

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2014

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)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

On March 1, 2012, the Illinois Environmental Protection Agency (Agency or IEPA) filed a proposal to amend Parts 501, 502, and 504 of the Board's agriculture related pollution regulations. *See* 35 Ill. Adm. Code 501, 502, 504. The Agency's proposal included its Statement of Reasons (SR). On November 7, 2013, the Board adopted a first-notice proposal. After reviewing the first-notice comments and responses to them, the Board on April 17, 2014 adopted a second-notice proposal and submitted it to review by the Joint Committee on Administrative Rules (JCAR). At its meeting on July 15, 2014, JCAR issued a certificate of no objection to the proposed rules, subject to specific changes, and also issued a recommendation. Today the Board adopts amendments to Parts 501, 502, and 504.

The Board's first-notice and second-notice opinions include a review of the rulemaking record and discussion of contested issues. Rather than reproduce those sections today, the Board recommends that the reader wishing to revisit them consult the first-notice and second-notice opinions.

The Board's opinion begins by providing an abbreviated procedural history beginning with adoption of the Board's first-notice proposal. The Board then addresses issues raised by JCAR, including a summary of a letter received from the Co-Chairs of JCAR, the Board's July 10, 2014 response, and JCAR's certifications of no objections and its recommendation. The Board then discusses the issues of economic reasonableness and technical feasibility. Following its conclusion to submit amended rules to the Secretary of State for publication in the *Illinois Register*, the Board's order sets forth the proposed amendments to Parts 501, 502, and 504 of its agricultural water pollution regulations.

ABBREVIATED PROCEDURAL HISTORY

On November 7, 2013, the Board adopted a first-notice opinion and order (First Notice). The proposed regulations were published in the *Illinois Register* on December 2, 2013 (37 Ill Reg. 18974, 19005, 19074 (Dec. 2, 2013)).

On January 15, 2014, the hearing officer issued an order setting a deadline of January 30, 2014, to file first-notice comments. On January 30, 2014, the Board received first-notice

comments from the Agency (PC 3027) and the League of Women Voters of Illinois (LWVI) (PC 3028). Also on January 30, 2014, the Board received first-notice comments from the Agricultural Coalition (PC 3030), which consists of the Illinois Pork Producers Association, the Illinois Farm Bureau, the Illinois Beef Association, and the Illinois Milk Producers Association. Also on January 30, 2014, the Board received first-notice comments from the Environmental Groups (PC 3031), which include the Environmental Law and Policy Center, Prairie Rivers Network, Illinois Citizens for Clean Air and Water, and the Environmental Integrity Project.

The Board had previously received comments from Ivan N. Dozier, State Conservationist, on behalf of the United States Department of Agriculture, Natural Resources Conservation Service (USDA NRCS or NRCS) (PC 30) and Mr. S.V. Panno of the Illinois State Geological Survey (PC 1175).

On February 7, 2014, the hearing officer issued an order setting a deadline of February 21, 2014 to respond to first-notice comments. The order requested that the Agency respond to three specific issues but allowed response to any of the first-notice comments. On February 21, 2014, the Board received the Agricultural Coalition's response to the Environmental Groups' first-notice comments (PC 3040), the Environmental Groups' response to first-notice comments (PC 3041), and the Agency's additional first-notice comments (PC 3042).

On April 17, 2014, the Board adopted a second-notice opinion and order and submitted its proposed rules to JCAR. With the Board's agreement, JCAR voted at its meeting on May 20, 2014, to extend second-notice review (*see* 5 ILCS 100/5-40(c) (2012)). At its June 17, 2014 meeting, JCAR deferred action until its July 15, 2014 meeting.

On July 3, 2014, the Board received a letter dated June 26, 2014, from Senator Don Harmon and Representative Tim Schmitz, the Co-Chairs of JCAR (PC 3047), identifying "the major concerns the committee has with this package of rulemakings." On July 10, 2014, the Board adopted an order (Board Order) responding to JCAR's concerns and indicating how the Board intended to proceed.

At its meeting on July 15, 2014, JCAR issued a certificate of no objection based upon agreements during second-notice review. JCAR separately issued a recommendation regarding a comment submitted to JCAR by NRCS.

JCAR SECOND-NOTICE ISSUES

Summary of JCAR Letter (PC 3047)

As noted above, in a June 26, 2014 letter to the Board the Co-Chairs of JCAR described "the major concerns the committee has with this package of rulemakings." PC 3047 at 1. The Co-Chairs described these concerns as "technical in nature" and stated that "we would like to give the Board the opportunity to repair these issues prior to JCAR's final consideration." *Id.*

JCAR first addressed proposed Section 501.505, which would require certain unpermitted CAFOs to submit specified information to the Agency. JCAR stated that "[i]t is not clear

whether the information you are asking for is the same information [I]EPA already collects under an agreement with USEPA [United States Environmental Protection Agency], with the help of the Departments of Agriculture and Public Health.” PC 3047 at 1. JCAR added that, with two noted partial exceptions, “[I]EPA indicates that all the information you are requesting is already part of [I]EPA’s database.” *Id.* JCAR acknowledged that the Board’s proposal was “generated before EPA’s current data collection process was devised and operating, but it appears that Section 501.505 is now redundant.” *Id.* at 2. JCAR added that “[r]edundancy in State government programs is rarely considered by JCAR to be appropriate.” *Id.*

JCAR also addressed the Board’s proposed Section 502.510(b)(13), which would require that a nutrient management plan must specify and demonstrate “[t]he plan for the inspection, monitoring, management and repair of subsurface drainage systems at the livestock waste application site. Inspection of subsurface drainage systems shall include visual inspection prior to land application to determine failures that may cause discharges and visual inspection during and after land application to identify discharges.” JCAR stated that this proposed subsection generated uneasiness “that this requirement could mean removing crops and ground cover so tiles could be seen.” PC 3047 at 2. JCAR stated that it had asked the Agency to clarify this requirement with draft language. *Id.* JCAR reported that the Agency responded to that request as follows: “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.” *Id.* JCAR stated that “[t]o 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.” *Id.*

Summary of Board’s July 10, 2014 Order

On July 10, 2014, the Board adopted an order responding to PC 3047, the letter from the Co-Chairs of JCAR.

The Board first addressed JCAR’s concern that proposed Section 501.505 may arguably be redundant with an Agency database. The Board stated that it “intends, consistent with any JCAR direction issued at its July 15, 2014 meeting, to proceed to adopt the Board’s proposal with the single exception of Section 501.505.” Board Order at 2. The Board added that it “intends at the same time to open a subdocket dedicated to addressing the informational requirements originally proposed in that Section 501.505.” *Id.* The Board stated the expectation that comments submitted in this subdocket would clarify the points raised by JCAR on this issue. *Id.*

The Board next addressed proposed Section 502.510(b)(13). The Board noted that the Agency had responded in writing to a question posed by the Illinois Agricultural Coalition about recording a visual inspection of a subsurface drainage system. Board Order at 2. The Board also noted that the Agency had responded to JCAR’s request for a clarification of this requirement. *Id.* The Board stated that it “agrees that clarification of the term ‘visual inspection’ would provide greater certainty to this requirement.” *Id.* To provide this clarification, the Board agreed “to add to proposed subsection (b)(13) language identical or substantially similar to that suggested by IEPA’s response described by JCAR” in PC 3047.

JCAR Recommendation

Regarding the Board's proposed Parts 501 and 502, JCAR issued a recommendation. *See* 1 Ill. Adm. Code 220.1000(b). JCAR recommended that, when the Board opens a subdocket as indicated in its July 10, 2014 order, "it also address concerns, raised by the USDA's Natural Resource Conservation Service comment to JCAR on May 16, 2014, that these rulemakings are relying on elements of NRCS standards that are now obsolete and have been replaced by new standards." The recommendation noted that the Board "should respond to this Recommendation in writing within 90 days after receipt of this Statement." *See* 1 Ill. Adm. Code 220.1250.

Certificate of No Objection

On July 24, 2014, the Board received notice that JCAR had considered the Board's proposed amendments to Parts 501 and 502. In its Certification of No Objection to Proposed Rulemaking, JCAR stated that, "[a]fter consideration, and based upon the Agreement, if any for modification of the rulemaking made by the agency and attached to this document, the Committee determined that no Objection will be issued."

For Part 501, JCAR's attached Second Notice Changes include striking proposed Section 501.505 and reference to it in the table of contents. While the Second Notice Changes included changes to the format of contact information for the NRCS in Section 501.244, JCAR did not make any changes addressing reliance on standards that NRCS appears to believe are obsolete. JCAR's other changes addressed non-substantive issues including punctuation, organization, and technical corrections, which the Board will not specifically address in this opinion.

For Part 502, JCAR's attached Second Notice Changes include the addition of language originally proposed by the Agency to JCAR to clarify Section 502.510(b)(13) regarding inspection of subsurface drainage systems. While the Second Notice Changes included changes to the format of contact information for the NRCS in the Board Notes to Sections 502.615(c)(3), 502.620(f), and 502.630(c)(4), JCAR did not make any changes addressing reliance on standards that NRCS appears to believe are obsolete. Other JCAR changes addressed non-substantive issues including punctuation, organization, abbreviation, and technical corrections, which the Board will not specifically address in this opinion.

Separately on July 25, 2014, the Board received JCAR's Certificate of No Objection to the Board's proposed repeal of Part 504. JCAR attached no Second Notice Changes to Part 504 to its certificate and made no recommendation regarding Part 504.

Board Discussion of JCAR Issues

In its July 10, 2014 order, the Board stated that it intended, "consistent with any JCAR directions issued at its July 15, 2014 meeting, to proceed to adopt the Board's proposal with the single exception of Section 501.505." Board Order at 2. Having received JCAR's Certificate of No Objection subject to Second Notice Changes, the Board in its order below adopts amended rules. The adopted rules reflect each of JCAR's changes, which include striking proposed

Section 501.505 regarding submission of information to the Agency and adding clarifying language to Section 502.510(b)(13) regarding visual inspection of subsurface drainage systems. JCAR also suggested a number of non-substantive changes and corrections, which the Board adopts below without discussing in this opinion.

As it intended to do in its July 10, 2014 order, the Board directs the Clerk “to open a subdocket dedicated to addressing the informational requirements originally proposed in Section 501.505.” Board Order at 2. The Board further directs the Clerk to include in the subdocket the record of this docket, including all testimony, comments, and other filings. At a later date, the Board will issue an order in the subdocket addressing procedures, deadlines, and other matters. In the subdocket, the Board expects to receive comments from the Agency and other participants in this docket on the issue of the Agency’s database. The Board expects that these comments will clarify the points made by JCAR in its June 26, 2014 letter. *Id.*

In addition, the Board notes that JCAR has recommended that, when the Board opens a subdocket to address the issue of submitting information to the Agency, “it also address concerns, raised by the USDA’s Natural Resource Conservation Service comment to JCAR on May 16, 2014, that these rulemakings are relying on elements of NRCS standards that are now obsolete and have been replaced by new standards.” The Board is now considering and preparing its response to JCAR’s recommendation. *See* 1 Ill. Adm. Code 220.1250(a) (90-day response deadline). As noted in the preceding paragraph, the Board has not yet issued an order addressing procedures and other matters in the subdocket.

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Statutory Background

Section 27(a) of the Act directs the Board to take into account factors including the “technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution” when conducting a substantive rulemaking. 415 ILCS 5/27(a) (2012). Section 27(b) of the Act provides that, in adopting rules, the Board shall determine “based upon the evidence in the public hearing record, including but not limited to the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois.” 415 ILCS 5/27(b) (2012). For the reasons below and as it did in adopting its first-notice and second-notice proposals, the Board finds that the rules adopted today are technically feasible and economically reasonable and will not have an adverse economic impact on citizens of Illinois. *See* 415 ILCS 5/27(a), (b) (2012).

Request for Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2012)) the Board, in a letter dated March 22, 2012, requested that Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency’s rulemaking proposal. The Board asked that DCEO determine by May 1, 2012, whether it would conduct such a study. The Board has received no response to this request from DCEO.

During each of the five hearings held in this proceeding, the hearing officer afforded those present an opportunity to address the Board's request for a study and DCEO's lack of response. Tr.1 at 200-01; Tr.2 at 40-41; Tr.3 at 169-70; Tr.4 at 266-67; Tr.5 at 212-13. No participant offered testimony or comment on the request or response. *See* Tr.1 at 201; Tr.2 at 41; Tr.3 at 170; Tr.4 at 267; Tr.5 at 213.

Potentially Affected Entities

In its Statement of Reasons, the Agency stated that its proposal generally intends to cover permitted CAFOs. SR at 90. The Agency noted, however, that some elements of its proposal "impact all CAFOs meeting the definition of a large CAFO." *Id.* The Agency added that proposed amendments to Part 501 apply "to all livestock management facilities and livestock waste handling facilities regardless of whether they are a CAFO or whether they have a permit from Illinois EPA." *Id.* The Agency characterized its proposed amendments to Part 501 as "primarily non-substantive, clean-up amendments to create consistency between Parts 501, 502, and the Act." *Id.*

The Agency's Statement of Reasons claimed that "[i]t is difficult to give an accurate number of CAFOs in Illinois." SR at 90. After the 2003 adoption of federal rules, "the Agency estimated that Illinois may have had approximately 500 large CAFOs and 2,700 medium CAFOs." *Id.* The Agency argued that, following the decisions in Waterkeeper Alliance v. U.S. E envtl. Prot. Agency, 399 F.3d 286 (2nd Cir. 2005), and Natl. Pork Producers Council, et al. v. U.S. E envtl. Prot. Agency, 635 F.3d 738 (5th Cir. 2011), "it is impossible to specify how many of these would now be required to obtain an NPDES permit because a site-specific evaluation is required to determine whether the CAFO is discharging." *Id.* During the hearing process, the Agency provided testimony estimating that there are approximately 350 to 400 Large CAFOs in Illinois. The Agency added that it had issued the general CAFO permit on October 20, 2009. SR at 90. The Agency indicated that, on the March 1, 2012, date of filing its proposal, "Illinois had approximately 35 CAFOs covered by the General Permit or proposed to be covered by that permit." *Id.*

Technical Feasibility

In its first-notice opinion, the Board reviewed the record regarding the issue of technical feasibility. *See* First Notice at 247-49. The Board noted the Agency's claim "that both the land application area and production area requirements of the proposed rule are technically feasible and rely on widely available existing equipment, methods and practices." *Id.* at 254, citing SR at 89. The Board stated that the record did not include persuasive evidence or arguments challenging the Agency's claim. First Notice at 254. The Board concluded that, to the extent it had amended the Agency's original proposal, it has not imposed additional technical requirements. *Id.* The Board found that its first-notice proposal is technically feasible. *Id.*

In proceeding to Second Notice, the Board stated that first-notice comments had not addressed the issue of technical feasibility and that the record did not include any persuasive claim that the first-notice proposal was technically infeasible. To the extent that the Board modified its first-notice proposal, it stated that it did so without adding technical requirements or

making them more stringent. In making JCAR's Second Notice changes, the Board does not add or make more stringent any technical requirements. On the basis of the record before it and for the reasons discussed above, the Board finds that the adopted rules are technically feasible.

Economic Reasonableness

In its first-notice opinion, the Board reviewed the record regarding the issue of economic reasonableness. *See* First Notice at 249-53. The Board noted the Agency's argument that it was difficult to estimate the economic impact of the original proposal because regulated facilities have considerable flexibility in complying. *Id.* at 254. The Board also noted the Agency's claim that many of its proposed requirements were implemented under the Livestock Management Facilities Act, the CAFO general permit, or USDA conservation programs. *Id.* Although the Agency acknowledged that some facilities may bear costs such as building additional waste storage capacity or locating additional fields for land application, it claimed that the economic impact of those costs will be reasonable when compared to the benefits. *Id.*

The record also included estimates that the proposed 2003 regulations would have average annual costs of \$26,912 for Large CAFOs and \$8,783 for Medium CAFOs, with lower costs for swine CAFOs. First Notice at 254. USEPA also estimated that the rules would yield \$204-355 million of economic benefit through pollution reductions attributable to Large CAFOs. *Id.*

The Agency noted USEPA's determination that the only change in costs from the 2003 rule to the 2008 rule was a small decrease in administrative costs. First Notice at 254. The Board recognized the Agency's claim that, while USEPA did not analyze the economic impact of the Pork Producers decision, it expects further decreases in administrative costs. The Agency argued that fewer CAFOs will be required to apply for a permit under its proposal than under the proposed 2003 or 2008 rules. *Id.* at 254-55. The Agency also claimed that USEPA did not find a change in the economic benefit between the 2003 rule and the 2008 rule. *Id.* at 255.

