PC#3024

Therriault, John

From: Food & Water Watch <act@fwwatch.org> on behalf of Michael Feltman <michael050303@yahoo.com>
Sent: Wednesday, January 29, 2014 3:38 PM
To: Therriault, John
Subject: Public Comment Supporting R2012-023

Jan 29, 2014

Mr. James Therriault
100 W. Randolph St.
Chicago, IL 60601

Dear Mr. Therriault,

I'm writing in support of the rules outlined in R2012-023 and encourage the Illinois Pollution Control Board to maintain the stringent regulation of Concentrated Animal Feeding Operations.

Specific aspects of R2012-023 that must be preserved include the following:

--CAFOs lacking NPDES permits must provide the EPA with information establishing the 1) identity of their operator, 2) location, 3) number and type of livestock, 4) types of animal holding areas and 5) types and capacity of waste storage structures.

--Reducing the frequency of and tightening requirements surrounding winter application of livestock waste.

--Improving land application requirements to reduce the probability of waterway and groundwater contamination from livestock waste.

--Improving production area requirements to protect U.S. waters and institutionalize routine inspections for leaks, discharges and other problems.

--Tightening regulation of temporary manure stacks to prevent leaching into groundwater and runoff into waterways.

TO IMPROVE THESE RULES, the Pollution Control Board could insist on facility siting setbacks to increase distance from surface waters.

CAFOs dot the Illinois landscape and compromise the health of our environment and neighbors. I urge you to defend the advances achieved by these strong rules and to continue to strive for better environmental protections in the future.

Sincerely,

Michael Feltman

60633-1755

January 30, 2014

PC#3025

Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois

RE: Proposed Rules for Concentrated Animal Feeding Operations (Case No. R2012-023)

Dear Members of the Illinois Pollution Control Board:

I am a farmer and a teacher. My husband and my father are full-time farmers. My husband's family and my family have farmed in Pike County for well over 100 years. As of a few months ago, we have had little experience with CAFOs and their regulation. In the last few weeks we have been introduced to the impacts that a new neighboring CAFO (housing over 9,000 hogs) brings to our land.

While we benefit in no way from the CAFO, we must deal with its impacts. We have serious concerns about our water and how the CAFO will manage its waste now that it's in operation. We live in a karst area and the facility is essentially located on top of a stream that runs through our property. We are already experiencing its smell and constant noise from its fans because it is located directly across the fence from our cornfield and pastures and we know these are just the first signs of things to come when its waste reaches capacity.

When the facility was first proposed, we educated ourselves about the environmental, public health and surrounding property devaluation problems large CAFOs bring to their neighbors. Because of this, and because of what we have learned about the inadequacies of the laws in Illinois that regulate CAFOs, in addition to what we experienced in unsuccessfully trying to obtain details about the facility showing it would be operated responsibly, we urge you to take strong action in this rulemaking.

To this day, I am still shocked that a livestock facility producing the same amount of untreated waste as a small city would be allowed in such an environmentally sensitive karst and watershed area without even close to the same level of site evaluation or environmental due diligence as would be required to put in a septic tank for a single residential home. And to this day, I am still shocked that the facility has not been required to produce a waste management plan to be approved by any regulatory agency or reviewed by the public before or even after being built: Equally shocking is the fact that, according to the Department of Agriculture (DOA), they have NEVER denied an application to construct a livestock facility in Illinois – not one. How can all this be when the widespread negative impacts of CAFOs to our air and water in Illinois are so well documented? These circumstances should give the Board motivation to ensure that the Illinois EPA's regulations are adequate, especially since they are intended to regulate pollution from CAFOs after DOA allows construction.

The Board is in a unique position today to correct problems with the state's regulation of CAFOs and to ensure farmers and rural residents like me and my family have our rights to clean air, water and property protected. You can do this by first requiring all CAFOs to register with the Illinois EPA. The Illinois EPA has no viable way of keeping track of how many, how big, and where these CAFO's are. (Note, even the Department of Agriculture has admitted to me that they don't even know how many livestock operations there are in Illinois.) How else can the Illinois EPA monitor their effect on our environment without a systematic reporting system? The Board should also require CAFOs to submit their waste plans when they register with the Illinois EPA. This will give the Agency at least some ability to identify problem facilities that don't have plans to manage their waste.

I strongly believe more stringent standards are needed for waste disposal in karst areas. The very definition of a karst area is soluable bedrock. The words SOLUABLE BEDROCK and MANURE APPLICATION should not be in the same sentence. I DO NOT WANT TO DRINK MANURE WATER.

Please enact setbacks for CAFOs from surface waters. It goes against common sense to site a facility with thousands of animals and millions of gallons of waste atop our precious waterways.

