

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)

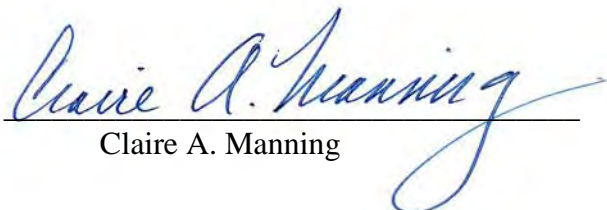
NOTICE OF ELECTRONIC FILING

TO: *SEE ATTACHED SERVICE LIST*

PLEASE TAKE NOTICE that on February 21, 2014, on behalf of ILLINOIS PORK PRODUCERS ASSOCIATION, ILLINOIS FARM BUREAU, ILLINOIS BEEF ASSOCIATION and ILLINOIS MILK PRODUCERS ASSOCIATION, I have filed the AGRICULTURAL COALITION'S RESPONSE TO ENVIRONMENTAL GROUP'S FIRST NOTICE COMMENTS, copies of which are also herewith sent to the attached service list.

Dated: February 21, 2014

Respectfully submitted,

By: 
Claire A. Manning

BROWN, HAY & STEPHENS, LLP

Claire A. Manning
Registration No. 3124724
William D. Ingersoll
Registration No. 6186363
Daniel Hamilton
Registration No. 6312982
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
cmanning@bhsllaw.com

THIS FILING IS SUBMITTED ELECTRONICALLY AND SERVED ON RECYCLED PAPER

PROOF OF SERVICE

I, Claire A. Manning, certify that I have served the AGRICULTURAL COALITION'S RESPONSE TO ENVIRONMENTAL GROUP'S FIRST NOTICE COMMENTS, by US Mail, first class postage prepaid, on February 21, 2014 to the following:

Jane McBride
Matthew J. Dunn
Assistant Attorney General
500 South Second Street
Springfield, IL 62706

Deborah J. Williams, Assistant Counsel
Joanne M. Olson, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19726
Springfield, IL 62704-9276

Alec M. Davis
Illinois Farm Bureau
1701 N. Towanda Ave.
PO Box 2901
Bloomington, IL 61702

Lauren Lurkins
Illinois Farm Bureau
1701 N. Towanda Ave.
PO Box 2901
Bloomington, IL 61702

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

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

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

Alec Messina
Illinois Environmental Regulatory Group
215 E. Adams Street
Springfield, IL 62701

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

Jim Kaitschuk
Illinois Pork Producers
6411 S. Sixth Street
Frontage Road East
Springfield, IL 62707

Tim Maiers
Illinois Pork Producers
6411 S. Sixth Street
Frontage Road East
Springfield, IL 62707

Warren Goetsch
Shari L. West
Illinois Department of Agriculture
P.O. Box 19281
801 E. Sangamon Avenue
Springfield, IL 62794

Jessica Dexter
Environmental Law and Policy Center
35 E. Wacker Drive
Suite 1600
Chicago, IL 60601

Jack Darin
Sierra Club
70 E. Lake Street, Suite 1500
Chicago, IL 60601

Lindsay Record
Executive Director
Illinois Stewardship Alliance
230 Broadway Street
Suite 200
Springfield, IL 62701

Mike Mankowski
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

Stacy James
Prairie Rivers Network
1902 Fox Drive, Suite G
Champaign, IL 61820

Kim Knowles
Prairie Rivers Network
1902 Fox Drive, Suite G
Champaign, IL 61820

Marvin Traylor
Executive Director
Illinois Association of Wastewater Agencies\
241 N. 5th Street
Springfield, IL 62701

Ann Alexander
20 N. Wacker Drive
Suite 1600
Chicago, IL 60606

Brett Roberts
USDA
2118 W. park Court
Champaign, IL 61821

Matt Roberts
USDA
2118 W. park Court
Champaign, IL 61821

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

Jim Fraley
Illinois Milk Producers Association
1701 N. Towanda Ave.
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

Ester Liberman
League of Women Voters of Jo Davies County
815 Clinton Street
Galena, IL 61036