The Board's first-notice opinion stated that none of the participants had persuasively challenged USEPA's economic analysis of its proposed 2003 rules or application of it to the Agency's proposal. First Notice at 255. The Agency claimed that the Waterkeeper decision had been expected to reduce the number of CAFOs seeking a permit and that the Pork Producers decision would reduce facilities' administrative expenses. The Agency cited its own experience to claim that fewer CAFOs will apply for a permit than assumed by USEPA's previous analyses. *Id.* The Board agreed with the Agency, in light of the USEPA analyses, that the original proposal implements the federal requirements in a manner that is economically reasonable. The Board concluded that, to the extent it proposed limited amendments to that proposal, those did not impose unreasonable economic burdens. *Id.* The Board found that its first-notice proposal was economically reasonable. *Id.*

In proceeding to Second Notice, the Board stated that first-notice comments had not addressed the issue of economic reasonableness and that the record did not include any persuasive claim that the first-notice proposal was technically infeasible. To the extent that the Board has modified its first-notice proposal, it stated that it did so without adding economic costs

or making them more burdensome. In making JCAR's Second Notice changes, the Board does not add or make more stringent any technical requirements. On the basis of the record before it and for the reasons discussed above, the Board finds that the adopted rules are economically reasonable. In addition, the Board concludes that the adopted rules will not have an adverse economic impact on the citizens of Illinois.

CONCLUSION

The Board adopts the following amendments to its agriculture related pollution regulations in Parts 501, 502 and 504 (35 Ill. Adm. Code 501, 502, 504). The Board directs the Clerk to open a subdocket and will later issue an order establishing procedures and other matters in the subdocket.

ORDER

The Board directs the Clerk to submit the following proposed amendments to Parts 501, 502, and 504 of the Board's agriculture related pollution regulations to the Secretary of State for publication in the *Illinois Register*. The amended rules include the changes suggested by JCAR during its second-notice review. The Board has reviewed the record in this proceeding and finds that the adopted rules are economically reasonable and technically feasible and that they will not have an adverse economic impact on the citizens of Illinois. In the order below, additions to Parts 501, 502, and 504 are underlined, and deletions appear stricken.

In response to JCAR, the Board directs the Clerk to open a subdocket. At a later date, the Board will issue an order to establish procedures in that subdocket.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE E: AGRICULTURE RELATED POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 501
GENERAL PROVISIONS

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SUBPART B: DEFINITIONS AND INCORPORATIONS

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SUBPART C: OPERATIONAL RULES FOR ALL LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE-HANDLING FACILITIES

Section	
501.401	<u>Purpose and Scope of Operational Rules for Livestock Management Facilities and Livestock Waste-Handling Facilities</u> General Criteria
501.402	Location of New Livestock Management Facilities and New Livestock Waste-Handling Facilities
501.403	Protection of Livestock Management Facilities and Livestock Waste-Handling Facilities
501.404	Handling and Storage of Livestock Waste
501.405	Field Application of Livestock Waste
501.406	Inspections and Disease Prevention

SUBPART D: SUBMITTAL OF INFORMATION

Section

501.505

Requirements for Certain CAFOs to Submit Information

501.APPENDIX A References to Previous Rules

AUTHORITY: Implementing and authorized by Sections 9, 12, 13, 21, 22 and 27 of the Environmental Protection Act [415 ILCS 5/9, 12, 13, 21, 22 and 27].

SOURCE: Filed and effective January 1, 1978; amended at 2 Ill. Reg. 44, p. 137, effective October 30, 1978; codified at 7 Ill. Reg. 10592; amended in R90-7 at 15 Ill. Reg. 10075, effective July 1, 1991; amended in R12-23 at 38 Ill. Reg. _____, effective _____.

SUBPART A: AUTHORITY AND POLICY

Section 501.103 Organization of this Chapter

The Board regulations adopted in 35 Illinois Administrative Code Subtitle E: Agriculture Related Pollution, Chapter I: Pollution Control Board are organized as provided in this Section.

- a) Part 501 of this Chapter contains definitions and incorporations by reference applicable to Parts 501, 502 and 503, which are the Parts of this Chapter administered by the Environmental Protection Agency. Subpart C of Part 501 also contains the requirements applicable to all livestock waste-handling facilities and livestock management facilities, whether or not those facilities are defined as ~~animal~~ Animal ~~feeding~~ Feeding operations Operations (AFOs) or ~~concentrated~~ Concentrated ~~animal~~ Animal ~~feeding~~ Feeding operations Operations (CAFOs) and without regard to whether the facility is subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements.
- b) Part 502 identifies which AFOs are subject to NPDES permit requirements and specifies those requirements. Part 502 also provides the State technical standards applicable to permitted CAFOs. That Part also contains requirements applicable to land application activities from AFOs that are defined as large CAFOs and are not permitted under an NPDES permit.
- c) Part 503 contains the requirements applicable to fish and aquatic animal production facilities, irrigation activities, and silvicultural activities and sources.
- d) Part 506 implements the Livestock Management Facilities Act [510 ILCS 77]. Those rules and the Livestock Management Facilities Act are administered by the Illinois Department of Agriculture.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.104 Severability

If any provision of this Part is adjudged invalid, or if the application of this Part to any person or in any circumstance is adjudged invalid, that invalidity shall not affect the validity of this Chapter as a whole, or of any Part, Subpart, sentence or clause of this Part not adjudged invalid.

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART B: DEFINITIONS AND INCORPORATIONS

Section 501.200 Incorporations by Reference

- a) The Board incorporates the following material by reference:

~~ASABE/ASAE. Available from American Society of Agricultural and Biological Engineers, 2950 Niles Road, St. Joseph, MI 49085 (269) 429-0300, fax (269) 429-3852, hq@asabe.org 9659 (616) 429-6300.~~

~~“Management Control of Manure Odors,” ASAE EP379.4/EP379.1 (January 2007)/(December 1986).~~

~~“Design of Anaerobic Lagoons for Animal Waste Management,” ASABE EP403.4 (R2011)/ASAE EP403.1 (March 1999).~~

“Illinois Agronomy Handbook, 24th Edition,” University of Illinois, College of Agriculture, Consumer and Environmental Sciences. Urbana, IL, July 2009. Available from University of Illinois, Office of Extension and Outreach, 111 Mumford Hall (MC-710), 1301 W. Gregory Dr., Urbana, IL 61801 (217) 333-5900.

MWPS. Available from MidWest Plan Service, 122 Davidson Hall, Iowa State University, Ames, IA 50011-3080 (515)294-4337.

“Livestock Waste Facilities Handbook, Third Edition,” MWPS-18. MidWest Plan Service. April 1993.

“Manure Characteristics,” Section 1. Second Edition MWPS-18-S1. MidWest Plan Service. 2004.

“Recommended Chemical Soil Test Procedures for the North Central Region,” North Central Regional Publication No.221, Missouri Agricultural Experiment Station Bulletin SB 1001 (January 1998). Available from North Central Region-University of Missouri Soil Testing Lab, 23 Mumford Hall, University of Missouri Columbia, MO 65211 (573) 884-4288.

“Average Crop, Pasture, and Forestry Productivity Ratings for Illinois Soils; Bulletin No. 810,” University of Illinois, College of Agricultural, Consumer and Environmental Sciences, Office of Research (2000), revised January 15, 2011 to amend Table 2 for B810. Available from University of Illinois, College of Agricultural, Consumer, and Environmental Sciences, Office of Research, 228 Mumford Hall, 1301 W. Gregory Dr., Urbana IL 61801 (217) 333-0240.

“Optimum Crop Productivity Ratings for Illinois Soils; Bulletin 811,” University of Illinois, College of Agricultural, Consumer and Environmental Sciences, Office of Research (2000), revised January 15, 2011 to amend Table S2 for B811. Available from University of Illinois, College of Agricultural, Consumer, and Environmental Sciences, Office of Research, 228 Mumford Hall, 1301 W. Gregory Dr., Urbana IL 61801 (217) 333-0240.

“NOAA Atlas 14: Precipitation Frequency Atlas of the United States,” United States Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Volume 2, Version 3.0 (2004), revised 2006. Available from NOAA, NWS, Office of Hydrologic Development, 1325 East West Highway, Silver Spring MD 20910 (Available online at http://www.nws.noaa.gov/oh/hdsc/PF_documents/Atlas14_Volume2.pdf).

Code of Federal Regulations. Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401 (202) 783-3238:

~~7 CFR 610.12 (2013), Revised Universal Soil Loss Equation.~~

40 CFR 412.46(a)(1)(ii) (2008), New Source Performance Standards (NSPS).

40 CFR 412.46(a)(1)(vi) (2008), New Source Performance Standard (NSPS).

“Agricultural Waste Management Field Handbook,” United States Department of Agriculture, Natural Resources Conservation Service (2009). Available from USDA, NRCS, 1400 Independence Ave., S.W., Washington, DC 20250. (Available online at <http://directives.sc.egov.usda.gov/viewerFS.aspx?hid=21430>).

- b) This Section incorporates no later editions or amendments.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.201 Definitions

- a) Except as ~~otherwise hereinafter~~ stated in this Part, and unless a different meaning of the term is clear from its context, the definitions of terms used in this Chapter shall be the same as those used in the Act and 35 Ill. Adm. Code: Subtitle C, Chapter I.
- b) The definitions contained in this Subpart are applicable to 35 Ill. Adm. Code 501, 502 and 503.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.223 Animal Confinement Area

Animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways and stables.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.236 Chemicals and Other Contaminants

Antibiotics, hormones, feed additives, pesticides, hazardous and toxic chemicals, petroleum products and by-products, other chemical products and by-products, and the residues and containers of any of these materials.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.238 Concentrated Animal Feeding Operation (CAFO)

~~An animal Animal feeding Feeding operation Operation~~ (AFO) that is defined as a ~~Large~~ large CAFO pursuant to 35 Ill. Adm. Code 502.103 or as a medium CAFO pursuant to 35 Ill. Adm. Code 502.104, or that is designated as a CAFO pursuant to 35 Ill. Adm. Code 502.106.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.241 CWA

The Clean Water Act, as amended (33 USC 1251 et seq.)~~Federal Water Pollution Control Act~~ (also known as the Clean Water Act), as amended, 33 U.S.C 1251 et seq., Public Law 92-500, enacted by the Congress October 18, 1972, as amended by Public Law 95-217, enacted December 27, 1977, as amended.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.242 Dry lot

A facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.244 Erosion Factor T

An estimate of the maximum average annual rate, in tons per acre per year, of soil erosion by wind or water that can occur without affecting crop productivity over a sustained period.

BOARD NOTE: Erosion Factor T for Illinois soils is available from the United States Department of Agriculture, Natural Resources Conservation Service, Illinois Office, 2118 W. Park Court, Champaign, IL 61821, Phone (217) 353-6600/6676. Service's The published soil surveys for Illinois are available at <http://www.nrcs.usda.gov> ~~at~~ http://soils.usda.gov/survey/printed_surveys/state.asp?state=Illinois&abbr=IL.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.252 Frozen Ground

Soil that is frozen anywhere between the first ½ inch to 8 inches of soil as measured from the ground surface.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.253 Grassed Waterway

A natural or constructed waterway or outlet shaped or graded and established in suitable vegetation as needed for the conveyance of runoff from a field, diversion or other structure.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.254 Groundwater

Underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure [415 ILCS 5/3.210].

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.261 Incorporation

A method of land application of livestock waste in which the livestock waste is thoroughly mixed or completely covered with the soil within 24 hours. Any ponded liquid livestock waste remaining on the site after application is not considered to be thoroughly mixed or completely covered with the soil.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.263 Injection

The placement of livestock waste 4 to 12 inches below the soil surface in the crop root zone using equipment specifically designed for that purpose, when the applied material is retained by the soil.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.267 Land Application Area

Land under the control of an ~~animal~~ Animal feeding Feeding operation ~~Operation~~ owner or operator, whether it is owned, rented or leased, to which livestock waste from the production area is or may be applied.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.295 Livestock Waste

Manure, litter, process wastewater, overflow from watering systems, ~~Livestock excreta and associated feed losses, bedding,~~ wash waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an ~~animal~~ Animal feeding Feeding operation ~~Operation~~ and other materials polluted by livestock, including but not limited to soils and sludges removed from livestock waste storage structures. Livestock waste does not include agricultural stormwater discharge.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.305 Man-made

~~Constructed by man and used for the purpose of transporting waste.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.310 Man-made Ditch

~~A discrete fissure or channel excavated in the earth for the purpose of transporting livestock waste directly to navigable waters. This is not to be confused with a vegetative filter or acceptable disposal area which is a treatment device and may take the form of a man-made terrace or grass waterway system.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.312 Manure

Animal excreta, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.313 Manure Storage Area

Includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-the-house, ~~under the house~~ or pit storages, liquid impoundments, static piles, and composting piles.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.325 Navigable Waters (Repealed)

All waters of the United States as defined in Criteria and Standards for the National Pollutant Discharge Elimination System (40 CFR 125.1(p)):

- a) ~~All navigable waters of the United States;~~
- b) ~~Tributaries of navigable water of the United States;~~
- e) ~~Interstate waters;~~
- d) ~~Intrastate lakes, rivers and streams which are utilized by interstate travelers for recreational or other purposes;~~
- e) ~~Intrastate lakes, rivers and streams from which fish or shellfish are taken and sold in interstate commerce; and~~
- f) ~~Intrastate lakes, rivers and streams which are utilized for industrial purposes by industries in interstate commerce.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 501.333 New Source

Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after either of the following dates:

- a) after promulgation of standards of performance under section 306 of the Clean Water Act that are applicable to the source, or
- b) after proposal of standards of performance in accordance with section 306 of the Clean Water Act that are applicable to the source, but only if the standards are promulgated in accordance with section 306 within 120 days after their proposal.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.343 Overflow

The discharge of livestock waste resulting from the filling of livestock waste storage structures beyond the point at which livestock waste or stormwater can no longer be contained by the structure.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.345 Owner ~~/or~~ Operator

Any person who owns, leases, operates, controls or supervises a livestock management facility or livestock waste-handling facility.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.355 Pollutant

Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water, as defined in CWA.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.357 Process Wastewater

Water directly or indirectly used in the operation of the ~~AFQ~~ Animal Feeding Operation for any of the following activities: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other ~~AFQ~~ Animal Feeding Operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. It also includes any water that comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs or bedding.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.358 Production Area

The part of an ~~AFQ~~ Animal Feeding Operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.359 Raw Materials Storage Area

Includes, but is not limited to, feed silos, silage bunkers, and bedding materials stacks.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.360 Revised Universal Soil Loss Equation Version 2 (RUSLE2) ~~Settling Basin~~

- a) The equation for calculating soil loss due to water erosion is as follows as set forth in 7 CFR 610.12 (2013), incorporated by reference in Section 501.200:

$$\underline{A = R * K * LS * C * P}$$

$$\underline{a_i = r_i k_i l_i S c_i p_i}$$

Where:

a_i = long-term average soils loss for the ith day;

r_i = erosivity factor;

k_i = soil erodibility factor;

l_i = soil length factor;

S = soil steepness factor;

c_i = cover management factor; and

p_i = supporting practices factor,

all on the ith day, except for soil steepness factor (S).

- b) The average annual soil loss is computed as follows:

$$\underline{A = \left[\sum_{i=a}^{365m} a_i \right] / m}$$

Where:

A = average annual soil loss.

$365m$ = number of days per year.

m = number of years in the analysis period. The value for m is 1 for continuous vegetation on range, pasture, and other lands, where conditions are the same year after year, while m = the number of years of cropping

management rotations on cropland and the number of years following a disturbance such as construction, logging, grading of a reclaimed surface mine, or closing of a land fill where conditions are changing years to year.