More stringent requirements for winter manure application on frozen and snow-covered ground should also be enacted. There is no agricultural reason to land apply in these conditions because manure will NOT be absorbed into frozen soil. It will inevitably run off onto lower ground and into waterways. Also, stronger requirements for temporary manure storage are needed for the same reason. Otherwise, contaminants will seep into surface and ground water. AGAIN, I DO NOT WANT TO DRINK MANURE WATER. DO YOU?

And finally, please require all CAFOs to follow the same waste management standards. How will our system be improved if the bulk of the Board's new clean water regulations only apply to a tiny fraction of Illinois CAFOs?

As you consider a final set of CAFO regulations, I ask you to imagine a livestock operation housing 9,000+ animals being built adjacent to your homes. Would you not wish for stronger protections for you and your family? I love living on the farm. I would hate to move to town just to have fresh air and clean water.

Proud to be an Illinois Farmer,

Barbara Risley
35287 390th St.
Griggsville, IL 62340

January 30, 2014

Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois

PC# 3026

RE: Case # R2012-023

Dear Pollution Control Board Members:

I congratulate Illinois Pollution Control Board for having advanced as far as it has in proposing some enhancements to the state's regulation of Confined Animal Feeding Operations (CAFOs) in Case #R2012-023.

In its current consideration of the limits and particulars of ***possible further regulations*** of these facilities, I think it is crucial that IPCB keep in the forefront of its communal mind some critical factors in the existing CAFO regulatory climate.

Anyone who hopes to correctly and fairly assess the need for regulation in this area must keep constantly in mind that there is an elephant in any room where people gather to consider fair regulation of these facilities, and that elephant is the LMFA, the Livestock Management Facilities Act, the law dictating exact terms for the permitting of these facilities.

With this legislation in control of the issue, any agency or official attempting to put any constraints on pollution by these facilities finds himself with one arm tied behind his proverbial back.

I urge you to review the history of this area of state operation -- particularly in the context of a recent case before you (PCB2011-068) as an excellent example -- in order to appreciate why anyone attempting to bring reason to the arena of CAFO regulation enters it in chains.

So much of the need for remedial environmental regulation of these facilities stems from the deficiencies of the LMFA, a statute from May, 1996, 510 ILCS 77, modified in 1998 and 1999.

The law was little noticed outside the agricultural community at its passage, but has come to be viewed by many as an onerous mistake in state policy and a legally flawed mechanism which enables a few business interests, many from outside the state, to take advantage of the state's economic-development aspirations at the expense of its natural resources and safety.

As we know, possibly the most effective way to avoid regulation by government is to saddle that government with impotent regulation. As a striking example of this, I call to your attention the recent case of the mercifully short-lived "Traditions" Dairy of Jo Daviess County, a case in which 510 ILCS 77 served that nefarious purpose well.

A MATTER OF LAW. 510 ILCS 77 appears to have internal contradictions, conflicts of interest and other self-defeating legal defects which allow the creation of CAFOs which are by their very unregulated nature virtually guaranteed to become the subjects of environmental attention by state regulators.

THE ACT IN BRIEF. The Act forces all of the state's regulatory apparatus to stand aside as limited liability corporations install oversized water-devouring leviathons in Illinois simply by complying with a set of "undersized" site requirements specified in the Act.

The Act specifies that the Illinois Agriculture Department is the sole party to determine the suitability of the individual operation. This exclusiveness was prescribed despite (a) its negative implications for the safety and sustainability of the state's water supply and other natural resources, (b) what should be the logical inclination to involve Illinois EPA, the State Geological Survey, the Attorney General and others, and (c) an obvious conflict-of-interest in the Department of Agriculture's role. (See #10 below)

The Act's inherent defects are many. In detail:

1) WHO IS THE APPLICANT? It fails to subject the applicant operator to any tests of ability and willingness to comply with its own environmental provisions. Hundreds of thousands of Illinois professionals and businesses, from beauticians to furnace installers, brokers to attorneys, are subject to state licensing strictures that include not only professional qualifications but also quasi-moral requirements of character, where licensing can be denied upfront or later suspended for past transgressions, report omissions, discrimination and other turpitude.

Unlike the licensing and regulation of so many professions and businesses, permitting of large factory farms in Illinois does not require even a cursory investigation of the past practices of an applicant. The health of the state's water and air are far less important to protect, says 510 ILCS 77, than someone's fingernails, coiffure or heating pipes.

Past performance, e.g. taking advantage of loopholes to expand facility size unreasonably, histories of multiple nuisance and worker complaints, repeated infractions of environmental requirements, broken on-the-record promises -- all of these should be indicators of willingness or unwillingness to comply.

