

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2012

IN THE MATTER OF:)
)
AGRICULTURE RELATED WATER) R12-23
POLLUTION FROM CONCENTRATED) (Rulemaking - Water)
ANIMAL FEEDING OPERATIONS)
(CAFOs): PROPOSED AMENDMENTS TO)
35 ILL. ADM. CODE PARTS 501, 502, AND)
504)

ORDER OF THE BOARD (by T.A. Holbrook):

On March 1, 2012, the Illinois Environmental Protection Agency (Agency or Illinois EPA) filed a proposal to amend Parts 501, 502, and 504 of the Board’s agriculture related water pollution regulations. *See* 35 Ill. Adm. Code 501, 502, 504. Accompanying the proposal were a number of documents including a Statement of Reasons (SR). *See* 35 Ill. Adm. Code 102.202 (Proposal Content for Regulations of General Applicability).

The Agency states that the rulemaking proposal has two chief purposes. First, the Agency seeks to amend Parts 501 and 502 “so that they are consistent with, and as stringent as, the current federal CAFO regulations.” SR at 32. The Agency argues that failure to adopt these proposed amendments “could result in withdrawal of federal delegation of the NPDES [National Pollutant Discharge Elimination System] program itself to the State of Illinois.” *Id.* Second, the Agency seeks “to establish the state technical standards which are mandated by the federal rule, but not prescribed for the states.” *Id.* at 33. The United States Environmental Protection Agency has indicated that “Illinois still needs to establish standards that address the rate at which manure, litter, and process wastewater may be applied on crop or forage land where the risk of phosphorus transport is high, as well as standards for land application on frozen soil and snow.” *Id.*, citing Attachment 8.

With its proposal, the Agency submitted a motion for waiver of copy requirements (Mot.). In its motion, the Agency notes that the Board’s procedural rules require filing an original and nine copies of each rulemaking proposal. Mot. at 1, citing 35 Ill. Adm. Code 102.200. The Agency states that its proposal in this matter “is thousands of pages in length.” Mot. at 1; *see* SR at 95-97 (listing 40 attachments). Based on that length and the resources necessary to submit nine copies, the Agency “requests that the Board waive the normal copy requirements of Section 102.200 and allow the Illinois EPA to instead file the original and four complete copies of the proposal, plus five partial copies containing the pleadings, Statement of Reasons and proposed amendments.” Mot. at 1.

Section 101.500(d) of the Board’s procedural rules provide in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its

disposition of the motion.” 35 Ill. Adm. Code 101.500(d). Having reviewed the substance of the motion, and in the absence of any response, the Board grants the Agency’s motion for waiver. Specifically, the Board allows the Agency to file an original and four complete copies of the documents comprising its rulemaking proposal and five partial copies containing the pleadings, Statements of Reasons and proposed amendments. In this regard, the Board notes that the Clerk has provided access to the documents through the Clerk’s Office On-Line (COOL) under this docket number R12-23.

The Board finds that the Agency has satisfied the content requirements at Section 102.202 of its procedural rules (35 Ill. Adm. Code 102.202) and accepts the Agency’s proposal for hearing. The Board directs its assigned hearing officer to schedule and proceed to hearing under the rulemaking provisions of the Act and the Board’s procedural rules. 415 ILCS 5/27, 28 (2010); 35 Ill. Adm. Code 102. In addition, the Board grants the Agency’s unopposed motion for waiver of specified copy requirements. After conducting hearings on this proposal, the Board will determine whether to proceed to first notice.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 15, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board