

ILLINOIS POLLUTION CONTROL BOARD

March 22, 2012

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STATE OF ILLINOIS  
Pollution Control Board

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

NOTICE OF HEARINGS

ORIGINAL  
RETURN TO CLERK'S OFFICE

DATES, TIMES, AND LOCATIONS:

FIRST HEARING: BEGINNING TUESDAY, AUGUST 21, 2012

10:00 AM  
Illinois Environmental Protection Agency  
Sangamo Room  
1021 N. Grand Ave E., north entrance  
Springfield, Illinois  
(parking available north of building across Converse Ave. in fenced area)

AND, IF BUSINESS REMAINS AT THE END OF HEARING ON THAT DAY,  
CONTINUING DAY-TO-DAY UNTIL BUSINESS IS COMPLETE OR UNTIL  
THURSDAY, AUGUST 23, 2012, BEGINNING EACH FOLLOWING DAY AT 9:00  
AM AT THE SAME LOCATION

SECOND HEARING: TUESDAY, OCTOBER 16, 2012

10:00 AM  
St. Clair County Court House  
County Board Meeting Room B-564, 5th Floor  
10 Public Square  
Belleville, Illinois  
(attached paid parking garage on S. 1st. St.)

THIRD HEARING: TUESDAY, OCTOBER 23, 2012

10:00 AM  
Brookens Administrative Center  
Lyle Shields (County Board) Meeting Room  
1776 E. Washington  
Urbana, Illinois  
(enter building through north door from visitor parking, which is accessible from  
Lierman Ave.)

FOURTH HEARING: TUESDAY, OCTOBER 30, 2012

10:00 AM

DeKalb Municipal Building  
City Council Chambers, Room 200  
200 S. 4th St.

DeKalb, Illinois

(visitors' parking available on corner of Grove and S. 4th Sts., diagonally across intersection from Municipal Building)

PURPOSE OF HEARINGS: Merit and Economic  
ATTENDING BOARD MEMBER: Thomas A Holbrook  
HEARING OFFICER: Timothy J. Fox

### **HEARING OFFICER ORDER**

On March 1, 2012, the Illinois Environmental Protection Agency (Agency) filed a rulemaking 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 40 C.F.R. 412.4(c)(1), (c)(2); SR, Attachment H (USEPA correspondence).

The Board will conduct four hearings in order to allow the Agency and any other interested participants the opportunity to present testimony and public comments on the merits and economic impact of the proposal. *See* 415 ILCS 5/28(a) (2010). At hearing, all persons wishing to testify will be sworn in and subject to questioning. The Board will also receive testimony on any economic impact study conducted by the Department of Commerce and Economic Opportunity (DCEO) on the proposed rules or on DCEO's decision not to perform a study. *See* 415 ILCS 5/27(b) (2010).

### **Hearings**

In setting hearing dates and various filing deadlines, the Board has considered its general workload, rulemaking activity now underway, and the anticipated interest and involvement in the issues raised by the Agency's proposal.

### **First Hearing**

Participants who intend to testify at the first hearing must pre-file their testimony and are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk's Office On-Line (COOL) from the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) or by contacting the Clerk's Office at 312-814-3629.

In its Statement of Reasons, the Agency indicated that it expects during the Board's hearings on its proposal to present the testimony of three employees in its Division of Water Pollution Control: Mr. Sanjay Sofat, Mr. Bruce Yurdin, and Mr. Dan Heacock. SR at 92-93. The Agency further indicates that it may wish to call additional witnesses as necessary and expects to make "additional staff available to answer specific questions raised by the Board or interested parties." *Id.* at 92. Consequently, for the first hearing the Board expects that the Agency will pre-file testimony by Mr. Sofat, Mr. Yurdin, and Mr. Heacock. *See* 35 Ill. Adm. Code 102.424(a).

Participants, including the Agency, who wish to testify at the first hearing are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, June 19, 2012. In order to expedite the first hearing and make it more efficient, participants are directed to pre-file written questions based on any of the pre-filed testimony no later than Tuesday, July 17, 2012. Any participant whose pre-filed testimony elicits pre-filed questions is directed to pre-file written answers to those pre-filed questions no later than Tuesday, August 14, 2012. *See* 35 Ill. Adm. Code 104.424(b).

The "mailbox rule" (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of any of the pre-filed testimony, pre-filed questions, and pre-filed answers for the first hearing, and the Board's Clerk must receive these documents before the close of business on the respective deadlines. However, documents may be filed electronically though COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk's Office at (312) 814-3629.

