

ILLINOIS POLLUTION CONTROL BOARD

July 10, 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 )

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

On April 17, 2014, the Board adopted a second-notice opinion and order in this docket and submitted proposed revisions of its agriculture related pollution regulations for review by the Joint Committee on Administrative Rules (JCAR). On May 20, 2014, JCAR extended consideration of the proposal. 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). The letter states that they “would like to share with [the Board] the major concerns the committee has with this package of rulemakings. They are largely technical in nature, and we would like to give the Board the opportunity to repair these issues prior to JCAR’s final consideration.” PC 3047 at 1.

The Board appreciates the opportunity to address these matters and assures JCAR that it has carefully reviewed and considered them. Below, the Board responds to those concerns and indicates how it intends to proceed.

**SECTION 501.505**

JCAR first addresses proposed Section 501.505, which would require certain unpermitted CAFOs to submit specified information to the Illinois Environmental Protection Agency (IEPA). JCAR states that it is not clear whether this information “is the same information [I]EPA already collects under an agreement with USEPA, with the help of the Departments of Agriculture and Public Health, or whether this is an additional, and arguably redundant, submission.” PC 3047 at 1. JCAR acknowledges that the Board’s proposal was “generated before [I]EPA’s current data collection process was devised and operating” but adds that “it appears that Section 501.505 is now redundant.” *Id.* at 2. JCAR emphasizes that “[r]edundancy in State government mandates is rarely considered by JCAR to be appropriate.”

The Board recognizes JCAR’s concern that it is not clear whether information to be submitted under proposed Section 501.505 is the same as that collected in an IEPA database. The Board also acknowledges JCAR’s concern that it is not clear whether proposed Section 501.505 constitutes “an additional, and arguably redundant” requirement. PC 3047 at 1. The Board appreciates JCAR’s recognition that IEPA devised and began operating its database since the Board issued its proposals in this docket.

In response, the Board 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. The Board intends at the same time to open a subdocket dedicated to addressing the informational requirements originally proposed in that Section 501.505. In the subdocket, the Board expects to elicit from IEPA written comments and exhibits on its database. The Board also expects to receive comments on this issue from other participants in this rulemaking docket. The Board expects that these comments will clarify the points raised by JCAR in its June 26, 2014 letter.

### **SECTION 502.510(b)(13)**

Second, JCAR addresses proposed Section 502.510(b)(13), which addresses nutrient management plans. Subsection (b)(13) requires in part that the plan for inspection, monitoring, management and repair of subsurface drainage systems at waste application sites must include visual inspection prior to land application to determine failures that may cause discharges. JCAR states that this proposed language has confused potentially regulated entities because it "could be interpreted as actually viewing the drainage system, which could be a virtual impossibility if the landowner did not lay the tiles and does not have a map from the person who did." PC 3047 at 2. JCAR also indicated that this proposed language "could mean removing crops and ground cover so the tiles can be seen." *Id.* JCAR states that leaving the term "visual inspection" undefined "is not good public policy and creates an undue hardship for the regulated community." *Id.*

For the Board's first hearing, the Illinois Agricultural Coalition submitted a question asking IEPA "how a producer records a visual observation of a subsurface drainage system" under proposed subsection (b)(13). IEPA responded that "[t]he producer's observations should include but are not limited to recording the presence of or absence of flow in the tile outlets and whether the flow, if present, had an unnatural or unusual color or odor. Photos of the outlet discharge may also be useful. Any repairs made by the producer to the field tiles should also be recorded." Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code 501, 502, and 504, R12-23, Attachment 2 at 12 (Aug. 14, 2012) (Illinois EPA's Answers to the Prefiled Questions of the Illinois Agricultural Coalition). The Board cited this response and clarification in its first-notice opinion adopted on November 7, 2013. JCAR states that it asked IEPA to place that clarification in the form of rule language. JCAR reports that IEPA 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 subsurface drainage system." PC 3047 at 2.

In response, the Board agrees that clarification of the term "visual inspection" would provide greater certainty to this requirement. In order to provide this clarification, the Board agrees to add to proposed subsection (b)(13) language identical or substantially similar to that suggested by IEPA's response described by JCAR in its June 26, 2014 letter.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 10, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Clerk  
Illinois Pollution Control Board