

ILLINOIS POLLUTION CONTROL BOARD

December 18, 2014

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

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

On October 2, 2014, the Board adopted an order establishing procedures for this subdoCKET. That order directed the Illinois Environmental Protection Agency (Agency or IEPA) to submit written comments addressing specified matters on or before Monday, November 3, 2014. The Board also set a deadline of Wednesday, December 3, 2014, for any participant to file a response. On November 6, 2014, the Board granted an Agency motion and extended the Agency's deadline to file comments to December 3, 2014, and the response deadline to February 3, 2015.

On November 26, 2014, the Illinois Pork Producers Association, the Illinois Farm Bureau, the Illinois Beef Association, and the Illinois Milk Producers Association (collectively, the Agricultural Coalition) filed an application for non-disclosure (Appl.) under the Board's procedural rules. *See* 35 Ill. Adm. Code 130.406. The Agricultural Coalition requested that information sought from the Agency by the Board "be entitled to protection from public disclosure as 'non-disclosable' information in the context of this proceeding." Appl. at 1.

The Agricultural Coalition noted that the Board's order directed the Agency to provide information including "a copy of any inventory, database or similar compilation of CAFOs that are not required to be covered by an NPDES [National Pollutant Discharge Elimination System] permit that is maintained by the Agency." Appl. at 2, 5. The Coalition argued that this request may elicit information that should be protected from disclosure. *Id.* at 5. Specifically, the Agricultural Coalition claimed that the following potential elements of an Agency database are non-disclosable:

- a. Livestock facility location information: facility street address, latitude and longitude;
- b. Livestock facility owner information: address and phone; and
- c. Waste and wastewater storage information: containment type, wastewater storage type and total storage volume. *Id.* at 5, 8.

The Agricultural Coalition made a number of arguments and cited Illinois statutory and regulatory provisions in support of its request. *Id.* at 5-13, citing 415 ILCS 5/7(a)(iv), 7.1 (2012); 35 Ill. Adm. Code 101.202, Part 130.

The Agricultural Coalition requested that the Board “order or otherwise direct” the Agency to respond to the Board by supplying its database without information it had claimed to be non-disclosable. Appl. at 13. In addition, the Agricultural Coalition stated that, “until the Board otherwise directs the IEPA related to its request, the Coalition asks that any such information contained in the Database not be made public in this proceeding. Specifically, the Coalition asks that the information not be included in any electronic or otherwise public filing and not included as an attachment to any filings given to those persons on the Board’s Service List.” *Id.* at 13-14.

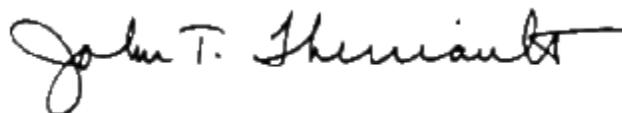
However, the Agricultural Coalition recognized that “the Board’s Part 130 rules generally apply in situations where the provider of the information files the Application for Non-Disclosure.” Appl. at 8, n.1. The Agricultural Coalition acknowledged that it “is in a unique position as applicant for non-disclosure.” *Id.* at 14. If the Board denies its application, the Agricultural Coalition requested that the Board accept an Agency filing consistent with that application. *Id.*

On December 3, 2014, the Agency filed its responses to Board questions (Resp.), which included Attachments A-W. In that response, the Agency noted that the Agricultural Coalition had filed its application for non-disclosure of three specific types of information: “1) livestock facility location information: facility address, latitude and longitude; 2) livestock facility owner information: address and phone number; 3) waste and wastewater storage information: containment type, wastewater storage type and total storage volume.” Resp. at 6, n.1; *see* Appl. at 5, 8. The Agency stated that, in light of the Agricultural Coalition’s application, “the Agency has redacted the information identified above from Attachment P [Initial Notice of Construction Completeness], Attachment Q [Final Notice of Construction Completeness], Attachment R [Acknowledgment of Setback Compliance], Attachment T [Portion of IDPH Excel spreadsheet], and Attachment W [Proposed 501.505 fields within the CAFO database].” Resp. at 6, n.1. The Agency stated that, in addition to filing these five redacted attachments with the Board, it also submitted them to persons named on the service list. *Id.*

The Board recognizes the Agency’s statement that its December 3, 2014 response redacted specific information that the Agricultural Coalition had sought to protect from disclosure. The Board has reviewed the Agency’s response and the documents attached to it, particularly the redactions in Attachments P, Q, R, T, and W. In light of this review, the Board finds that the application for non-disclosure is moot and denies it on that basis.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 18, 2014, by a vote of 4-0.



John T. Therriault, Clerk

Illinois Pollution Control Board