- ~~A = the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion;~~
- ~~R = the rainfall erosivity factor, which accounts for the energy and intensity of rainstorms;~~
- ~~K = the soil erodibility factor, which measures the susceptibility of a soil to erode under a standard condition and adjusts it bi-monthly for the effects of freezing and thawing, and soil moisture;~~
- ~~LS = the slope length and steepness factor, which accounts for the effect of length and steepness of slope on erosion based on the relationship of rill to interrill erosion; and~~
- ~~P = the support practice factor, which accounts for the effect of conservation support practices, such as cross slope farming, strip cropping, buffer strips, and terraces on soil erosion.~~

BOARD NOTE: Soil loss may be calculated using Revised Universal Soil Loss Equation 2 (RUSLE2) software program available at http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Index.htm. Additional information may be obtained from the United States Department of Agriculture, Agricultural Research Services, 1400 Independence Avenue, S.W., Washington, DC 20250, (202) 720-3656.

~~Any excavated, diked or walled structure or combination of structures designed as part of a livestock waste handling facility to detain feedlot runoff for a sufficient time to permit solids to settle for later removal.~~

~~(Source: Amended at 38 Ill. Reg. _____, effective _____)~~

Section 501.361 Saturated

Soils in which pore spaces are occupied by liquid to the extent that additional inputs of water or liquid wastes cannot infiltrate into the soil.

~~(Source: Added at 38 Ill. Reg. _____, effective _____)~~

Section 501.363 Setbacks

A specified distance from surface waters or potential conduits to surface waters where livestock waste may not be land applied. Examples of conduits to surface waters include, but are not limited to, open tile intake structures, sinkholes, and agriculture well heads.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.373 Surface Land Application

Application of livestock waste to the ground surface that is not incorporated or injected.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.377 Vegetative Buffer

Narrow, permanent strip of dense perennial vegetation established parallel to the contours of the land and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.378 Vegetative Fence Row

Narrow, permanent strip of perennial vegetation established at the edge of a field that is a minimum of 15 feet wide. The vegetative fence row slows water runoff and enhances water infiltration, reducing the risk of pollutants leaving the field.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.379 Waste Containment Area

Includes, but is not limited to, settling basins, and areas within berms and diversions that separate uncontaminated stormwater from livestock waste.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.385 Wet Lot

A confinement facility for raising ducks that is open to the environment, has a small number of sheltered areas, and has open water runs and swimming areas to which ducks have free access.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.390 25-Year, 24-Hour Precipitation Event

The maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by NOAA Atlas 14; Precipitation Frequency Atlas of the United States, incorporated by reference in Section 501.200.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 501.395 100-Year, 24-Hour Precipitation Event

The maximum 24-hour precipitation event with a probable recurrence interval of once in 100 years, as defined by NOAA Atlas 14; Precipitation Frequency Atlas of the United States, incorporated by reference in Section 501.200.

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART C: OPERATIONAL RULES FOR ALL LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE-HANDLING FACILITIES

Section 501.401 Purpose and Scope of Operational Rules for Livestock Management Facilities and Livestock Waste-Handling Facilities~~General Criteria~~

- a) Besides the regulations contained within this Chapter, every person shall also comply with provisions of the Act and other Board regulations.
- b) The owner or operator of any livestock management facility or livestock waste-handling facility shall comply with the CWA, NPDES filing requirements and the feedlot category of point source effluent guidelines. All livestock management facilities and livestock waste-handling facilities have the obligation to make a site specific determination of whether the facility is subject to NPDES permit requirements and to follow those requirements when and where they are applicable. CAFOs are subject to additional requirements applicable under 35 Ill. Adm. Code 502.
- c) ~~This Subpart~~These regulations shall apply to stockyards and similar operations where animals are held briefly, as well as to conventional livestock operations.
- d) The transportation of livestock wastes shall be planned and conducted so as not to cause, threaten, or allow any violation of the Act and applicable regulations.
- e) Any runoff or overflow from a livestock management facility or a livestock waste handling facility shall not cause a water quality violation pursuant to the Act or 35 Ill. Adm. Code Subtitle C: Water Pollution.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.402 Location of New Livestock Management Facilities and New Livestock Waste-Handling Facilities

- a) No new livestock management facility or new livestock waste-handling facility shall contain within its boundaries any stream or other surface waters except small temporary accumulations of water occurring as a direct result of precipitation.
- b) New livestock management facilities and new livestock waste-handling facilities located within a 10-year flood height as recorded by the United States Geological Survey or as officially estimated by the Illinois State Water Survey shall be protected against such flood.
- c) Limitations Effective July 15, 1991
 - 1) Upon July 15, 1991, new or expanded livestock management facilities and new or expanded livestock waste-handling facilities shall not be located within ½ mile of a populated area or within ¼ mile of a non-farm residence.
 - 2) For purposes of this subsection (c), the following shall not be considered location of a new or expanded livestock management or waste-handling facility:
 - A) Commencement of operations at an idle facility which has livestock shelters left intact, and ~~that~~which has been operated as a livestock management facility or livestock waste-handling facility for four consecutive months at any time within the ~~ten~~(10) previous years;
 - B) Commencement of operations at a facility reconstructed after partial or total destruction due to natural causes, i.e., tornado, fire, or earthquake.
 - 3) Adequate odor control methods and technology shall be practiced by operators of new and existing livestock management facilities and livestock waste-handling facilities so as not to cause air pollution.
- d) The setback requirements of subsection (c) shall not apply to any livestock management facility or livestock waste-handling facility ~~that~~which meets any of the following conditions:
 - 1) The facility is located in an agricultural area~~Agricultural Area~~, designated as such pursuant to the Agricultural Areas Conservation and Protection Act, [505 ILCS 5]Ill. Rev. Stat. 1989, ch. 5, para. 1001 et seq.;
 - 2) The facility undergoes expansion, and the owner of the facility certifies and notifies the Agency in writing ~~as such~~ that the facility was operating as a livestock management facility or livestock waste-handling facility for

at least one year prior to the existence of any non-farm residence within ¼ mile of the facility or of a populated area within ½ mile of the facility; or

- 3) The use of the facility as a livestock management or livestock waste handling facility is allowed by local zoning or municipal ordinance. If no local zoning or municipal ordinance exists that covers ~~that~~^{such} use, the facility shall be exempt if the livestock are not raised or kept at the facility primarily for hire or the raising or keeping of livestock at the facility does not have financial profit as a primary aim.
- e) A new livestock management facility or new livestock waste-handling facility ~~that~~^{which} locates within ¼ mile of a neighboring farm residence shall locate at the maximum feasible location from ~~that~~^{such} residence.
- f) A new livestock management facility or new livestock waste-handling facility ~~that~~^{which} locates within ¼ mile of a non-farm residence or within ½ mile of a populated area, ~~as allowed by~~^{pursuant to} subsection (d), shall locate at the maximum feasible location from ~~the~~^{such} residence or populated area.
- g) New livestock management facilities or new livestock waste-handling facilities located on soil types or geological formations where the deposition of livestock waste is likely to cause groundwater pollution shall be constructed in such a way that pollution will be prevented, or supplementary measures shall be adopted ~~that~~^{which} will prevent pollution.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.404 Handling and Storage of Livestock Waste

- a) Any livestock waste stored in excess of six months shall be contained in a manure storage structure.
- b) Temporary Manure Stacks
 - 1) A temporary manure stack is a potential secondary source, as defined by the Act. As a potential secondary source, a temporary manure stack is subject to the minimum setback zones established in Title IV of the Act ~~Temporary manure stacks shall be constructed or established and maintained in a manner to prevent runoff and leachate from entering surface or groundwaters.~~
 - 2) A temporary manure stack shall not be located within 75 feet from any water well, except monitoring wells ~~No temporary manure stack shall be constructed within 100 feet of a water well.~~

- 3) A temporary manure stack shall be constructed or established and maintained in a manner to prevent runoff and leachate from entering surface waters or groundwaters. A cover and pad or other control must be provided to prevent runoff and leachate from entering surface waters and groundwater.

c) Livestock Waste-Holding Facilities

- 1) Liquid manure-holding tanks shall be impermeable and capable of withstanding pressures and loadings to which such a tank may be subjected.
- 2) Holding ponds and lagoons shall be impermeable or so sealed as to prevent groundwater or surface water pollution.
- 3) For livestock management facilities and livestock waste handling facilities that are not required to obtain an NPDES permit, the contents of livestock waste-handling facilities shall be kept at levels such that there is adequate storage capacity so that an overflow does not occur except in the case of precipitation in excess of a 25-year 24-hour storm.
- 4) Liquid Livestock Waste
- A) Existing livestock management facilities ~~that~~^{which} handle the waste in a liquid form shall have adequate storage capacity in a liquid manure-holding tank, lagoon, holding pond, or any combination thereof so as not to cause air or water pollution as defined in the Act or applicable regulations. If inadequate storage time causes or threatens to cause a violation of the Act or applicable regulations, the Agency may require that additional storage time be provided. In such cases, interim pollution prevention measures may be required by the Agency.
- B) New livestock waste-handling facilities ~~that~~^{which} handle the waste in a liquid form shall provide a minimum of 120-day storage with a liquid manure-holding tank, lagoon, holding pond, or any combination thereof unless the operator has justifiable reasons substantiating that a lesser storage volume is adequate. If inadequate storage volumes cause or threaten to cause a violation of the Act or applicable regulations, the Agency may require corrective measures.

d) Runoff Field Application Systems

Any livestock management facility not meeting the definition of a CAFO in Section 501.238 may construct and operate a runoff field application system for

the treatment of livestock waste from fewer than 300 animal units, meeting the requirements of 35 Ill. Adm. Code 570, in lieu of utilizing liquid manure-holding tanks, holding ponds, or lagoons in compliance with subsection (c), or other livestock waste-handling systems ~~that which~~ would assure compliance with the Act and this 35 Ill. Adm. Code Subtitle E.

- e) Subsections (a) through (d) shall not apply to livestock management facilities with fifty (50) or fewer animal units, provided that the following conditions exist:
- 1) The location of the facility relative to waters of the State is such that there is no discharge of livestock waste into waters of the State, in violation of Section 12 of the Act(~~Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012~~);
 - 2) There is no discharge of livestock waste into waters of the State by means of a man-made ditch, flushing system or other similar man-made device, in violation of Section 12 of the Act(~~Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012~~); and
 - 3) The facility is managed so that livestock waste is not allowed to accumulate to an extent ~~that which~~ threatens to cause a discharge to waters of the State, in violation of Section 12 of the Act(~~Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012~~).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 501.405 Field Application of Livestock Waste

- a) For livestock management facilities and livestock waste handling facilities that are not required to obtain an NPDES permit, the quantity of livestock waste applied on soils shall not exceed a practical limit as determined by soil type, especially its permeability, the condition (frozen or unfrozen) of the soil, the percent slope of the land, cover mulch, proximity to surface waters and likelihood of reaching groundwater, and other relevant considerations. These livestock waste application guidelines will be adopted pursuant to 35 Ill. Adm. Code 502.305, unless otherwise provided for by Board regulations. Facilities required to obtain an NPDES permit are subject to the requirements in 35 Ill. Adm. Code 502. Subpart F. Unpermitted Large~~large~~ CAFOs claiming an agricultural stormwater exemption must comply with 35 Ill. Adm. Code 502.102 and the practices listed in Section 502.510(b) to qualify for the exemption.
- b) Operators of livestock waste handling facilities shall practice odor control , five timemethods during the course of manure removal and field application so as not to affect a neighboring farm or non-farm residence or populated area by causing air pollution as described in Section 501.102(d). Odor control methods include, but are not limited to:;

- 1) Soil injection or other methods of incorporation of waste into the soil including disking or plowing;
- 2) Consideration of climatic conditions, including wind direction and inversions;
- 3) For liquid livestock waste: whether supernatant ~~which~~ is used for irrigation purposes has been stored in a livestock waste lagoon system ~~that~~ which is designed and operated in accordance with "Design of Anaerobic Lagoons for Animal Waste Management", as incorporated by reference at Section 501.200.
- 4) Other methods as described in "~~Management~~Control of Manure Odor", as incorporated by reference at Section 501.200.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: SUBMITTAL OF INFORMATION

Section 501.505 Requirements for Certain CAFOs to Submit Information

- ~~a)~~ Existing CAFOs not covered by an NPDES permit must submit to the Agency the information listed in subsection (c) as follows:
 - ~~1)~~ Large CAFOs must submit the information within 90 days after the effective date of this Section.
 - ~~2)~~ CAFOs with the same or fewer animals as the numbers of animals provided in 35 Ill. Adm. Code 502.103 that propose to stable or confine additional animals must submit the information 30 days prior to increasing the number of animals above the numbers provided in 35 Ill. Adm. Code 502.103.
- ~~b)~~ New CAFOs that commence construction after the effective date of this Section and have a capacity for animals greater than the numbers provided in 35 Ill. Adm. Code 502.103 must submit the information in subsection (c) 30 days prior to the commencement of operations if no NPDES permit application has been filed at that time.
- ~~e)~~ CAFOs covered by subsections (a) and (b) must submit the following information to the Agency:
 - ~~1)~~ name of all owners and operators of the facility and their mailing addresses and phone numbers;

- ~~2) location of the facility identified by the street address or latitude and longitude;~~
- ~~3) location of the facility according to township, county, section, and quarter section;~~
- ~~4) for the previous 12-month period, identification of each animal type stabled or confined at the facility and maximum number of each animal type;~~
- ~~5) identification of types of animal holding areas, including pastures, confinement barns, and open lots;~~
- ~~6) identification of types and capacity of livestock waste containment and storage units, including, but not limited to, anaerobic lagoons, manure stacks, underground storage pits, and storage tanks; and~~
- ~~7) date the information in this subsection (c) is submitted to the Agency.~~
- ~~d) When a CAFO that has provided information to the Agency under this Section ceases operation, the owner or operator must submit a notification of termination to the Agency within 30 days after closure of the facility.~~
- ~~e) Any CAFO required to submit information to USEPA pursuant to Section 308 of the Clean Water Act must submit the same information to the Agency simultaneously with the submittal to USEPA.~~
- ~~f) Any submittal required under this Section must be sent to:~~
- ~~Illinois Environmental Protection Agency
Division of Water Pollution Control
Attn. Permit Section
P.O. Box 19276
Springfield, Illinois 62794-9276.~~

(Source: Added at 38 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE E: AGRICULTURE RELATED POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 502
PERMITS

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SUBPART H: NEW SOURCE PERFORMANCE STANDARDS FOR
NEW SWINE, POULTRY AND VEAL LARGE CAFOS

<u>Section</u>	
<u>502.800</u>	<u>Applicability</u>
<u>502.810</u>	<u>Production Area Requirements</u>
<u>502.820</u>	<u>Land Application Area Requirements</u>
<u>502.830</u>	<u>Alternative Best Management Practice Livestock Waste Discharge Limitations</u>
<u>502.840</u>	<u>Technical Evaluation</u>

502.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 9, 10, 12, 13, 21, and 22 of the Environmental Protection Act [415 ILCS 5/9, 10, 12, 13, 21, 22] and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27].

SOURCE: Filed and effective January 1, 1978; amended at 2 Ill. Reg. 44, p. 137, effective October 30, 1978; codified at 7 Ill. Reg. 10594; amended in R12-23 at 38 Ill. Reg._____, effective _____.

SUBPART A: PERMITS REQUIRED

Section 502.101 NPDES Permit Requirement and Duty to Maintain Permit Coverage

- a) A ~~controlled~~ Concentrated ~~animal~~ Animal ~~feeding~~ Feeding ~~operation~~ Operation (CAFO) is a point source. Any discharge of pollutants into waters of the United States from a CAFO is prohibited unless authorized by an NPDES permit or unless the discharge is an agricultural stormwater discharge as described in Section 502.102(b). No person shall cause or allow a discharge from a CAFO in violation of federal or State law, including but not limited to the Clean Water Act (CWA) (33 USC 1251), the Act or Board regulations.
- b) The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges.
- c) The owner or operator of a CAFO that discharges must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Agency has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Agency. All permit applications and applications for permit modifications must contain the information set forth in Subpart B.
- d) Any permitted CAFO shall apply for reissuance of the NPDES permit not less than 180 days prior to the expiration date of the permit unless the CAFO will not discharge after the expiration date of the NPDES permit.
- e) The owner or operator of a new CAFO that will discharge must apply for NPDES permit coverage at least 180 days prior to the time that the CAFO commences operation.
- f) Once an ~~animal~~ Animal ~~feeding~~ Feeding ~~operation~~ Operation (~~CAFO~~) is defined as a CAFO for at least one type of animal, the NPDES permit requirements for CAFOs apply with respect to ~~the~~ all animals in confinement at the animal feeding operation and all livestock waste generated by those animals or the production of those animals.