2) SIZE COUNTS. The Act fails to distinguish between operations of 500, 800, 1,000 cows -- and those housing 5,000, 10,000, including one now under Agriculture Department consideration that would house an initial population of 13,000, and could grow to 50,000. This lack of specificity takes no account of the considered opinion of the engineering and scientific community that the scope of a facility can of itself produce impermissible economic and environmental burdens.

The sheer magnitudes of these mega-farms are what make them unacceptable. Their environmental weight creates the spread of methane/ammonia clouds, the burden on local area water supplies and the grave danger of massive contamination to local surface and underground water. Our earth has always been able to survive and thrive on the reasonable impacts of small farming; no local environment can survive the crush of a mega-farm.

The Act includes a provision that "restricts" the operator to expanding any permitted herd by one-half again its size (measured by dollar expenditure) every two years without requirement of further permit/review. This provision alone would seem to represent a dereliction of the Act's pretense at regulation.

In the case which I urge you to bring back to mind, the 2008 proposal was for a 12,000-plus concentration of confined cows in Jo Daviess County. The applicant, A.J. Bos, of water-starved Bakersfield, California, thus could in just six years expand to a concentration of 40,000-plus animals. In two further years, a permissible 20,000 more cows would exceed even the largest of his other holdings, the Three-Mile Canyon farm in Oregon, where 52,000 animals were permitted.

3) WHOSE WATER? The Act takes no account of the burden one operation of this scale places on local water supplies. In the Jo Daviess case, the applicant proposed to use about 1,000,000 gallons of water per day from an aquifer located about 500 feet below the surface, the same aquifer from which the towns of Nora, Warren and Lena take their combined 500,000 gallons of drinking water. As we know these aquifers do not replenish themselves year-to-year from rainfall. The state's own hydrogeologists cannot say when, but that aquifer will be emptied at some point. At that point, the CAFO that in large part causes the exhaustion of water would close and the cows would be moved elsewhere. The rest of eastern Jo Daviess County would be stuck there with no water. While purporting to deal with environmental concerns, the Act omits perhaps the greatest danger to the local ecology, the loss of water.

4) NO ASSESSMENT OF DANGER. During the CAFO permitting process Illinois EPA as custodian of the state's water and air is not permitted by 510 ILCS 77 to make any assessment of the likelihood that the proposed facility will come into violation of EPA's strictures. Even without additional manpower, EPA could easily make projections and recommendations based on the environmental safeguards named in the application if it were allowed input during the permitting process. Instead, EPA is cut out of the permitting process, then stuck with dealing with violations the permitted facilities incur, and apologetically imposing inconsequential fines.

The IEPA's 2005 Livestock Facility Investigation Annual Report documented that of 172 facilities surveyed, the following had regulatory violations:

Water quality standards 26

Effluent standards 18

Runoff control requirements 54

Handling/storage requirements 77

Field application criteria 9

Altogether, 36% of livestock facilities had one or more regulatory violations. Sixty-eight percent of dairy operations (such as the one proposed for Jo Daviess County) had violations.

5) CONDONES INSUFFICIENT STANDARDS. The Act encourages profit-driven mega-farm operators to build and operate "on the cheap" by failing to require common, available, industry-standard safeguards against leaks and fumes. By continuing to use 510 ILCS 77 as its sole standard in the permitting process, Illinois Agriculture Department encourages deficiencies and generates a minimalist climate.

To use the instant case as an example again, throughout the application process and even after becoming aware of the environmental evidence mounting against him, the applicant A.J. Bos formally stated in his testimony before the Jo Daviess County Board that he would not employ any of the already common safeguards such as waste lagoon covers, concrete pond linings, manure digesters or incineration. That attitude represented some level of confidence in the deficiencies of 510 ILCS 77.

6) TWO BITES AT THE APPLE. Under the Act the Department of Agriculture invites the judgment of county and township governments by mandating public hearings to judge the desirability of the application, then allows Agriculture to ignore those assessments in deciding the permit issue.

In those hearings on the 8 environmental and economic criteria prescribed by the Act, the Jo Daviess County Board learned from the state's own scientists that the hills of the area possess rock formations, fissures, old mines, and other characteristics that make pollution of its groundwater and rivers by the "Traditions" facility a certainty. That is why the County Board voted against recommending the facility and forwarded the damning scientific documents to the Agriculture Department.

But the Agriculture Department has ignored other county boards in the past, and its Director and his functionaries ignored the plea of Jo Daviess citizens and permitted the "Traditions" facility whose later history of dangerous pollution is well known to IPCB.

Thus, under Illinois current CAFO permitting, the applicant is "given a Mulligan," a chance to go back to the tee and swing again. Such is the voluptuous vagueness of authority and responsibility in 510 ILCS 77.

