB in section 13(a) may be insufficient. Though the Agency intends to defer to the PCB on this issue, it should instead revisit its analysis and find that express and implied authority exists currently. A careful reading of the Act undermines the Agency’s final conclusion that the issue can be resolved only by the grant of additional statutory authority from the Illinois General Assembly. We therefore urge the Agency and the PCB to act on this existing authority and include an information collection or registration requirement in the final CAFO regulations.

Sincerely,



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prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with State and federal law.” 415 ILCS 5/11(b).

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