~~No person specified in Sections 502.102, 502.103 or 502.104 or required to have a permit under the conditions of Section 502.106 shall cause or allow the operation of any new livestock management facility or livestock waste handling facility, or cause or allow the modification of any livestock management facility or livestock waste handling facility, or cause or allow the operation of any existing livestock management facility or livestock waste handling facility without a National Pollutant Discharge Elimination System (NPDES) permit. Facility~~

~~expansions, production increases, and process modifications which significantly increase the amount of livestock waste over the level authorized by the NPDES permit must be reported by submission of a new NPDES application.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.102 Land Application Discharges and Agricultural Stormwater~~Twenty-five Year Storm Event~~

- a) The discharge of livestock waste to waters of the United States from a CAFO as a result of the livestock waste application by the CAFO to land application areas is a discharge from that CAFO subject to NPDES permit requirements, except when it is an agricultural stormwater discharge and therefore exempt from the definition of a point source under section 502 of the Clean Water Act.
- b) Where livestock waste has been land applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the livestock waste and in compliance with Section 502.510 for permitted CAFOs and Section 502.510(b) for unpermitted Large CAFOs, a precipitation-related discharge of livestock waste from land application areas of an unpermitted large CAFO or a permitted CAFO, is an agricultural stormwater discharge.
- c) Unpermitted large CAFOs must maintain the documentation specified in Section 502.510(b)(16) either on site or at a nearby office, or otherwise make that documentation readily available to the Agency upon request.

~~An NPDES permit shall be required for an animal feeding operation which falls within the criteria set forth in Section 502.103 or Section 502.104 below; provided, however, that no animal feeding operation shall require a permit if it discharges only in the event of a 25-year 24-hour storm event.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.103 Very Large CAFOs Operators

~~An animal~~ Animal feeding Feeding operation Operation is defined as a ~~large~~ Large CAFO if at ~~least~~ NPDES permit is required if more than the numbers of animals specified in any of the following categories are stabled or confined:

<u>Number of Animals</u>	<u>Kind of Animals</u>
<u>700</u>	<u>Mature dairy cows, whether milked or dry</u>
<u>1,000</u>	<u>Veal calves</u>
<u>1,000</u>	<u>Cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.</u>

<u>2,500</u>	<u>Swine, each weighing 55 pounds or more</u>
<u>10,000</u>	<u>Swine, each weighing less than 55 pounds</u>
<u>500</u>	<u>Horses</u>
<u>10,000</u>	<u>Sheep or lambs</u>
<u>55,000</u>	<u>Turkeys</u>
<u>30,000</u>	<u>Laying hens or broilers, if the AFO Animal Feeding Operation uses a liquid manure handling system</u>
<u>125,000</u>	<u>Chickens (other than laying hens), if the AFO Animal Feeding Operation uses other than a liquid manure handling system</u>
<u>82,000</u>	<u>Laying hens, if the AFO Animal Feeding Operation uses other than a liquid manure handling system</u>
<u>30,000</u>	<u>Ducks, if the AFO Animal Feeding Operation uses other than a liquid manure handling system</u>
<u>5,000</u>	<u>Ducks, if the AFO Animal Feeding Operation uses a liquid manure handling system</u>

<u>Number of Animals</u>	<u>Kind of Animals</u>
1000	Brood cows and slaughter and feeder cattle
700	Milking dairy cows
500	Horses
2500	Swine weighing over 55 pounds
10,000	Sheep, lambs or goats
55,000	Turkeys
100,000	Laying hens or broilers (if the facility has continuous overflow watering)
30,000	Laying hens or broilers (if the facility has a liquid manure handling system)
5000	Ducks
1000	Animal units

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.104 Medium CAFOs ~~Large Operators~~

- a) An ~~animal~~ ~~Animal feeding~~ ~~Feeding operation~~ ~~Operation~~ is defined as a ~~medium~~ Medium CAFO NPDES permit is required if more than the following numbers and types of animals specified in any of the following categories are stabled or confined and the provisions of subsection either condition (b), or (c) or (d) below of this Section is met:

<u>Number of Animals</u>	<u>Kind of Animals</u>
<u>200 to 699</u>	<u>Mature dairy cows, whether milked or dry</u>
<u>300 to 999</u>	<u>Veal calves</u>
<u>300 to 999</u>	<u>Cattle other than mature dairy cows or veal</u>

	<u>calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.</u>
<u>750 to 2,499</u>	<u>Swine, each weighing 55 pounds or more</u>
<u>3,000 to 9,999</u>	<u>Swine, each weighing less than 55 pounds</u>
<u>150 to 499</u>	<u>Horses</u>
<u>3,000 to 9,999</u>	<u>Sheep or lambs</u>
<u>16,500 to 54,999</u>	<u>Turkeys</u>
<u>9,000 to 29,999</u>	<u>Laying hens or broilers, if the AFO Animal Feeding Operation uses a liquid manure handling system</u>
<u>37,500 to 124,999</u>	<u>Chickens (other than laying hens), if the AFO Animal Feeding Operation uses other than a liquid manure handling system</u>
<u>25,000 to 81,999</u>	<u>Laying hens, if the AFO Animal Feeding Operation uses other than a liquid manure handling system</u>
<u>10,000 to 29,999</u>	<u>Ducks, if the AFO Animal Feeding Operation uses other than a liquid manure handling system</u>
<u>1,500 to 4,999</u>	<u>Ducks, if the AFO Animal Feeding Operation uses a liquid manure handling system</u>

<u>Number of Animals</u>	<u>Kind of Animals</u>
300	Brood cows and slaughter or feeder cattle
200	Milking dairy cows
750	Swine weighing over 55 pounds
150	Horses
3000	Sheep, lambs or goats
16,000	Turkeys
30,000	Laying hens or broilers (if the facility has continuous overflow watering)
9000	Laying hens or broilers (if the facility has a liquid manure handling system)
1000	Ducks
300	Animal units

- b) Pollutants are discharged into navigable waters of the United States through a man-made ditch, flushing system or other similar man-made device; ~~or~~
- c) Pollutants are discharged directly into navigable waters of the United States ~~that~~ which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation; or:
- d) The ~~AFO~~ Animal Feeding Operation is designated as a CAFO by the Agency pursuant to Section 502.106.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.105 Small CAFOs ~~Voluntary Applications~~

~~An animal Animal feeding Feeding operation Operation~~ is a ~~small~~ Small CAFO if it is designated as a CAFO by the Agency pursuant to Section 502.106, and it is not a Medium CAFO. ~~None of the requirements listed in this subpart precludes the voluntary filing of an NPDES application by the owner or operator of an animal feeding operation.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.106 Case-By-Case ~~Case-by-case~~ Designation Requiring NPDES Permits

- a) Notwithstanding any other provision of this Part, the Agency may require any ~~animal Animal feeding Feeding operation Operation~~ not falling within ~~Section~~Sections 502.102, 502.103 or 502.104 to obtain an NPDES permit by designating the AFO Animal Feeding Operation as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States. In making the determination of whether the AFO Animal Feeding Operation is a significant contributor of pollutants, ~~such designation~~ the Agency shall consider the following factors:
- 1) The size of the ~~AFO Animal Feeding Operation~~ animal feeding operation and the amount of livestock wastes reaching navigable waters of the United States;
 - 2) The location of the ~~AFO Animal Feeding Operation~~ animal feeding operation relative to navigable waters of the United States;
 - 3) The means of conveyance of livestock ~~animal~~ wastes and ~~process~~ wastewaters into navigable waters of the United States;
 - 4) The slope, vegetation, rainfall and other factors relative to the likelihood or frequency of discharge of livestock ~~waste~~ ~~animal~~ ~~wastes~~ and ~~process~~ wastewaters into navigable waters of the United States; and
 - 5) Other such factors bearing on the significance of the pollution problem sought to be regulated.
- b) The Agency, however, may not require a permit under ~~subsection (a) paragraph a)~~ for any ~~AFO Animal Feeding Operation~~ animal feeding operation with less than the number of animals ~~animal units~~ (300) set forth in Section 502.104 ~~above~~, unless it meets either of the following conditions:

- 1) Pollutants are discharged into navigable waters of the United States through a man-made ditch, flushing system or other similar man-made device; or
 - 2) Pollutants are discharged directly into navigable waters of the United States that which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.
- c) In no case may a permit application be required from an ~~AFO~~ Animal Feeding Operation ~~animal feeding operation~~ designated pursuant to this ~~Section~~ section until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program. ~~In addition, no application may be required from an owner or operator of an animal feeding operation designated pursuant to this section unless the owner or operator is notified in writing of the requirement to apply for a permit.~~
- d) Prior to designating an Animal Feeding Operation as a CAFO, the Agency shall send the Animal Feeding Operation a written notice that it intends to designate the Animal Feeding Operation as a CAFO. The notice shall include grounds for the designation and information regarding the opportunity to request a meeting with the Agency within 90 days after of the Animal Feeding Operation's receipt of the notice to present evidence that it is not a significant contributor of pollutants to waters of the United States as provided in subsection (a) of this Section. Beginning 90 days after the initial written notice is received by the Animal Feeding Operation, the Agency may designate the Animal Feeding Operation as a CAFO. The Agency shall send the Animal Feeding Operation a written notice of its designation decision and the grounds for the designation in writing.
- e) Upon receipt of the Agency's designation decision, ~~notification that an NPDES permit is required pursuant to this Section, paragraph b)~~ the owner or operator shall make an NPDES permit application to the Agency within 90~~60~~ days. The Agency may issue an NPDES permit with a compliance schedule detailing interim steps to be taken along with a final date, not to exceed 14 months from the date the permit is issued, by which compliance with the Act and all applicable regulations shall be achieved.
- e) ~~The Agency will notify the owner or operator in writing of the Agency's decision to designate the AFO as a CAFO under this Section and the grounds for the designation. The owner or operator may file an appeal of the Agency's decision with the Board within 35 days after the date on which the Agency served the decision pursuant to Section 40(a) of the Act and 35 Ill. Adm. Code 105. No animal feeding operation may be required to have a permit if it discharges only in the event of a 25-year 24-hour storm event.~~

- f) The question of whether the designation was proper will remain open during the pendency of the permit application. Any appeal of the Agency's designation decision must be made as part of an NPDES permit appeal.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART B: PERMIT APPLICATIONS

Section 502.201 Permit Applications Contents

- a) All applications from a new or existing CAFO for any permit, including an individual permit or a general permit, required under this Chapter shall contain, where appropriate, the following information and documents:
- 1) The name of the owner or operator;
 - 2) The facility location and mailing addresses;
 - 3) The latitude and longitude at the entrance to the production area;
 - 4) Specific information about the average and maximum number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);~~Kinds and numbers of livestock;~~
 - 5) A statement as to any projected changes in the size of the livestock operation and when they may occur during the term of the permit;
 - 6) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (in tons or gallons); ~~Description of land areas used for the livestock management facilities and livestock waste handling facilities and land areas used for livestock waste disposal;~~
 - 7) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area and land application areas, and indicating the following: ~~A sketch of the existing and/or proposed facility indicating the following:~~
 - A) ~~Approximate overall dimensions of the facility;~~
 - AB) Direction and location of surface and subsurface drainage and other discharges from the facility; and

- ~~B~~C) Location~~General location~~ of waterways in the area.;
- ~~D~~) Location of area for manure disposal; and
- E) A marked-up aerial photograph or U.S. Geological Survey map of the area involved is desirable in lieu of a sketch.
- 8) Estimated amounts of livestock waste generated per year (in tons or gallons);
- 9) The total number of acres of land application area and the estimated amount of waste to be applied to those acres per year;
- 10) Estimated amount of livestock waste transferred to other persons per year (in tons or gallons);
- 11) A nutrient management plan that is consistent with the requirements of Subpart E;
- 12) A stormwater pollution prevention plan;
- 13) A spill control and prevention plan; and
- 145) A statement identifying and justifying any departure from current design criteria promulgated by the Agency.
- b) The Agency may adopt procedures requiring such additional information as is necessary to determine whether the CAFO livestock management facility or livestock waste handling facility will meet the requirements of the Act and applicable Board regulations~~regulations~~.
- c) Applicable requirements of 35 Ill. Adm. Code 309: Subpart A shall apply to applications for NPDES permits required by this Chapter~~chapter~~. The Agency may prescribe the form in which information required under this Section~~section~~ shall be submitted.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.202 Permit Application Submissions~~Registered or Certified Mail~~

All permit applications shall be mailed or ~~or~~ delivered to Illinois Environmental Protection Agency, Bureau of Water, 1021 N. Grand Ave. E., Springfield IL 62794 or electronically submitted at CAFO@EPA.state.il.us ~~to the appropriate address designated by the Agency~~. Any application or revised application sent by mail shall be sent by registered or certified mail, return receipt requested. ~~Applications which are hand-delivered shall be delivered to and receipted for~~

~~by any authorized person employed in the Permit Section of the Agency's Division of Water Pollution Control.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.203 New Applications (Repealed)

~~Any person now discharging whose discharge was not covered by the Refuse Act permit program (33 U.S.C. 407), but which is subject to the NPDES program, must apply for an NPDES permit on the effective date of this chapter. However, for purposes of this chapter, any person who has applied for an NPDES permit from the U.S. Environmental Protection Agency and whose application has not been denied, shall be considered to have applied for an NPDES permit unless the discharge described in the Application for an NPDES Permit has substantially changed in nature, volume, or frequency; in which case another NPDES permit application shall be submitted.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 502.204 Renewal

Permittees seeking reissuance of their NPDES permit pursuant to Section 502.101(d) ~~who wish to continue to discharge subsequent to the expiration date of their permit~~ must apply for reissuance of the permit, using proper forms, not less than 180 days prior to the permit expiration date. The Agency will notify those such persons of the need for renewal at least 60 days prior to the date on which the renewal application must be submitted; however, failure to do so does not excuse non-compliance with this Chapter~~chapter~~.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.205 New Operations (Repealed)

~~Any person whose livestock waste handling facility or livestock management facility is required by Sections 502.101, 502.102, 502.103 or 502.104 to obtain a permit and will begin operation on or after the effective date of these Regulations must apply for an NPDES permit no later than 180 days in advance of the date on which the facility is to commence operation minus the number of days available storage time for installed manure storage structures.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 502.207 Disclosure Required for Land Trusts

An applicant filing for an NPDES permit shall satisfy the requirements of the Land Trust Beneficial Interest Disclosure Act [735 ILCS 405 et. seq.] ~~"An Act to Require disclosure, under certification of perjury, of all beneficial interests in real property held in a land trust, in certain cases"~~ (Ill. Rev. Stat. 1981, ch. 148, par. 72) before the Agency grants the applicant its permit.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART C: PERMIT ISSUANCE AND CONDITIONS

Section 502.304 Issuance and Conditions

- a) The provisions of 35 Ill. Adm. Code 309: Subpart A shall apply to the issuance, conditions and modification of NPDES permits under this ~~Chapter~~^{chapter} in the same manner as ~~those~~^{such} provisions apply to NPDES permits issued pursuant to 35 Ill. Adm. Code 309. Specific provisions applicable to CAFOs seeking coverage under NPDES general permits are found in Section 502.310.
- b) In addition to specific conditions authorized under this Part, the Agency may impose such conditions in any permit issued pursuant to this Part as may be necessary to accomplish the purposes of the Act or Board regulations.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 502.310 CAFOs Seeking Coverage Under NPDES General Permits

- a) CAFO owners or operators must submit a notice of intent that meets the requirements of Section 502.201 and Subpart E of this Part when seeking authorization to discharge under a general permit.
- b) When additional information is necessary to complete the notice of intent or to clarify, modify, or supplement previously submitted material, the Agency may request that information from the owner or operator as provided in 35 Ill. Adm. Code 309.106.
- c) The Agency must notify the public of its proposal to grant coverage under the general permit to the CAFO. This public notice must include the CAFO's nutrient management plan.
- d) The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, will follow the procedures applicable to draft individual permits found in 35 Ill. Adm. Code 309.109(b) and 309.115 through 309.118.
- e) The time period for the public to comment and request a hearing is 30 days following the date of the notice issued pursuant to subsection (c).
- f) When a public hearing is held, the Agency must respond to significant comments received during the comment period as provided in 35 Ill. Adm. Code 309.119 and 309.120, except that notice and transmission to the USEPA Regional Administrator is not required. If no hearing is held, the Agency shall follow the procedures in 35 Ill. Adm. Code 309.112 and 309.120 for Agency action after the

comment period. If necessary, the Agency will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage.

