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June 26, 2014

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CLERK'S OFFICE

JUL 03 2014

STATE OF ILLINOIS
Pollution Control Board

Dr. Deanna Glosser, Chair
Pollution Control Board
c/o John Therriault, Clerk
100 W. Randolph Street
Suite 11-500
Chicago IL 60601

P.C. #
3047

Re: General Provisions (35 Ill. Adm. Code 501; 37 Ill. Reg. 18974)
Permits (35 Ill. Adm. Code 502; 37 Ill. Reg. 19005)
Implementation Program (35 Ill. Adm. Code 504; 37 Ill. Reg. 19074)

Dear Chair Glosser:

As you know, JCAR is in the process of considering the Board's three rulemakings cited above. Consideration was extended at the May meeting and, at the June meeting, the Committee chose to defer action until the 7/15/14 meeting.

As Co-Chairs of JCAR, we would like to share with you the major concerns the committee has with this package of rulemakings. They are largely technical in nature, and we would like to give the Board the opportunity to repair these issues prior to JCAR's final consideration.

First, JCAR is concerned about the proposal in 35 Ill. Adm. Code 501.505 that CAFOs not covered by an NPDES permit submit certain information about their operations to EPA. It is not clear whether the information you are asking for is the same information EPA already collects under an agreement with USEPA, with the help of the Departments of Agriculture and Public Health, or whether this is an additional, and arguably redundant, submission. EPA indicates that all the information you are requiring is already part of EPA's database, with two partial exceptions. Sec. 501.505(c)(2) of your rulemaking requires the CAFO to submit the location of the facility by street address or latitude and longitude, and subsection (c)(3) requires the same information in terms of county, township, section and quarter. EPA has collected this information in terms of latitude and longitude only, believing this to be the most specific locator, and sees no reason to collect the other two versions of the same information. Subsection (c)(4) requires the animal type and maximum number of each animal type (it is unclear whether this

reference to maximum animal type means the maximum actually housed at the time of reporting or over the facility's entire history, or the maximum capacity of the facility regardless of whether it has ever been filled) for the previous 12 months. EPA says it maintains this information, updated based on the facility's most recent permit application or inspection or on the most recent data submitted to DOA or DPH. This may be more or less frequently than 12 months.

We understand that your rulemakings were generated before EPA's current data collection process was devised and operating, but it appears that Section 501.505 is now redundant. Redundancy in State government mandates is rarely considered by JCAR to be appropriate.

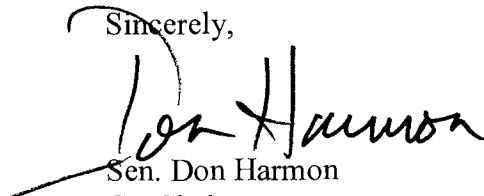
The second issue is largely a technical one. The requirement in 35 Ill. Adm. Code 502.510(b)(13) that the CAFO's plan for inspection, monitoring, management and repair of subsurface drainage systems at waste application sites include "visual inspection" has caused confusion in the affected community. Agricultural interests are concerned that visual inspection could be interpreted as actually viewing the drainage system, which could be a virtual impossibility if the landowner did not lay the tiles and does not have a map from the person who did. Concern has been expressed that this requirement could mean removing crops and ground cover so the tiles can be seen. The problem here is the lack of a definition of the term "visual inspection". PCB staff has indicated that, with no definition, the Board would probably rely on EPA testimony in your docket describing what it considered to be an adequate visual inspection. JCAR asked EPA to restate that testimony in rule terms, with the following result: "For the purposes of this subsection (b)(13), visual inspection means inspection by a person of the tile inlet, tile outlet and unobstructed land surface to assess the structural stability of the subservice drainage system."


To leave this term undefined is not good public policy and creates an undue hardship for the regulated community. We hope that the Board can address this issue through a simple clarification in this rule of its intent.

Various JCAR members have also expressed concern about some of the standards the Board has chosen to rely on in this rulemaking; e.g., a proposed Wisconsin standard that Wisconsin itself has reportedly failed to adopt and an NRCS standard that NRCS now considers to be obsolete.

If you would like to offer any further input on these issues to JCAR prior to its 7/16/14 meeting, please contact the JCAR office.

Sincerely,


Sen. Don Harmon
Co-Chair


Rep. Tim Schmitz
Co-Chair

cc: Jennifer A. Burke
Jerome D. O'Leary
Carrie Zalewski