IS HIS CONFIDENCE JUSTIFIED? The most telling point about the statewide implications of the Jo Daviess case is that, after 40 experts and citizens testified over the course of three hearings as to the imminent environmental and life-quality threat posed by his "Traditions" farm, the only assertion the developer could make when he stood before the Jo Daviess County Board was, "I can assure you this facility plan complies with the Illinois Livestock Management Facilities Act."

Yes, it was almost true. But for the unique geological features of the immediate area as cited by the state's own geologists, the developer was correct. What more damning condemnation of the Act itself could there be than the fact that this Early-Industrial-Age monster which the California developer got mostly built and almost operating in the stream-laced fields of Jo Daviess County could actually be just a hair short of compliance with the non-regulation that is 510 ILCS 77? And then, despite the failure to meet the Act's very own 8 criteria, still receive a permit from the Illinois Agriculture Department?

7) TIME TO DIG TRENCHES. Those who contested the placement of this facility in our midst had only 6 weeks following the moment when someone noticed what was happening to us to become aware of the threat, muster our friends and neighbors to awareness, research and educate ourselves and others, turn out for multiple meetings and finally convince our County Board to oppose the application for our health and well-being. Under the scheduling of 510 ILCS 77, the applicant had unlimited time before applying to get all ducks in line, all arguments rehearsed, all witnesses lined up, all lobbying accomplished. Just the time constraints upon a locality's population -- several months if everyone in the county read the paper every day, but realistically only several weeks -- militates against fairness.

8) CONFLICT OF INTEREST. The Illinois Department of Agriculture is charged with promoting agriculture, and it does so unblushingly. Its leadership over the years has been culled from farm lobbyists and Farm Bureau Federation people, but usually they are not the guys with 40 cows and 200 chickens. While most of the Farm Bureau's membership are not operators of CAFOs, the Bureau paradoxically but not surprisingly supports these mega-farm-factories openly, for reasons known only to those who study the relationship between politics and money.

When the Agriculture Department promotes any agriculture it sees, but then is called upon to pretend to discern which agriculture is good for Illinois and which is not, it is not surprising that it is ineffective at the latter task. If by nature, the Ag Department is thus more sympathetic to any enterprise that calls itself agriculture than to affected neighbors who oppose that enterprise, that is also not surprising. But to situate the Department at this crossroads is to invite, foster and guarantee unequal treatment before the law, and, until that law is greatly modified, **should be considered regulatory imbalance which should be offset elsewhere.**

Even if there were some form of outside oversight of the process, it is still far more than an impropriety for the Department of Agriculture to be a proponent and a regulator at the same time. When the power of regulation is conferred on a party with a vested interest and vested bias, that should be deemed a conflict of interest and, again, that is unfair and unconstitutional.

STATEWIDE IMPLICATIONS. The struggle against "Traditions" Dairy in Jo Daviess County was never solely about Northwest Illinois. "Traditions" had backers in a lot of high places in government and Big Lobbying. Had the megadairy not been pushed back and plowed over, it is more than likely that what the IPCB is now considering would be far different from what is before us now. The current matter before IPCB is being closely watched all over the United States, particularly in the waterless West where CAFO operators view Illinois as the promised land of lax regulation and free Illinois water as the holy grail of natural resource booty.

LONG TERM. In the long term, we are urging that responsible authorities continually harangue the Illinois Legislature regarding its duty to acquaint itself with the dangers of oversized factory farms and, for the good of future Illinois generations, begin to take actions to remedy 510 ILCS 77 and its effects.

THE IMMEDIATE NEED. But, bogged down to the point of craven impotence, the Illinois Legislature is unlikely to appreciate much more than its own pain and probably will pass only gun-to-the-head and knee-jerk legislation in the immediate future. So, in the present situation, an unimproved and thus continually ineffective 510 ILCS 77 will continue to be the sole arbiter of which excesses in animal husbandry are okay to permit.

The Illinois Pollution Control Board turned out to be the venue of redress for the citizens of Jo Daviess County in its struggle against "Traditions."

In the matter before it (R2012-023), IPCB is asked by the regulatees to tacitly ignore as an unfair advantage the regulatory vacuum that results from the permitting process dictated by LMFA.

Thus, IPCB is asked to regard the regulatees as having equal sympathetic standing with the public-interest parties who correctly perceive that this struggle over the state's water resources was never a "fair fight" in the first place because of the LMFA's effects.

I ask that IPCB keep in mind throughout the hearing process the unfair regulatory advantage imposed by LMFA and create regulation appropriate to redress the imbalance in the state's interest.

Thank you for your time and attention.

Bern Colleran
Warren, Illinois