- g) When the Agency authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. This incorporation of terms and conditions does not require a modification of the general permit.
- h) The Agency shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.
- i) Nothing in this Section shall limit the Agency's authority to require an individual NPDES permit pursuant to Section 39(b) of the Act.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.315 CAFO Permit Requirements

NPDES permits issued to CAFOs under this Part must include:

- a) Requirements to implement a nutrient management plan that meets the provisions of Subpart E.
- b) Requirements for the permittee to create, maintain for five years from creation on site, and make available to the Agency, upon request, a complete copy of the records required in Section 502.320.
- c) Annual reporting requirements for permitted CAFOs. The permittee must submit an annual report to the Agency. The annual report must include the information specified in Section 502.325.
- d) Requirements to comply with the livestock waste discharge limitations in Subparts F, G and H, if applicable.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.320 Recordkeeping Requirements

The permittee must create, maintain for five years, and make available to the Agency, upon request, the following records:

- a) A copy of all applicable records identified pursuant to Section 502.510(b)(16);

- b) A copy of the information required under Section 502.201;
- c) Records documenting the visual inspections required under Section 502.610(c);
- d) Weekly records of the depth of the manure and process wastewater in the liquid livestock waste storage as indicated by the depth marker, as described in Section 502.610(d);
- e) Records documenting any actions taken to correct deficiencies as required by Sections 502.610(e) and (f). Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction;
- f) Records of mortalities management and practices used by the facility to meet the requirements of Section 502.610(g);
- g) Records documenting the current design of any livestock waste storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;
- h) Records of the date, time, and estimated volume of any overflow;
- i) A copy of the facility's site-specific nutrient management plan;
- j) Expected crop yields for land application areas;
- k) The dates livestock waste is applied to each land application area;
- l) Records documenting subsurface drainage inspections conducted according to the plan developed pursuant to Section 502.510(b)(13);
- m) Results from livestock waste and soil sampling;
- n) Explanation of the basis for determining livestock waste application rates;
- o) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than livestock waste;
- p) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;
- q) The method used to apply the livestock waste;
- r) Date of livestock waste application equipment inspection;
- s) Maximum number and type of animals, whether in open confinement or housed under roof by the following types: beef cattle, broilers, layers, swine weighing 55

pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, turkeys, ducks, other;

- t) All records necessary to prepare the annual report required by Section 502.325;
- u) Total number of acres of land application area covered by the nutrient management plan;
- v) The quantity of livestock waste removed when a manure storage area or waste containment area is dewatered;
- w) The following information for each day during which livestock wastes are applied to land:
 - 1) the amount applied to each field in either gallons, wet tons or dry tons per acre;
 - 2) soil water conditions at the time of application (such as dry, saturated, flooded, frozen, snow-covered);
 - 3) an estimate of the amount of precipitation 24 hours prior to, and for 24 hours after, the application;
 - 4) the type of application method used (surface, surface with incorporation, or injection);
 - 5) the location of the field where livestock waste was applied;
 - 6) the results of leak inspection of livestock waste application equipment;
 - 7) the name and address of off-site recipients of livestock waste, the amount of waste transferred to each off-site recipient in gallons or dry tons, off-site location on a topographic map, and acreage of each site used by the off-site recipient;
 - 8) Weather conditions, including precipitation, air temperature, wind speed, wind direction and dew point, at time of land application and for 24 hours prior to and for 24 hours following application; and
 - 9) Records of the weather forecasts required to be maintained pursuant to Sections 502.620(d) and 502.630(b)(3), (4), and (5);
- x) The laboratory analysis sheets reporting the analysis of the livestock waste samples shall be kept on file at the facility for the term of the permit and for 5 years after expiration of the permit; and

- y) Records documenting the test methods and sampling protocols for manure, litter and process wastewater and soil analyses.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.325 Annual Report

- a) The NPDES permit must specify annual reporting requirements for the CAFO. The annual report must be submitted to the Agency.
- b) The annual report must contain the following minimum elements:
- 1) Maximum number and type of animals, whether in open confinement or housed under roof by the following types: beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, turkeys, ducks, other;
 - 2) Quantity of livestock waste generated by the facility in the previous 12 months (tons/gallons);
 - 3) Quantity of livestock waste transferred to another person by the facility in the previous 12 months (in tons or gallons);
 - 4) Total number of acres of land application area covered by the nutrient management plan;
 - 5) Total number of acres the CAFO used for land application of livestock waste in the previous 12 months and were under the control of the CAFO through ownership, lease, or consent agreement;
 - 6) A statement indicating whether the current version of the CAFO's nutrient management plan for land application of livestock waste was developed or approved by a certified nutrient management planner and by whom the certification was issued;
 - 7) Summary of all livestock waste discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
 - 8) A report of instances of non-compliance with the NPDES permit in the previous 12 months;
 - 9) The actual crops planted and actual yields for each field;
 - 10) The actual nitrogen and phosphorus content of the livestock waste;

- 11) The results of calculations conducted in accordance with Section 502.515(d)(3) and (e)(3);
- 12) The amount of livestock waste land applied to each field during the previous 12 months;
- 13) For any CAFO that implements a nutrient management plan that addresses rates of application in accordance with Section 502.515(e):
 - a) the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months;
 - b) data used in calculations conducted in accordance with Section 502.515(e)(3), and
 - c) the amount of any supplemental fertilizer applied during the previous 12 months; and
- 14) Annual review of the nutrient management practices to be implemented and an update of the nutrient management plan when there is a change in the nutrient management practices.

(Source: ~~Added~~^{Amended} at 38 Ill. Reg. _____, effective _____)

SUBPART E: REQUIREMENTS FOR DEVELOPING AND IMPLEMENTING NUTRIENT MANAGEMENT PLANS

Section 502.500 Purpose, Scope and Applicability

The requirements in this Subpart are intended to minimize the transport of nitrogen and phosphorus to waters of the United States in compliance with the nutrient management plan developed by the CAFO owner or operator.

- a) The requirements in this Subpart apply to CAFOs required to obtain an NPDES permit. Unpermitted large CAFOs claiming an agricultural stormwater exemption ~~must comply with Sections~~ pursuant to Section 502.102 are not required to have a nutrient management plan but must comply with ~~and~~ the requirements listed in Section 502.510(b) to qualify for the exemption.
- b) The CAFO owner or operator shall develop, submit and implement a site specific nutrient management plan. This plan shall specifically identify and describe practices that will be implemented to assure compliance with this Subpart and the livestock waste discharge limitations and technical standards of Subparts F, G, and H.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.505 Nutrient Management Plan Information

The nutrient management plan shall contain, at a minimum, the following items:

- a) Name, address, and phone number of the owners of the CAFO;
- b) Name, address, and phone number of the managers or operators if different than the owners;
- c) Address, phone number, and plat location of the CAFO production area;
- d) Name of the person who developed the nutrient management plan and a statement indicating whether it was developed or approved by a certified nutrient management planner and by whom the certification was issued;
- e) Type of waste storage for the CAFO;
- f) Species, size and maximum number of animals at the CAFO;
- g) Scaled aerial photos or maps depicting each field available and intended for livestock waste applications with available acreage listed and indicating residences, non-farm businesses, common places of assembly, streams, wells, waterways, lakes, ponds, rivers, drainage ditches, subsurface drainage systems, other water sources, 10-year flood plain, buffers, slope, locations of structural Best Management Practices, setbacks and areas restricted from application by this Subpart E;
- h) For land application areas not owned or rented by the owner or operator of the CAFO, copies of the statement of consent between the owner or operator of the livestock facilities and the owner of the land where livestock waste will be applied;
- i) Cropping schedule for each field for the past year, anticipated crops for the current year, and anticipated crops for the five year term of the permit;
- j) Realistic crop yield goal for each crop in each field;
- k) An estimate of the nutrient value of the livestock waste or results of livestock waste analysis determined pursuant to Section 502.625(c);
- l) Livestock waste application methods;
- m) Results of the Bray P1 or Mehlich 3 test for soil phosphorus, in accordance with Recommended Chemical Soil Test Procedures for the North Central Region,

incorporated by reference in 35 Ill. Adm. Code 501.200, reported in pounds of elemental phosphorus per acre. If the livestock waste is to be land applied based on a single year or multi-year phosphorus application on the land application area, the following items must be provided:

- 1) An estimate of the volume of livestock waste to be disposed of annually;
 - 2) The phosphorus content of the livestock waste;
 - 3) The phosphorus amount needed for each crop in the planned crop rotation, expressed as pounds of P₂O₅ per acre, obtained from the Illinois Agronomy Handbook, 24th Edition, incorporated by reference at 35 Ill. Adm. Code 501.200; and
 - 4) The maximum livestock waste application rate based on phosphorus for each field, determined pursuant to Section 502.625(g).
- n) Calculations showing the following:
- 1) An estimate of the volume of livestock waste to be disposed of annually;
 - 2) Nitrogen loss due to the method of storage, if applicable;
 - 3) Amount of nitrogen available for application;
 - 4) Nitrogen loss due to the method of application;
 - 5) Amount of plant-available nitrogen including first-year mineralization of organic nitrogen;
 - 6) Amount of nitrogen required by each crop in each field based on realistic crop yield goal;
 - 7) Nitrogen credits from previous crops, from other sources of fertilizer applied for the growing season, and from any livestock waste applications during the previous three years for each field;
 - 8) Livestock waste application rate based on nitrogen for each field; and
 - 9) Land area required for application;
- o) A listing of fields and the planned livestock waste application amounts for each field.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.510 Nutrient Management Plan Requirements

- a) Any permit issued to a CAFO must include a requirement to implement a nutrient management plan by the date of permit coverage that, at a minimum, contains best management practices necessary to meet the requirements of this Section and the applicable livestock discharge limitations and technical standards in 35 Ill. Adm. Code 501 and 502.
- b) The nutrient management plan must specify and demonstrate:
 - 1) The livestock waste application rate of nitrogen in a single year and phosphorus in a single year or multiple years, not to exceed the single year crop nitrogen and single year or multi-year phosphorus requirements for realistic crop yield goals in the rotation;
 - 2) Adequate land application area for livestock waste application which may include:
 - A) land owned by the CAFO owner or operator;
 - B) land rented or leased by the CAFO;
 - C) land covered by a consent agreement between the CAFO owner or operator and the property owner; or
 - D) any combination of the land described in subsection (b)(2)(A) through (C);
 - 3) Adequate storage of livestock waste, including procedures to ensure proper operation and maintenance of the storage facilities;
 - 4) Proper management of mortalities to ensure that they are not disposed of in a liquid livestock waste or stormwater storage or treatment system that is not specifically designed to treat animal mortalities;
 - 5) That clean water is diverted, as appropriate, from the production area;
 - 6) Prevention of direct contact of confined animals with waters of the United States;
 - 7) That chemicals and other contaminants handled on-site are not disposed of in any livestock waste or stormwater storage or treatment system unless specifically designed to treat those chemicals and other contaminants;

- 8) Appropriate site specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- 9) Protocols for appropriate testing of livestock waste and soil. Livestock waste must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of twice every five years for phosphorus content. The results of these analyses are to be used in determining application rates for livestock wastes;
- 10) Protocols to land apply livestock waste in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the livestock waste;
- 11) Livestock waste shall not be applied within the distance from residences provided in Section 502.645(a) and within the areas prohibited from land application by this Part;
- 12) A winter time land application plan that meets the requirements of Section 502.630;
- 13) The plan for the inspection, monitoring, management and repair of subsurface drainage systems at the livestock waste application site. Inspection of subsurface drainage systems shall include visual inspection prior to land application to determine failures that may cause discharges and visual inspection during and after land application to identify discharges. For 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 ability of the subsurface drainage system;
- 14) A spill prevention and control plan;
- 15) Annual review of the nutrient management practices to be implemented and an update of the nutrient management plan when there is a change in the nutrient management practices;
- 16) Specific records that will be maintained to document the implementation and management of the minimum elements described in subsections (b)(2) through (15); and
- 17) A description of the storage provisions and schedules provided for livestock waste when cropping practices, soil conditions, weather conditions or other conditions prevent the application of livestock waste to land or prevent other methods of livestock waste disposal.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.515 Terms of Nutrient Management Plan

Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. These terms include:

- a) The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the Agency to be necessary to meet the requirements of Sections 502.505 and 502.510.
- b) The terms of the nutrient management plan, with respect to protocols for land application of livestock waste as required by Subpart F, must include:
 - 1) the fields available for land application;
 - 2) field-specific rates of application properly developed pursuant to subsection (d) or (e) to ensure appropriate agricultural utilization of the nutrients in the livestock waste; and
 - 3) any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application.
- c) The terms of the nutrient management plan must address rates of application using either the linear approach as described in subsection (d) or the narrative rate approach as described in subsection (e), unless the Agency specifies that only one of these approaches may be used.
- d) The linear approach is an approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:
 - 1) The terms include maximum application rates from livestock waste for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Agency, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine those rates.
 - 2) At a minimum, the factors that are terms must include:
 - A) the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;
 - B) the crops to be planted in each field or any other uses of a field such as pasture or fallow fields;

- C) the realistic yield goal for each crop or use identified for each field;
 - D) the nitrogen and phosphorus recommendations, according to Section 502.625, for each crop or use identified for each field;
 - E) credits for all nitrogen in the field that will be plant available;
 - F) consideration of multi-year phosphorus application;
 - G) accounting for all other additions of plant available nitrogen and phosphorus to the field;
 - H) the form and source of livestock waste to be land-applied;
 - I) the timing and method of land application; and
 - J) the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the livestock waste to be applied.
- 3) CAFOs that use this linear approach must calculate the maximum amount of livestock waste to be land applied at least once each year using the results of the most recent representative livestock waste tests for nitrogen and phosphorus taken within 12 months ~~prior to~~^{after} the date of land application required by Section 502.635.
- e) The narrative rate approach is an approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of livestock waste to be land applied, according to the provisions of this subsection (e).
- 1) The terms include:
 - A) maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Agency, in pounds per acre, for each field, and certain factors necessary to determine those amounts;
 - B) the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;
 - C) the crops to be planted in each field or any other uses, such as pasture or fallow fields, including alternative crops identified in accordance with subsection (e)(1)(G);

- D) the realistic yield goal for each crop or use identified for each field;
- E) the nitrogen and phosphorus recommendations according to Section 502.625 for each crop or use identified for each field;
- F) the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of livestock waste to be land applied:
 - i) results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by Section 502.510(b)(9);
 - ii) credits for all nitrogen in the field that will be plant available;
 - iii) the amount of nitrogen and phosphorus in the livestock waste to be applied;
 - iv) consideration of multi-year phosphorus application;
 - v) accounting for all other additions of plant nitrogen and phosphorus to the field;
 - vi) the form and source of livestock waste;
 - vii) the timing and method of land application; and
 - viii) volatilization of nitrogen and mineralization of organic nitrogen.
- G) alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation.
 - i) When a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations according to Section 502.625 for each crop.
 - ii) Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of livestock waste to be applied must be determined in accordance with the

methodology described in subsections (e)(1)(A) through (F).

- 2) For CAFOs using this narrative approach, the following projections must be included in the nutrient management plan submitted to the Agency, but are not terms of the nutrient management plan:
- A) the CAFO's planned crop rotations for each field for the period of permit coverage;
 - B) the projected amount of livestock waste to be applied;
 - C) projected credits for all nitrogen in the field that will be plant available;
 - D) consideration of multi-year phosphorus application;
 - E) accounting for all other additions of plant available nitrogen and phosphorus to the field;
 - F) the predicted form, source, and method of application of livestock waste for each crop; and
 - G) timing of application for each field, insofar as it concerns the calculation of rates of application.
- 3) CAFOs that use this narrative rate approach must calculate maximum amounts of livestock waste to be land applied at least once each year using the methodology required in subsections (e)(1)(A) through (F) before land applying livestock waste and must rely on the following data:
- A) a field-specific determination of nitrogen that will be plant available consistent with the methodology required by subsections (e)(1)(A) through (F), and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Agency; and
 - B) the results of most recent representative livestock waste tests for nitrogen and phosphorus taken within 12 months ~~prior to~~ ^{or after} the date of land application, in order to determine the amount of nitrogen and phosphorus in the livestock waste to be applied.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.520 Changes to the ~~Nutrient~~ Nutrient Management Plan

When a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Agency, the procedures in this Section are applicable.