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

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

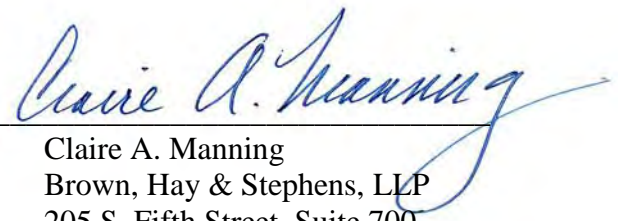
Danielle Diamond
Illinois Citizens for Clean Air & Water
3431 W. Elm Street
McHenry, IL 60050

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

Reid Blossom
Executive Vice President
Illinois Beef Association
2060 W. Iles Ave., Suite B
Springfield, IL 62704

Bill Bodine
Illinois Farm Bureau
1701 N. Towanda Avenue
P.O. Box 2901
Bloomington, IL 61702-2901

By: _____



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

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)

AGRICULTURAL COALITION’S RESPONSE TO ENVIRONMENTAL GROUPS’ FIRST NOTICE COMMENTS

Now comes the Agricultural Coalition (“Coalition”), comprised of THE ILLINOIS PORK PRODUCERS ASSOCIATION, THE ILLINOIS FARM BUREAU, THE ILLINOIS BEEF ASSOCIATION, AND THE ILLINOIS MILK PRODUCERS ASSOCIATION, by and through its counsel, BROWN, HAY & STEPHENS, LLP, and respectfully presents to the Illinois Pollution Control Board (“Board”) the following Response to the First Notice Comments submitted by Prairie Rivers Network, Illinois Citizens for Clean Air and Water, the Environmental Integrity Project, and Environmental Law & Policy Center (“Environmental Groups”).

I. INTRODUCTION

The Coalition continues to appreciate the opportunity to provide public comments regarding the proposed rule submitted by the Illinois Environmental Protection Agency (“IEPA” or “Agency”) and acknowledges and appreciates the time spent by the Board, including its members and staff, on this rulemaking. The Coalition welcomes the proposed rule, believes it to be a major step forward in the protection of the environment, and continues to support an effective and practicable rule that is clear and understandable for those tasked with compliance. This Comment is a concise response to the First Notice Comments filed by the Environmental Groups (PC #3031, filed on January 30, 2014) to address specific issues raised and reiterated by the Environmental Groups. The Coalition continues to support the comments it previously submitted in this rulemaking, including the Coalition’s Pre-First Notice

Public Comment (PC #19, filed January 16, 2013), the Coalition's Pre-First Notice Post Hearing Responsive Comment (PC #28, filed on January 30, 2013), and the Coalition's First Notice Public Comment (PC #3030, filed on January 30, 2014).

II. TECHNICAL STANDARDS

In their First Notice Comments, the Environmental Groups again advocate for the Board to adopt technical standards for land application for permitted Concentrated Animal Feeding Operations ("CAFOs"), and apply those standards to all large CAFOs. The Environmental Groups assert that the current rule language allows the unpermitted large CAFOs to "avoid proven safeguards for agronomic waste application". (PC #3031, p. 2). Such a claim is unreasonable and inaccurate.

The technical standards applicable to permitted CAFOs are a result of the actual discharge that is taking place, thus necessitating a permit. The rules require certain steps for compliance from permitted CAFO facilities, and reporting various activities to IEPA. All farms and CAFOs, regardless of permit status and size, seek to avoid discharges due to the nutrient value needed for the crops, the potential for increased regulation, the potential damage to the environment, and other possible results adverse to the interests of the farm. The Environmental Groups' claims are little more than broad assumptions, and they completely lack evidentiary support.

The Board has already considered testimony and evidence offered by the Environmental Groups on this issue, and correctly rejected the Environmental Groups argument in the First Notice Opinion and Order. In *The Matter Of: Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504*, PCB R12-23, pp. 170-171 (November 7, 2013) (hereinafter "Order"). The Board rejected the Environmental Groups' proposal because it would reduce the flexibility built into the rule by IEPA, and the rule as proposed by IEPA "appropriately implements the

federal CAFO rule as to requirements for unpermitted Large CAFOs.” *Id.* at 171. The Board has already found that the technical standards applicable to permitted large CAFOs should not be imposed on unpermitted large CAFOs, and Environmental Groups provide no new or persuasive arguments upon which the Board would be compelled to change direction. As such, the Board’s earlier finding should not be disturbed.