Although Section 27 of the Act (415 ILCS 5/27 (2010)) does not establish the order of the first hearing or limit it to the proponent's testimony, the hearing officer intends to begin the first hearing with the Agency's presentation of its proposal. *See* 35 Ill. Adm. Code 102.428(c). After the Agency has addressed all questions from other participants, and if time permits before the conclusion of the first hearing, other participants who have pre-filed testimony may then testify and address questions. For the first hearing, all pre-filed testimony will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief introduction or summary of testimony will be allowed if a witness wishes to provide one before responding to questions.

Participants wishing to offer a public comment during the first hearing will be allowed to do so if time permits at the close of testimony and questions based upon it. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

### **Second Hearing**

Participants who intend to testify at the second hearing in Belleville must pre-file their testimony and are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk's Office On-Line (COOL) from the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) or by contacting the Clerk's Office at 312-814-3629.

Participants, including the Agency, who wish to testify at the second hearing are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, October 2, 2012.

The "mailbox rule" (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of this pre-filed testimony for the second hearing, and the Board's Clerk must receive these documents before the close of business on October 2, 2012. However, documents may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk's Office at (312) 814-3629.

The hearing officer intends to begin the second hearing with any participants who pre-filed testimony for the first hearing and were not able to testify and address questions at that time. Next, participants who pre-filed testimony for the second hearing will present that testimony and respond to questions. Participants who do not pre-file testimony for the second hearing will then be allowed to testify and respond to questions as time permits after the conclusion of pre-filed testimony and questions based upon it. As at the first hearing, all testimony pre-filed for the second hearing will also be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions.

Participants wishing to offer a public comment at the second hearing will be allowed to do so if time permits at the close of the testimony and questions. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

### **Third Hearing**

Participants who intend to testify at the third hearing in Urbana must pre-file their testimony and are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk's Office On-Line (COOL) from the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) or by contacting the Clerk's Office at 312-814-3629.

Participants, including the Agency, who wish to testify at the third hearing are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, October 9, 2012.

The “mailbox rule” (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of this pre-filed testimony for the third hearing, and the Board’s Clerk must receive these documents before the close of business on October 9, 2012. However, documents may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk’s Office at (312) 814-3629.

The hearing officer intends to begin the third hearing with any participants who pre-filed testimony for the second hearing and were not able to testify and respond to questions at that time. Next, participants who pre-filed testimony for the third hearing will present that testimony and respond to questions. Participants who do not pre-file testimony for the third hearing will then be allowed to testify and respond to questions as time permits after the conclusion of pre-filed testimony and questions based upon it. As at the first and second hearings, all testimony pre-filed for the third hearing will also be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions.

Participants wishing to offer a public comment at the third hearing will be allowed to do so if time permits at the close of the testimony and questions. The Board’s procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

#### **Fourth Hearing**

Participants who intend to testify at the fourth hearing in DeKalb must pre-file their testimony and are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk’s Office On-Line (COOL) from the Board’s Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) or by contacting the Clerk’s Office at 312-814-3629.

Participants, including the Agency, who wish to testify at the fourth hearing are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, October 16, 2012.

The “mailbox rule” (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of this pre-filed testimony for the fourth hearing, and the Board’s Clerk must receive these documents before the close of business on October 16, 2012. However, documents may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk’s Office at (312) 814-3629.

The hearing officer intends to begin the fourth hearing with any participants who pre-filed testimony for the third hearing and were not able to testify and address questions at that

time. Next, participants who pre-filed testimony for the fourth hearing will present that testimony and respond to questions. Participants who do not pre-file testimony for the fourth hearing will then be allowed to testify and respond to questions as time permits after the conclusion of pre-filed testimony and questions based upon it. As at the previous hearings, all testimony pre-filed for the fourth hearing will also be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions.

Participants wishing to offer a public comment at the fourth hearing will be allowed to do so if time permits at the close of the testimony and questions. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

### **Service and Notice Lists**

The hearing officer will establish and maintain both a Notice List and a Service List for this proceeding. *See* 35 Ill. Adm. Code 102.422(a), (b). The Notice List includes participants who wish to receive copies only of the Board's opinions and orders and hearing officer orders. 35 Ill. Adm. Code 102.422(a). The Service List for this rulemaking is the list of persons who wish to participate actively in this proceeding and receive not only the Board's opinions and orders but also other filings such as pre-filed testimony, questions, and responses. *See* 35 Ill. Adm. Code 102.422(b).

Note that interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number R12-23. This electronic notice includes notice of the filing of documents that are not typically provided to persons on the Notice List. In addition, COOL provides links to documents filed with the Board, and those documents can be viewed, downloaded, and printed free of charge as soon as they are posted to the Board's Web site. For more information about the option of electronic notice or COOL, please consult either the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us) or John Therriault, the Board's Assistant Clerk, at (312) 814-3629.

IT IS SO ORDERED.



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