- a) The CAFO owner or operator must identify changes to the nutrient management plan, except that the results of calculations made in accordance with the requirements of Sections 502.515(d)(3) and (e)(3) are not subject to the requirements of this Section. These calculation calculations may be revised without submittal to the Agency provided the calculation revisions do not change the terms of the nutrient management plan.
- b) The Agency must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO.
 - 1) If revision to the terms of the nutrient management plan is not necessary, the Agency must notify the CAFO owner or operator and, upon such notification, the CAFO may implement the revised nutrient management plan.
 - 2) If revision to the terms of the nutrient management plan is necessary, the Agency must determine whether the changes are substantial changes as described in subsection (d).
 - 3) If the Agency determines that the changes to the terms of the nutrient management plan are not substantial, the Agency must notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.
- c) If the Agency determines that the changes to the terms of the nutrient management plan are substantial, the Agency must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment.
 - 1) The process and time limits for submitting public comments and hearing requests, the hearing process if a request for a hearing is granted, and the process for responding to significant comments received during the comment period will follow the procedures applicable to draft general permits found in Section 502.310(d) through (f).
 - 2) The Agency will require the CAFO owner or operator to further revise the nutrient management plan, if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit.
 - 3) Once the Agency incorporates the revised terms of the nutrient management plan into the permit, the Agency must notify the owner or

operator and inform the public of the final decision concerning the revisions to the terms and conditions of the permit.

- d) Substantial changes to the terms of the nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:
- 1) Addition of new land application areas not previously included in the CAFO's nutrient management plan; except that, if the land application area that is being added to the nutrient management plan is covered by the terms of a nutrient management plan incorporated into an existing NPDES permit in accordance with the requirements of Section 502.515, and the CAFO owner or operator applies livestock waste on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, addition of new land would be a change to the new CAFO owner's or operator's nutrient management plan but not a substantial change for purposes of this Section;
 - 2) For nutrient management plans using the linear approach as set forth in Section 502.515(d), changes to the field-specific maximum annual rates of land application (pounds of nitrogen and phosphorus from livestock waste). For nutrient management plans using the narrative rate approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop;
 - 3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with Section 502.515; and
 - 4) Changes to site-specific components of the CAFO's nutrient management plan, when the changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the United States.

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART F: LIVESTOCK WASTE DISCHARGE LIMITATIONS AND TECHNICAL STANDARDS

Section 502.600 Applicability

- a) This Subpart provides livestock waste discharge limitations and technical standards for permitted CAFOs. Permitted CAFOs must achieve the livestock waste discharge limitations and technical standards in this Subpart as of the date of permit coverage. ~~Unpermitted large CAFOs claiming an agricultural stormwater exemption must comply with Sections 502.102 and 502.510(b) and are subject to portions of this Subpart to the extent required by Section 502.510(b).~~ This Subpart does not apply to CAFOs that stable or confine horses,

sheep or ducks. CAFOs that stable or confine horses or sheep are subject to applicable production area livestock waste discharge limitations and technical standards found in Section 502.720. CAFOs that confine ducks in either a dry lot or wet lot are subject to applicable production area livestock waste discharge limitations and technical standards found in Section 502.730.

- b) Unpermitted Large CAFOs claiming an agricultural stormwater exemption pursuant to Section 502.102 are not required to have a nutrient management plan but must comply with ~~Section~~ the requirements listed in Section 502.510(b) to qualify for the exemption.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.605 Livestock Waste Discharge Limitations for the Production Area for Permitted CAFOs

- a) Except as provided in subsections (a)(1), (a)(2) and (c), there must be no discharge of livestock wastes into waters of the United States from the CAFO production area. Whenever precipitation causes an overflow of livestock wastes from the containment or storage structure, livestock wastes in the overflow may be discharged into waters of the United States provided:
- 1) The production area is designed, constructed, operated and maintained to contain all livestock wastes, including the runoff and the direct precipitation from a 25-year, 24-hour precipitation event, except that, for swine, poultry or veal, large CAFOs that are new sources must comply with Subpart H, and
 - 2) The production area is operated in accordance with the additional measures and records required by Section 502.610.
- b) Any point source subject to this Subpart must achieve the livestock waste discharge limitations in this Section as of the date of the permit coverage.
- c) Voluntary Alternative Performance Standards. Any CAFO subject to this Subpart may request the Agency to establish NPDES permit livestock waste discharge limitations based upon site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline performance standards as provided by subsection (a).
- 1) In requesting site-specific livestock waste discharge limitations to be included in the NPDES permit, the CAFO owner or operator must submit a supporting technical analysis and any other relevant information and data that would support those site-specific livestock waste discharge limitations within the time frame provided by the Agency.

- 2) The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis when appropriate, based on a site-specific analysis of a system designed, constructed, operated, and maintained to contain all livestock waste, including the runoff from a 25-year, 24-hour rainfall event.
- 3) The technical analysis of the discharge of pollutants must include:
 - A) all daily inputs to the storage system, including livestock waste, direct precipitation, and runoff;
 - B) all daily outputs from the storage system, including losses due to evaporation, sludge removal, and removal of wastewater for use on cropland at the CAFO or transport off site;
 - C) a calculation determining the predicted median annual overflow volume based on a 25-year period of actual rainfall data applicable to the site;
 - D) site-specific pollutant data, including nitrogen, phosphorus, BOD₅ and total suspended solids, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data; and
 - E) predicted annual average discharge of pollutants, expressed, when appropriate, as a mass discharge on a daily basis (lbs/day), and calculated considering subsections (c)(3)(A) through (D).
- 4) The Agency has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the CAFO.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.610 Additional Measures for CAFO Production Areas

Each CAFO subject to this Subpart must implement the following:

- a) The CAFO owner or operator must at all times properly operate and maintain all structural and operational aspects of the facilities, including all systems for livestock waste treatment, storage, management, monitoring and testing.
- b) Livestock within a CAFO production area shall not come into contact with waters of the United States.

- c) Visual Inspections. There must be routine visual inspections of the CAFO production area. At a minimum, the following must occur:
- 1) Weekly inspections of all stormwater diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the wastewater and manure storage and containment structure;
 - 2) Daily inspection of water lines in the production areas, including drinking water or cooling water lines; and
 - 3) Weekly inspections of the livestock waste storage facilities. The inspection will note the level of total volume of materials in the liquid livestock waste storage facility using the depth marker required in subsection (d).
- d) Depth Marker. All open surface liquid livestock waste storage facilities must have a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. In the case of new sources subject to livestock waste discharge limitations established pursuant to Section 502.830, all open surface livestock waste storage structures associated with the sources must include a depth marker that clearly indicates the minimum capacity necessary to contain the maximum runoff and direct precipitation associated with the design storm used in sizing the storage facility for no discharge.
- e) Corrective Actions. Any deficiencies found as a result of these inspections must be corrected as soon as possible.
- f) In addition to the requirement in subsection (e), deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.
- g) Discharge to waters of the United States of pollutants from dead livestock or dead animal disposal facilities is prohibited. Dead livestock and water contaminated by dead livestock shall not be disposed of in the liquid manure storage structures, egg wash wastewater facilities, egg processing wastewater facilities, or areas used to hold products, by-products or raw materials that are set aside for disposal, or contaminated stormwater facilities, other than facilities used solely for disposal of dead livestock.
- h) Chemicals and other contaminants shall not be disposed of in any livestock waste or stormwater storage or treatment system unless specifically designed to treat those chemicals and other contaminants.
- i) A CAFO owner or operator utilizing an earthen lagoon or other earthen manure storage area or waste containment area shall inspect all berm tops, exterior berm

sides, and non-submerged interior berm sides for evidence of erosion, burrowing animal activity, and other indications of berm degradation on a frequency of not less than once every week.

- j) The CAFO owner or operator shall perform periodic removal of livestock waste solids from liquid manure storage areas and the waste containment area to maintain proper operation of the storage structures. Soils that are contaminated with livestock waste removed from earthen manure storage structures shall be considered livestock waste.
- k) Requirements Relating to Transfer of Livestock Waste to Other Persons.
 - 1) Prior to transferring livestock waste to other persons, CAFOs must provide the recipient of the livestock waste with the most current nutrient analysis.
 - 2) The analysis provided must be consistent with applicable requirements to sample livestock wastes in Section 502.635(b).
 - 3) CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of livestock waste transferred to another person.
- l) Livestock Waste Storage Requirements
 - 1) Livestock waste storage structures at the CAFO production area shall be designed to contain a volume equal to or greater than the sum of the volumes of the following:
 - A) the amount of waste generated during a 180-day period of operation at design capacity;
 - B) the runoff volumes generated during a 180-day period, including all runoff and precipitation from lots, roofs and other surfaces where precipitation is directed into the storage structure;
 - C) the volume of all wash down liquid generated during the 180-day period that is directed into the manure storage structure;
 - D) the volume of runoff and precipitation directed to the storage structure during a 25-year, 24-hour storm event;
 - E) the design volatile solids loading volume, if applicable;
 - F) the sludge accumulation volume, if applicable; and

G) a freeboard of 2 feet, except for structures with a cover or otherwise protected from precipitation.

2) The storage volume requirements in this subsection (1) do not apply to pump stations, settling tanks, pumps, piping or other components of the CAFO production area that temporarily hold or transport waste to a storage facility meeting the requirements of this subsection (1).

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.615 Nutrient Transport Potential

a) Field Assessment. An individual field assessment of the potential for nitrogen and phosphorus transport from the field to surface waters must be conducted and the results contained in the nutrient management plan. The following factors must be identified for each field to determine nitrogen and phosphorus transport potential to waters of the United States.

1) Soil type;

2) Slope;

3) Conservation practices;

4) Soil erodibility or potential for soil erosion;

5) Soil test phosphorus;

6) Tile inlet locations;

7) Distance to surface waters;

8) Proximity to wells;

9) Location of conduits to surface water, including preferential flow paths; and

10) Subsurface drainage tiles.

b) The applicant shall utilize the field assessment information obtained in subsection (a) to determine the appropriate phosphorus-based or nitrogen-based application rate for each assessed field. The determination of phosphorus-based or nitrogen-based application of livestock waste on an assessed field must be consistent with subsection (c) or (d) and Sections 502.620, 502.625, 502.630, and 502.635.

c) Nitrogen-based application of livestock waste must be conducted consistent with the following requirements:

- 1) livestock waste is applied consistent with the setback requirements in Section 502.645;
- 2) available soil phosphorus (median Bray P1 or Mehlich 3 in accordance with Recommended Chemical Soil Test Procedures for the North Central Region, incorporated by reference in 35 Ill. Adm. Code 501.200) is equal to or less than 300 pounds per acre;
- 3) the soil loss calculated using the Revised Universal Soil Loss Equation 2 (RUSLE2) is less than the ~~erosion factor~~ Erosion Factor T;

BOARD NOTE: Soil loss may be calculated using the Revised Universal Soil Loss Equation 2 (RUSLE 2) software program available at http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Index.htm and Additional information may be obtained from the United States Department of Agriculture, Agricultural Research Service, 1400 Independence Avenue, S.W., Washington, DC 20250, (202) 720-3656. Erosion Factor T for Illinois soils is available from the United States Department of Agriculture, Natural Resources Conservation Service, Illinois Office, 2118 W. Park Court, Champaign, IL 61821, (217) 353-6600/6676. Service's (USDA-NRCS) The published soil surveys for Illinois are available at <http://www.nrcs.usda.gov> at http://soils.usda.gov/survey/printed_surveys/state.asp?state=Illinois&abbr=IL

- 4) if conduits on the field are less than 400 feet from surface waters, the setback requirements in Section 502.645(b)(2) do not apply. Instead the following setbacks apply:
 - A) Livestock waste application shall be conducted no closer than:
 - i) 150 feet from a tile inlet, agricultural well head, sinkhole, or edge of a ditch that has no vegetative buffer; or
 - ii) 50 feet from a tile inlet, agricultural well head, sinkhole, or edge of a ditch that has a 50 foot vegetative buffer or 50 feet from the center of a grass waterway;
 - B) These setbacks do not apply if the CAFO is able to demonstrate to the Agency that a setback or buffer is not necessary because implementation of alternative conservation practices (including, but not limited to, injection and incorporation) or field-specific

conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 150-foot setback under subsection (c)(4)(A)(i) or the 50-foot setback under subsection (c)(4)(A)(ii);

- 5) if conduits on the field are more than 400 feet from surface waters, the setback requirements in subsection (c)(4) do not apply;
 - 6) where surface waters are on the assessed field or within 200 feet of the field, the livestock waste applied to the field shall be injected or incorporated within 24 hours after the application or equivalent conservation practices must be installed and maintained on the field pursuant to USDA-NRCS practice standards; and
 - 7) if nitrogen-based application cannot be conducted in accordance with this subsection (c), then phosphorus-based application must be conducted as specified in subsection (d).
- d) Phosphorus-based application of livestock waste must be conducted consistent with the following requirements:
- 1) livestock waste must be applied consistent with the setback requirements in Section 502.645;
 - 2) the livestock waste application rate must not exceed the annual agronomic nitrogen demand of the next crop grown as provided in Section 502.625(a);
 - 3) if the soil contains greater than 50 pounds of available soil phosphorus per acre (median Bray P1 or Mehlich 3 in accordance with Recommended Chemical Soil Test Procedures for the North Central Region, incorporated by reference in 35 Ill. Adm. Code 501.200), phosphorus-based application rates must ~~maintain or lower the soil test phosphorus~~ ~~be neutral~~ during the nutrient management plan period;
 - 4) if the soil contains greater than 300 pounds of available soil phosphorus per acre (median Bray P1 or Mehlich 3 in accordance with Recommended Chemical Soil Test Procedures for the North Central Region, incorporated by reference in 35 Ill. Adm. Code 501.200), the amount of phosphorus applied in the livestock waste must not exceed the amount of phosphorus removed by the next year's crop grown and harvested; and
 - 5) livestock waste shall not be applied to fields with available soil phosphorus (median Bray P1 or Mehlich 3 in accordance with Recommended Chemical Soil Test Procedures for the North Central

Region, incorporated by reference in 35 Ill. Adm. Code 501.200) greater than 400 pounds per acre.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.620 Protocols to Land Apply Livestock Waste

- a) Livestock wastes shall not be applied to waters of the United States. Livestock waste application shall not cause runoff to waters of the United States during non-precipitation events. Livestock waste application shall not occur on land that is saturated at the time of application. Livestock waste shall not be applied onto land with ponded water.
- b) Discharge of livestock waste to waters of the United States or off-site during dry weather through subsurface drains is prohibited.
- c) Livestock waste shall not be applied during precipitation when runoff of livestock waste will be produced.
- d) Surface land application of livestock waste shall not occur within 24 hours preceding a forecast of 0.5 inches or more of precipitation in a 24-hour period as measured in liquid form. The CAFO owner or operator shall use one of the following two methods for determining whether these conditions exist and shall maintain a record of the forecast from the source used.
- 1) A prediction of a 60 percent or greater chance of 0.5 inches or more of precipitation in a 24-hour period as measured in liquid form, obtained from the National Weather Service's Meteorological Development Laboratory, Statistical Modeling Branch, 1325 East West Highway, Silver Spring MD 20910 for the location nearest to the land application area; or

BOARD NOTE: The prediction in subsection (d)(1) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/forecast/graphics/MAV/>.

- 2) A prediction of 0.5 inches or more of precipitation in a 24 hour period as measured in liquid form and identified as higher than Quantitative Precipitation Forecast (QPF) category 3, obtained from the National Weather Service's Meteorological Development Laboratory, Statistical Modeling Branch, 1325 East West Highway, Silver Spring, MD 20910 for the land application area location.

BOARD NOTE: The prediction in subsection (d)(2) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/synop/products/bullform.mex.htm>

- e) Determination of soil loss must be made for each field using Revised Universal Soil Loss Equation 2 (RUSLE2).