III. REPORTING

The Environmental Groups not only continue to urge the Board to adopt a reporting and registration rule, but also support the mandatory disclosure of additional information in that process. In lieu of repeating all its previous arguments on this issue, the Coalition incorporates herein the relevant portions of the Coalition’s First Notice Public Comment. The additional information sought by the Environmental Groups includes: (1) the number of acres available for land application of waste; and (2) for facilities that have them, CAFO waste management plans.

IEPA has created a CAFO inventory, and has stated that the CAFO inventory is maintained and updated on a regular basis in order to form a comprehensive inventory of CAFOs. IEPA’s Post Hearing Comments at p. 14 (PC #17, filed on January 16, 2013). Thus, it is apparent that IEPA believes that the inventory is sufficient without the information required in the Board’s First Notice Opinion and Order, or the additional information now sought by the Environmental Groups. The Coalition agrees with the Agency on this point, and strongly opposes the imposition of mandatory requirements that serve no apparent regulatory purpose. Even if the Board disregards the legal and practical arguments proffered by the Coalition as to the lack of authority and necessity for the reporting and registration rule, the two pieces of information now sought by the Environmental Groups are irrelevant to the formation of a CAFO inventory.

The additional information the Environmental Groups' are now seeking only heightens the concerns previously raised by the Coalition. All of the information submitted pursuant to a reporting and registration rule would be subject to public release through the Freedom of Information Act ("FOIA"). 5 ILCS 140/3. Any person or entity would be able to access that information, and use it to make allegations against farmers who are not themselves directly subject to the CAFO rules. Because the information now sought by the Environmental Groups has no relevance to the creation of a CAFO inventory, and appears to only provide more information to those seeking to unreasonably interfere with legitimate farming operations, such information should not be subject to regulatory disclosure.

Also, as to the request that CAFO waste management plans be mandatorily disclosed as part of a registration and reporting rule, the Environmental Groups admit in their First Notice Comments that "[o]nly CAFOs required to have NPDES permits by the IEPA are required to submit their nutrient management plans for approval." PC #3031, p. 9. The purported rationale for the submission of waste management plans is to provide "another tool for the [IEPA] to fulfill its regulatory duties." *Id.* The IEPA has not requested such a tool from the Board, presumably because such a tool would be needed. The IEPA has stated that a registration and reporting rule was not necessary for creation of the CAFO inventory, and the collection of unnecessary data would not assist in the creation thereof. Order at pp. 183; 247.

Currently, under the Livestock Management Facilities Act ("LMFA"), waste management plans, for facilities with over 5,000 animal units, are filed with the Illinois Department of Agriculture ("Department"). 510 ILCS 77/20; 8 Ill. Adm. Code Section 900.802. Facilities with 1,000 to 5,000 animal units must provide certification to the Department that they have waste management plans and, further, must make them available upon inspection by the Department. *Id.* Thus, the submission of waste

management plans to IEPA, pursuant to a registration and reporting rule, is unnecessary and without sufficient administrative benefit to outweigh the burden to compliant farmers.

IV. SETBACK ISSUES

The Environmental Groups also continue to encourage the Board to adopt production area setbacks in Section 501.402. PC #3031, p. 10. The Board has already considered testimony and evidence from the Environmental Groups on this issue, and correctly rejected the invitation to include such setbacks in its First Notice Opinion and Order. Order at p. 201. The Environmental Groups fail to provide any new relevant information on the topic in their First Notice Comments. Also, the Coalition herein incorporates the arguments previously made in its First Notice Public Comment that address the authority of the Board to promulgate a rule regarding setback and siting requirements, and supports the Board's finding that there is no basis in the record for the modification of any setbacks in the context of this rulemaking. *Id.*

The Environmental Groups attempt to support the request for setbacks with a purported economic impact opinion, based on a "quick analysis", provided by a University of Illinois economist. PC #3031, p. 10; PC #3031 Attachment 4, p. 1. The opinion fails to add substance to the request for setbacks, as the cover letter to the opinion explicitly states that the opinion does not "provide a precise quantification of expected impacts". PC #3031 Attachment 4, p. 1. The opinion is speculative in that it states that "there *may* be economic impacts of the setback rules on downstream water users", and "there *may* be economic impacts on livestock management or livestock waste handling facilities resulting from the setback rules". *Id.* at 2 (emphasis added). These purely speculative findings, unaccompanied by any substantive analysis, data sets, or in-depth reasoning, fail to provide the Board with any new relevant information upon which to change its previous decision. Moreover, the Coalition cautions the Board

against relying on such speculative opinions, as they have not been subjected to the type of participant analysis and investigation that is common and expected in Board regulatory proceedings.