BOARD NOTE: Soil loss may be calculated~~determined~~ using the RUSLE2 software program available at http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Index.htm. Additional information may be obtained from the United States Department of Agriculture, Agricultural Research Service, 1400 Independence Avenue, S.W., Washington, DC 20250, (202) 720-3656.

- f) Surface land application may be used when the land slope is no greater than 5% or when the yearly average soil loss calculated using RUSLE2 is equal to or less than 5 tons per acre per year or Erosion Factor T, whichever is less, regardless of slope. Injection or incorporation within 24 hours shall be used when the land slope is greater than 5% and the yearly average soil loss calculated using RUSLE2 is greater than 5 tons per acre per year or Erosion Factor T, whichever is less. Fields with varying or steep slopes must be divided into separate areas for calculating yearly average soil loss using RUSLE2 to comply with this subsection.

BOARD NOTE: Soil loss may be calculated~~determined~~ using the RUSLE2 software program available at http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Index.htm and Additional information on RUSLE2 may be obtained from the United States Department of Agriculture, Agricultural Research Services, 1400 Independence Avenue, S.W., Washington, DC 20250, (202) 720-3656. Erosion Factor T for Illinois soils is available from the ~~USDA~~ United States Department of Agriculture, Natural Resources Conservation Service, Illinois Office, 2118 W. Park Court, Champaign, IL 61821, (217) 353-6600~~6676~~. Service's The published soil surveys for Illinois are available at <http://www.nrcs.usda.gov>~~http://soils.usda.gov/survey/printed_surveys/state.asp?state=Illinois&abbr=IL~~.

- g) Land application of livestock waste is prohibited on slopes greater than 15%.
- h) Liquid livestock waste shall not be applied to land with less than 36 inches of soil covering fractured bedrock, sand or gravel. The depth of soil cover may be determined by using NRCS soil surveys, Illinois State Geological Survey well logs, or soil probes.
- i) Livestock waste shall not be applied to bedrock outcrops.
- j) Livestock waste shall be applied at no greater than 50 percent of the agronomic nitrogen rate determined pursuant to Section 502.625 when there is less than 60 inches of unconsolidated material over bedrock. The depth of unconsolidated

material may be determined by using NRCS surveys, Illinois State Geological Survey well logs, or soil probes.

- k) Livestock waste shall be applied at no greater than 50 percent of the agronomic nitrogen rate determined pursuant to Section 502.625 when the minimum soil depth to seasonal high water table is less than or equal to 2 feet. The depth of soil to seasonal high water table may be determined by using information from NRCS soil surveys, soil probes, and water table levels from Illinois State Geological Survey well log data or well points.
- l) Livestock waste shall not be applied at rates that exceed the infiltration rates of the soil.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.625 Determination of Livestock Waste Application Rates

- a) Livestock waste application shall not exceed the agronomic nitrogen rate, which is defined as the annual application rate of nitrogen that can be expected to be required for a realistic crop yield goal. Multi-year phosphorus application is allowed when the application is specified in a nutrient management plan and meets the requirements in Section 502.615. Any such application must be consistent with nutrient management plan requirements. The agronomic rate must be determined in a manner consistent with this Section and Section 502.615.
- b) Livestock Waste Volumes. The estimate of the annual volume of available livestock waste for application shall be obtained by multiplying the number of animals constituting the maximum design capacity of the facility by the appropriate amount of waste generated by the animals. For purposes of this Section, "maximum design capacity" means the maximum number of animals that can be housed at any time for a minimum of 45 days at a CAFO. The following sources may be used to obtain the amount of waste generated:
- 1) Livestock Waste Facilities Handbook, Third Edition, Table 2-1, incorporated by reference at 35 Ill. Adm. Code 501.200(a);
 - 2) 35 Ill. Adm. Code 560.Table 1;
 - 3) Manure Characteristics, 2nd ed., 2004 (MWPS-18 Section 1), MidWest Plan Service, incorporated by reference at 35 Ill. Adm. Code 501.200(a); and
 - 4) NRCS Agricultural Waste Management Field Handbook Chapter 4, incorporated by reference at 35 Ill. Adm. Code 501.200(a); and
 - 5) ~~ASABE Standard Data ASAE D384.2 MAR 2005 (R2010);~~

- c) Nutrient Value of Livestock Waste. For new livestock facilities that have not generated livestock waste, the owner or operator must prepare a plan based on an average of the minimum and maximum numbers in the table values derived from Livestock Waste Facilities Handbook, Third Edition, Table 2-1, 10-6, or 10-7, or Manure Characteristics, incorporated by reference at 35 Ill. Adm. Code 501.200, or 35 Ill. Adm. Code 560. Table 1 or Table 2. If “as produced” or “as excreted” nutrient values are used, the nitrogen value shall be adjusted to account for losses due to the type of storage system utilized using an average of the ranges in Livestock Waste Facilities Handbook, Third Edition, Table 10-1. Other sources of nutrient values may be used if approved by the Agency. Owners or operators of existing livestock facilities, must prepare the plan based on representative sampling and analysis of the livestock waste generated by the CAFOs in accordance with Section 502.635(b).
- d) Adjustments to Nitrogen Availability. Adjustments shall be made to nitrogen availability to account for the following:
- 1) Nitrogen loss from livestock waste due to method of application, based on an average of the ranges in Livestock Waste Facilities Handbook, Third Edition, Table 10-2; and
 - 2) The first-year mineralization of organic nitrogen into a plant available form, as obtained from Livestock Waste Facilities Handbook, Third Edition, Table 10-5.
- e) Realistic Crop Yield Goal
- 1) The realistic crop yield goal shall be determined for each field where the livestock waste is to be land applied. The realistic crop yield goal shall be determined using an average yield over a five-year period from the field where livestock waste is to be land applied. The source of data to be utilized to determine the realistic crop yield goal is provided in subsection (e)(2).
 - 2) Whenever five years of data is available for the field where livestock waste is to be land applied, proven yields shall be used in calculating the realistic crop yield, unless there is an agronomic basis for predicting a different realistic crop yield goal. The owner or operator shall indicate the method used to determine the proven yield. Data from years with crop disasters may be discarded.
 - A) If five years of proven yield data is not available for the field where the livestock waste is to be land applied, or if an agronomic basis exists for predicting a different realistic crop yield goal, the owner or operator may calculate the realistic crop yield goal using

crop insurance yields or Farm Service Agency USDA yields. If either of these sources is used, a copy of the insurance or assigned crop yields shall be included with the nutrient management plan.

- B) If data is not available on proven yields, crop insurance yields or Farm Service Agency yields, or if an agronomic basis exists for predicting a different realistic crop yield goal, soils based yield data from the University of Illinois “Average Crop, Pasture, and Forestry Productivity Ratings for Illinois Soils; Bulletin No. 810” (Bulletin 810) or “Optimum Crop Productivity Ratings for Illinois Soils; Bulletin 811” (Bulletin 811), incorporated by reference at 35 Ill. Adm. Code 501.200, shall be used by the owner or operator to calculate the realistic crop yield goal pursuant to subsection (e)(1).
- i) If Bulletin 810 or 811 is used to calculate the realistic crop yield goal, a soil map of the land application areas shall be included in the nutrient management plan.
- ii) If Bulletin 810 or 811 is used, the realistic crop yield goal shall be determined by a weighted average of the soil interpretation yield estimates for the fields where livestock waste is to be land applied.
- iii) If Bulletin 811 is used, the owner or operator shall demonstrate in the nutrient management plan that the operational management and field conditions of the facility and land application areas meet the requirements for optimum conditions as provided in Bulletin 811.
- f) Nitrogen Credits
- 1) Nitrogen credits shall be calculated by the CAFO owner or operator, pursuant to Section 502.505(n)(7), for nitrogen-producing crops grown the previous year, for other sources of nitrogen applied for the growing season, and for mineralized organic nitrogen in livestock waste applied during the previous three years.
- 2) Nitrogen credits shall be calculated by the CAFO owner or operator for the mineralized organic nitrogen in livestock waste applied during the previous three years at the rate of 50%, 25%, and 12.5%, respectively, of that mineralized during the first year.
- g) Phosphorus. The plan shall be developed or amended by the CAFO owner or operator to determine the maximum livestock waste application rate for each field. The plan for that field shall contain the following:

- 1) The phosphorus content of the livestock waste shall be determined in accordance with subsection (c);
 - 2) The realistic crop yield goal of each crop in the field, obtained pursuant to subsection (e)(1);
 - 3) The phosphorus amount needed for each crop in the planned crop rotation, expressed as P₂O₅, obtained from the Illinois Agronomy Handbook, 24th Edition, incorporated by reference at 35 Ill. Adm. Code 501.200. The determination of this phosphorus amount shall be based on the realistic crop yield goal for each planned crop and the soil test for available phosphorus (Bray P1 or Mehlich 3 in accordance with Recommended Chemical Soil Test Procedures for the North Central Region, incorporated by reference in 35 Ill. Adm. Code 501.200);
 - 4) The phosphorus carryover from previous years' application of phosphorus or livestock waste;
 - 5) Soil test phosphorus results for that field; and
 - 6) The maximum livestock waste application rate, consistent with nitrogen-based or phosphorus-based applications allowed under Section 502.615.
- h) Nitrogen and phosphorus fertilization rates for the realistic crop yield goal may be obtained from the Illinois Agronomy Handbook, 24th Edition, incorporated by reference at 35 Ill. Adm. Code 501.200, or 35 Ill. Adm. Code 560.Appendix A.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.630 Protocols to Land Apply Livestock Waste During Winter

- a) Winter Application Prohibition. Surface land application of livestock waste on frozen, ice-covered, or snow-covered ground is prohibited except as specified in subsection (a)(1) of this Section.
 - 1) Notwithstanding the winter application prohibition in subsection (a) of this Section, surface land application of livestock waste on frozen, ice-covered, ice-covered or snow-covered, snow-covered ground is allowed if all of the following conditions are met ~~prohibited, unless:~~
 - A) No practical alternative measures are available to handle the livestock waste within storage facilities or to dispose of the livestock waste at other sites. Examples of practical alternative measures may include, but are not limited to, the transfer of waste to another waste handling facility or sewage treatment plant, rental or acquisition of a storage tank, reduction of herd size or

depopulation, and protection of the facility from direct precipitation and clean stormwater runoff;

- B) Liquid livestock waste cannot be injected or incorporated within 24 hours after application due to soil conditions;
- C) Prior to December 1, the owner or operator has taken steps to provide 120 days of available storage capacity of manure storage areas. Examples of steps that could be taken may include, but are not limited to, land application of livestock waste, transfer of waste to another party, protection of waste storage structures from direct precipitation and stormwater runoff, and depopulating facilities to reduce the amount of waste generated;
- D) The owner or operator has complied with subsection (a)(1)(C) and yet the storage volume available on December 1 of that winter season is less than 120 days of storage;
- E) The owner or operator has notified the Agency in writing on December 1 of that winter season that the CAFO has less than 120 days storage available; and
- F) The discharge of livestock waste from the structure to the surface waters is expected to occur due to shortage in storage capacity.

2) The storage volume calculation in subsection (a)(1)(C) must include runoff and direct precipitation plus the volume of livestock excreta, wash water and other process wastewater generated and expected to enter the storage structure during the period of December 1 to April 1. Runoff volume calculations must meet the following requirements:

- A) Runoff calculations must be based on the runoff transferred into the storage structure under frozen ground conditions;
- B) Direct precipitation that will reduce the available storage volume must be based on normal precipitation for the December 1 to April 1 period for the nearest weather station and, for facilities exposed to precipitation, the 25-year, 24-hour storm event volume or the design storm event volume determined under Subpart H for swine, poultry and veal large CAFOs that are new sources. The determination of normal precipitation shall be based on National Weather Service or State Water Survey Records;

BOARD NOTE: The following sources may be used to determine normal precipitation:

<http://www.isws.illinois.edu/atmos/statecli/newnormals/newnormals.htm> or <http://cdo.ncdc.noaa.gov/cgi-bin/climatenormals/climatenormals.pl>.

C) The owner or operator shall keep a record of the precipitation value used and the source from which the value was obtained; and

D) Calculations must allow for a freeboard of two feet.

3) In the event winter land application is necessary, it must be conducted pursuant to a winter application plan described in subsection (b) and according to the conditions of subsection (c).

b) Winter Application Plan

In order to conduct surface land application on frozen, ice covered, or snow covered ground, the requirements of this subsection (b) must be met.

1) No land application may occur within ¼ mile of a non-farm residence.

2) No discharge may occur during land application of livestock waste.

3) Surface land application on frozen ground shall not occur within 24-hours preceding a forecast of 0.25 inches or more of precipitation in a 24-hour period as measured in liquid form. The CAFO owner or operator shall use one of the following two methods for determining whether these conditions exist and shall maintain a record of the forecast from the source used.

A) A prediction of a 60 percent or greater chance of 0.25 inches or more of precipitation in a 24-hour period as measured in liquid form, obtained from the National Weather Service's Meteorological Development Laboratory, Statistical Modeling Branch 1325 East West Highway, Silver Spring MD 20910, for the location nearest to the land application area; or

BOARD NOTE: The prediction in subsection (b)(3)(A) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/forecast/graphics/MAV/>.

B) A prediction of 0.25 inches or more of precipitation in a 24-hour period as measured in liquid form and identified as higher than QPF category 2 obtained from the National Weather Service Meteorological Development Laboratory, Statistical Modeling Branch, 1325 East West Highway, Silver Spring MD 20910, for the land application area location.

BOARD NOTE: The prediction in subsection (b)(3)(B) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/synop/products/bullform.mex.htm>.

- 4) Surface land application of livestock waste on ice covered or snow covered land shall not occur within 24 hours preceding a forecast of 0.1 inches or more of precipitation in a 24 hour period as measured in liquid form. The CAFO owner or operator shall use one of the two methods provided below for determining whether or not these conditions exist and shall maintain a record of the forecast from the source used.

- A) A prediction of a 60 percent or greater chance of 0.1 inches or more of precipitation in a 24-hour period as measured in liquid form obtained from the National Weather Service's Meteorological Development Laboratory, Statistical Modeling Branch, 1325 East West Highway, Silver Spring MD 20910 for the location nearest to the land application area; or

BOARD NOTE: The prediction in subsection (b)(4)(A) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/forecast/graphics/MAV/>.

- B) A prediction of 0.1 inches or more of precipitation in a 24-hour period as measured in liquid form and identified as higher than QPF category 1 obtained from the National Weather Service's Meteorological Development Laboratory, Statistical Modeling Branch, 1325 East West Highway, Silver Spring MD 20910 for the land application area location.

BOARD NOTE: The prediction in subsection (b)(4)(B) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/synop/products/bullform.mex.htm>.

- 5) If the land application of livestock waste is on ice covered or snow covered land, surface land application shall not occur when the predicted high temperature exceeds 32 degrees F on the day of land application or on any of the 7 days following land application as predicted by the National Weather Service's Meteorological Development Laboratory, Statistical Modeling Branch, 1325 East West Highway, Silver Spring MD 20910 for the location nearest to the land application area. The owner or operator shall maintain a record of the forecast from the source used.

BOARD NOTE: The predicted high temperature in subsection (b)(5) may be obtained from the National Weather Service at <http://www.nws.noaa.gov/mdl/forecast/graphics/MEX/index.html> or

<http://www.nws.noaa.gov/mdl/synop/products/bullform.mex.htm>.

- 6) If the surface land application of livestock waste is on ice covered or snow covered land, the CAFO owner or operator shall visually monitor for runoff from the site. The CAFO owner or operator ~~daily~~ must monitor each ice covered or snow covered field where land application has been conducted ~~daily~~ when the ambient temperature is 32 degrees F or greater following winter land application until all the ice or snow melts from the land application area.
- 7) If the surface land application of livestock waste is on ice covered or snow covered land and a runoff from the land application area occurs, the CAFO owner or operator shall report any discharge of livestock waste within 24 hours after the discovery of the discharge as follows:
- A) The report shall be made to the Agency through the Illinois Emergency Management Agency by calling 1-800-782-7860 or 1-217-782-7860;
- B) Within 5 days after this telephone report, the CAFO owner or operator shall file a written report with the Agency that includes the name and telephone number of the person filing the report, location of the discharge, an estimate of the quantity of the discharge, time and duration of the discharge, actions taken in response to the discharge, and observations of the condition of the discharge with regards to turbidity, color, foaming, floatable solids and other deleterious conditions of the runoff for each day of each runoff event until the ice or snow melts off the site.

c) Availability of Individual Fields for Winter Application

If livestock waste is to be surface applied on frozen ground, ice covered land or snow covered land, the land application may only be conducted on land that meets the following requirements:

- 1) Adequate erosion and runoff control practices exist, including, but not limited to, vegetative fence rows around the site, contour farming, terracing, catchment basins and buffer areas that intercept surface runoff from the site;
- 2) A crop stubble, crop residue or vegetative buffer of 200 feet exists between the land application area and surface waters, waterways, open tile line intake structures, sinkholes, agricultural wellheads, or other conduits to surface water and the vegetative buffer zone is down gradient of the livestock waste application area;

- 3) Application on land with slopes greater than 5% is prohibited;
- 4) Application may only occur on sites that have field specific soil erosion loss calculated using Revised Universal Soil Loss Equation less than Erosion Factor T, and have a median Bray P1 or Mehlich 3 soil level of phosphorus, in accordance with Recommended Chemical Soil Test Procedures for the North Central Region, incorporated by reference in 35 Ill. Adm. Code 501.200, equal to or less than 300 pounds per acre;

BOARD NOTE: Soil loss may be calculated using the Revised Universal Soil Loss Equation 2 (RUSLE2) software program available at http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Index.htm, and Additional information may be obtained from the United States Department of Agriculture, Agricultural Research Service, 1400 Independence Avenue, S.W., Washington, DC 20250, (202) 720-3656. Erosion Factor T for Illinois soils is available from the ~~USDA-NRCS's~~ United States Department of Agriculture, Natural Resources Conservation Service, Illinois Office, 2118 W. Park Court, Champaign, IL 61821, (217) 353-6600~~6676~~. The published soil surveys for Illinois are available at <http://www.nrcs.usda.gov> and http://soils.usda.gov/survey/printed_surveys/state.asp?state=Illinois&abbr=IL.

- 5) Surface application may only occur if the setbacks equal three times the otherwise applicable setbacks by Sections 502.615 and 502.645 if the slope of the field is between 2 percent and 5 percent. This setback requirement does not include the quarter mile distance from residences contained in Section 502.645(a); and
- 6) For fields with slopes of less than 2 percent, the surface application may only occur if the setbacks equal two times the otherwise applicable setbacks required by Sections 502.615 and 502.645. This setback requirement does not include the quarter mile distance from residences contained in Section 502.645(a).

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.635 Manure and Soil Sampling and Analysis

- a) Soil Phosphorus Sampling. Soil samples shall be obtained and analyzed from each field of the land application area where applications are planned. Fields where livestock waste is applied shall be sampled twice for each field during the term of the permit. Soil testing must be conducted as follows:
- 1) Soil sampling for phosphorus shall be in accordance with the sampling protocols in Chapter 8 of the Illinois Agronomy Handbook, 24th Edition,

incorporated by reference at 35 Ill. Adm. Code 501.200. Laboratory analysis for soil phosphorus (Bray P1 or Mehlich 3) shall be in accordance with Recommended Chemical Soil Test Procedures for the North Central Region, incorporated by reference at 35 Ill. Adm. Code 501.200;

- 2) Soil samples shall be at the same time in the cropping cycle and rotation so that results are comparable year to year; and
- 3) The two required soil samples for each field must be taken at least one year apart.

b) Manure Sampling.

- 1) The CAFO owner or operator shall annually obtain a laboratory analysis of the nutrient content representative of the livestock waste to be land applied as provided within the nutrient management plan. Livestock waste shall be sampled during the application process. Multiple subsamples shall be obtained and combined into one sample so that a representative sample is obtained for analysis. Results of a sample taken during waste application the previous year can be used for plan preparation unless there has been a change in the waste management practices during the year. The analytical results of livestock waste samples shall be used for calculation of the application rate allowed by the NPDES permit.
- 2) The laboratory analysis of the livestock waste sample shall include total kjeldahl nitrogen, ammonia or ammonium nitrogen, total phosphorus, total potassium, and percent total solids. The nutrient results shall be reported on the laboratory analysis sheet on a lb/ton or mg/kg dry weight basis or lb/1000 gal or mg/L wet weight basis. The results of these analyses are to be used in determining application rates for livestock waste.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.640 Inspection of Land Application Equipment for Leaks

- a) For all permitted CAFOs that land apply livestock waste, the CAFO owner or operator must periodically inspect equipment used for land application of livestock waste for leaks or problems that result in improper operation.
- b) The CAFO owner or operator must ensure that the land application equipment is properly calibrated for application of livestock waste on a routine basis.
- c) Calibration procedures and schedules shall be described for all equipment in the CAFO's nutrient management plan.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.645 Land Application Setback Requirements

a) Distance from Residences

Livestock waste shall not be land applied within ¼ mile of any residence not part of the CAFO, unless it is injected or incorporated on the day of application.

b) Setbacks from Waters

1) Livestock waste shall not be land applied within 200 feet of surface water, unless the water is upgrade or there is adequate diking, which includes, but is not limited to, diking that prevents runoff from the land application from entering surface waters that are within 200 feet of the land application area.

2) Livestock waste shall not be land applied within 100 feet of down gradient open subsurface drainage intakes, agricultural drainage wells, sinkholes, grassed waterways or other conduits to surface waters, unless a 35 foot vegetative buffer exists between the land application area and the grassed waterways, open subsurface drainage intakes, agricultural drainage wells, sinkholes or other conduits to surface water.

3) The setback requirements in subsection (b)(2) do not apply if the CAFO is able to demonstrate to the Agency that a setback or buffer is not necessary because implementation of alternative conservation practices (including, but not limited to, injection and incorporation) or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

c) Livestock waste shall not be applied in a 10-year flood plain unless the injection or incorporation method of application is used.

d) Livestock waste shall not be land applied to waters of the United States, grassed waterways or other conduits to surface waters.

e) Livestock waste shall not be land applied within ~~150~~200 feet of potable water supply wells.

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART G: ADDITIONAL LIVESTOCK WASTE DISCHARGE LIMITATIONS

Section 502.710 New Source Performance Standards for Dairy Cows and Cattle Other Than Veal Calves

a) New Source Performance Standards (NSPS) Applicability

Any CAFO with the capacity to stable or confine 700 or more mature dairy cows, whether milked or dry, or 1,000 or more cattle other than mature dairy cows or veal calves that is a new source must achieve the livestock waste discharge limitations representing the application of NSPS as of the date of permit coverage or within the timelines provided in Section 502.303.

b) The livestock waste discharge limitations representing NSPS for the CAFO production area for CAFOs subject to this Section are the livestock waste discharge limitations found in Sections 502.605 and 502.610.

c) The livestock waste discharge limitations representing NSPS for the CAFO land application area are the livestock waste discharge limitations and requirements found in Sections 502.615 through 502.645.

d) CAFOs subject to this Section shall attain the limitations and requirements in Subpart F as of the date of permit coverage or within the timelines provided in Section 502.303.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.720 Horse and Sheep CAFOs: BPT, BAT and NSPS

This Section contains the effluent limitations applicable to discharges resulting from the production area at horse and sheep CAFOs. CAFOs subject to this Section shall attain the limitations and requirements of this Section as of the date of permit coverage. CAFOs with the capacity to stable or confine fewer than 10,000 sheep or fewer than 500 horses are exempt from these effluent limitations.

a) Effluent Limitations Attainable by the Application of the Best Practicable Control Technology Currently Available (BPT) for Horse and Sheep CAFOs

1) Except as provided in subsection (a)(2), any existing point source subject to this Section shall have no discharge of process wastewater pollutants to waters of the United States. Achievement of no process wastewater discharge to waters of the United States is the effluent limitation representing the application of BPT for horse and sheep CAFOs.

2) Process waste pollutants in the overflow may be discharged to waters of the United States whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated wastewaters plus the runoff from a 10-year, 24-hour rainfall event for the location of the point source.

- b) Effluent Limitations Attainable by the Application of the Best Available Technology Economically Achievable (BAT) for Horse and Sheep CAFOs
- 1) Except when the provisions of subsection (b)(2) apply, any existing point source subject to this Section shall have no discharge of process wastewater pollutants to waters of the United States. Achievement of no process wastewater discharge to waters of the United States is the effluent limitation representing the application of BAT for Horse and Sheep CAFOs.
 - 2) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged to waters of the United States.
- c) New Source Performance Standards (NSPS) for Horse and Sheep CAFOs
Except as provided in subsection (b)(2), any new source subject to this Section shall have no discharge of process wastewater pollutants to waters of the United States. Achievement of no process wastewater discharge to waters of the United States is the performance standard representing NSPS for horse and sheep CAFOs.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.730 Duck CAFOs: BPT and NSPS

This Section contains the effluent limitations applicable to discharges resulting from the production areas at dry lot and wet lot duck CAFOs. CAFOs subject to this Section shall attain the limitations and requirements of this Section as of the date of permit coverage. CAFOs with the capacity to stable or confine fewer than 5,000 ducks are exempt from these effluent limitations.

- a) Effluent Limitations Attainable by the Application of the Best Practicable Control Technology Currently Available (BPT) for Wet Lot and Dry Lot Duck CAFOs

Any existing point source subject to this Section shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of BPT:

- 1) BOD₅ is limited to a maximum daily limit of 3.66 pounds/1,000 ducks or 1.66 kg/1,000 ducks.

- 2) BOD₅ is limited to a maximum monthly average of 2.0 pounds/1,000 ducks or 0.91 kg/1,000 ducks.
 - 3) Fecal coliform is not to exceed the most probable number (MPN) of 400/100 ml at any time.
- b) New Source Performance Standards for Wet Lot and Dry Lot Duck CAFOs
- 1) Except as provided in subsection (b)(2), any new source subject to this Section shall have no discharge of process wastewater pollutants to waters of the United States. Achievement of no process wastewater discharge to waters of the United States is the performance standard representing NSPS for duck CAFOs.
 - 2) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged to waters of the United States.

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART H: NEW SOURCE PERFORMANCE STANDARDS FOR
NEW SWINE, POULTRY AND VEAL LARGE CAFOS

Section 502.800 Applicability

- a) This Subpart applies to all new swine, poultry and veal CAFOs with the capacity to stable or confine the numbers of animals of the types provided for in the definition of large CAFOs in Section 502.103.
- b) The requirements of this Subpart H are in addition to the livestock waste discharge limitations and technical standards in Subpart F, except Section 502.605.
- c) The limitations and requirements of this Subpart must be attained as of the date of NPDES permit coverage or within the timelines provided in Section 502.303.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.810 Production Area Requirements

There must be no discharge of livestock waste pollutants to waters of the United States from the production area unless the CAFO complies with the alternative livestock waste discharge limitations provided in Section 502.830.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.820 Land Application Area Requirements

For CAFOs subject to this Subpart, the land application areas shall attain the same limitations and requirements as specified in Sections 502.615 through 502.645.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.830 Alternative Best Management Practice Livestock Waste Discharge Limitations

- a) Any CAFO subject to this Subpart may request that the Agency establish NPDES permit best management practice (BMP) livestock waste discharge limitations designed to ensure no discharge of livestock waste based upon a site-specific evaluation of the CAFO's open surface livestock storage structure.
- b) The NPDES permit BMP livestock waste discharge limitations must address the CAFO's entire production area. In the case of any CAFO using an open surface livestock waste storage structure for which the Agency establishes such livestock waste discharge limitations, "no discharge of livestock waste pollutants," as used in this Subpart H, means that the storage structure is designed, operated, and maintained in accordance with BMP established by the Agency on a site-specific basis after a technical evaluation of the storage structure.
- c) The technical evaluation must address the elements listed in Section 502.840.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 502.840 Technical Evaluation

All technical evaluations conducted pursuant to this Subpart H must address the minimum elements contained in this Section. Waste management and storage facilities designed, constructed, operated, and maintained consistent with the analysis conducted in subsections (a) through (g) and operated in accordance with the additional measures and records required by Section 502.610 will fulfill the requirements of this Subpart.

- a) Information to be used in the design of the open manure storage structure including, but not limited to:
 - 1) Minimum storage periods for rainy seasons;
 - 2) Additional minimum capacity for chronic rainfalls;

- 3) Applicable technical standards that prohibit or otherwise limit land application on frozen, saturated or snow-covered ground found in Section 502.630;
 - 4) Planned emptying and dewatering schedules consistent with the CAFO's nutrient management plan;
 - 5) Additional storage capacity for livestock waste intended to be transferred to another recipient at a later time; and
 - 6) Any other factors that would affect the sizing of the structure.
- b) The design of the open livestock waste storage structure as determined in accordance with 40 CFR 412.46(a)(1)(ii) ~~the USDA National Resource Conservation Service's Agricultural Waste Management Field Handbook~~, incorporated by reference at 35 Ill. Adm. Code 501.200, or equivalent design software or procedures approved by the Agency.
- BOARD NOTE: ~~NRC's~~ The NRC's Animal Waste Management (AWM) waste management software specified under 40 CFR 412.46(a)(1)(ii) is available at <http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/alphabetical/mnm/?&cid=stelprdb1045812> and includes procedures and calculation based on the Agricultural Waste Management Field Handbook for design of open livestock waste storage units. Additional information may be obtained from the United States Department of Agriculture, Agricultural Research Service, 1400 Independence Avenue, S.W., Washington, DC 20250, Telephone (202) 720-3656.
- c) All inputs used in the open livestock waste storage structure design, including:
- 1) actual climate data for the previous 30 years, consisting of historical average monthly precipitation and evaporation values;
 - 2) the number and types of animals;
 - 3) anticipated animal sizes or weights;
 - 4) any added water and bedding;
 - 5) any other process wastewater; and
 - 6) the size and condition of outside areas exposed to rainfall and contributing runoff to the open livestock waste storage structure.
- d) The planned minimum period of storage in months, including, but not limited to, the factors for designing an open livestock waste storage structure described in subsection (a). Alternatively the CAFO may determine the minimum period of

storage by specifying times the storage pond will be emptied consistent with the CAFO's nutrient management plan.

- e) Site-specific predicted design specifications, including:
- 1) dimensions of the storage facility;
 - 2) daily manure and wastewater additions;
 - 3) the size and characteristics of the land application areas; and
 - 4) the total calculated storage period in months.
- f) An evaluation of the adequacy of the designed manure storage structure in accordance with 40 CFR 412.46(a)(1)(vi) ~~using simulation procedures in the USDA Natural Resources Conservation Services Agricultural Waste Management Field Handbook~~, incorporated by reference at 35 Ill. Adm. Code 501.200.
- 1) The evaluation must include all inputs used in the simulation, including but not limited to:
 - A) daily precipitation, temperature, and evaporation data for the previous 100 years;
 - B) user-specified soil profiles representative of the CAFO's land application areas;
 - C) planned crop rotations consistent with the CAFO's nutrient management plan; and
 - D) the final modeled result of no overflows from the designed open livestock waste storage structure.
 - 2) For those CAFOs where 100 years of local weather data for the CAFO's location is not available, CAFOs may use a simulation with a confidence interval analysis conducted over a period of 100 years.
 - 3) The adequacy of the designed manure storage structure may be evaluated using equivalent evaluation and simulation procedures approved by the Agency.

BOARD NOTE: ~~The adequacy of the designed manure storage structure may be evaluated by using the most recent version of the Soil Plant Air Water (SPAW) Hydrology Tool specified at 40 CFR 412.46(a)(1)(vi) is available found at <http://hydrolab.arsusda.gov/SPAW/Index.htm>.~~ Additional information may be obtained from the United States

Department of Agriculture, Agricultural Research Service, 1400
Independence Avenue, S.W., Washington, DC 20250, Telephone (202)
720-3656.

- g) The Agency may waive the requirement in subsection (f) for a site-specific evaluation of the designed livestock waste storage structure and instead authorize a CAFO to use a technical evaluation developed for a class of specific facilities within a specified geographical area.
- h) The Agency may request additional information to support a request for livestock waste discharge limitations based on a site-specific open surface livestock waste storage structure.

(Source: Added at 38 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE E: AGRICULTURE RELATED POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 504
IMPLEMENTATION PROGRAM (REPEALED)

SOURCE: Repealed at 38 Ill. Reg. _____, effective _____.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 7, 2014, by a vote of 4-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board