Also, the Environmental Groups do not appear to appreciate that a variety of different factors are considered in farm siting, and further regulation will exponentially increase the practical difficulty of doing so. The current siting criteria contained in the LMFA (510 ILCS 77/12) provides a sound basis for evaluation of the environmental impacts associated with farm siting, but the LMFA criteria are in addition to the practical considerations that farmers use to evaluate a potential site. The practical considerations may include property costs, availability and costs of utilities, current roads, necessary earthmoving work, the daily inconvenience caused by a poor location, environmental considerations relevant to the specific location, surrounding topographic and landscape features, and a host of other potential issues. The additional regulations suggested by the Environmental Groups will only increase the burden on farmers in the process of siting a facility, unnecessarily add to the list of required regulatory considerations, and reduce the number of sites that are available for production.

V. CONTRACTORS AND INTEGRATORS

In the First Notice Opinion and Order, the Board requested comment from the Environmental Groups regarding its proposal to include, as permit application requirements in Section 502.201(a)(2), information related to contractual relationships between owners or operators or others who might have investment or other business interests in the CAFO operation. Order at p. 256. The Coalition herein incorporates the arguments previously made in its First Notice Public Comment regarding Board Question Number 4, and also notes that the Environmental Groups' First Notice Comments, in responding to the Board's request, fails to provide an adequate rationale for permit applications to require such information.

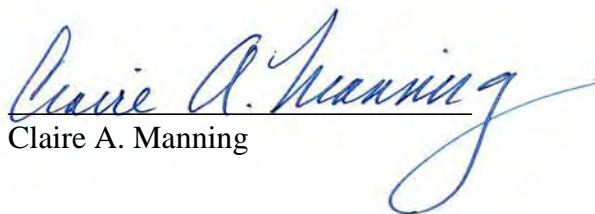
First, the Environmental Groups make several assumptions and logical leaps to create a connection between the location of CAFOs near integrators and increased potential for water pollution. For instance, the Environmental Groups cite to the preamble of the USEPA's now defunct 2001 Proposed CAFO rule as the basis of the claim that CAFOs tend to become concentrated in a given geographic area, and that concentration may lead to excess manure nutrients in that region. PC #3031, p. 15. The Environmental Groups then again assert (contrary to those proposed by IEPA) what tools are best utilized for enforcement by advocating for disclosure of integrators to "evaluate if there is a common integrator in an applicant's geographic region". *Id.* This mechanism is suggested because certain Illinois facilities "are believed" by the Environmental Groups to "not have adequate land to dispose of waste they are producing." *Id.* Unnamed and uncited citizen reports are then provided as evidence to assert that sharing of land application areas is occurring between contract operations.

The entire argument is based on speculation and assumptions of unnamed and uncited sources. Clearly, it would be wholly unreasonable for the Board to rely on such statements when promulgating rules. Further, as all the purported evidence is based on speculation, there is no record evidence that there has ever been a problem arising due to the relationship between an integrator and multiple CAFOs. Also, livestock facilities may work with custom manure haulers in the management of livestock waste. One custom manure hauler may apply manure for multiple farms, but each farm is required to develop its own manure management plan for livestock located at the particular farm, with the necessary landmass available to utilize nutrients. In short, the arguments made by the Environmental Groups are insufficient to support the disclosure of contractors or integrators.

VI. CONCLUSION

The Coalition appreciates the opportunity to comment and is ready to answer any questions should the Board need clarification. The Coalition also appreciates the time and effort of the Board and its staff on this important rulemaking and looks forward to the Board moving the rule to Second Notice and final rule.

Respectfully Submitted,


Claire A. Manning

BROWN, HAY & STEPHENS, LLP

Claire A. Manning
Registration No. 3124724
William D. Ingersoll
Registration No. 6186363
Daniel Hamilton
Registration No. 6312982
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
cmanning@bhslaw.com