

ILLINOIS POLLUTION CONTROL BOARD

November 6, 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. The Board directed the Illinois Environmental Protection Agency (Agency) 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 the filing of comments from any participant wishing to respond to the Agency's comment or address issues raised by JCAR in its June 26, 2014 letter to Board.

On October 21, 2014, the Agency filed a motion for extension of time (Mot.). Counsel for the Agency states that she was out of the country beginning on October 5, 2014, and did not return to the office until October 15, 2014. Mot. at 1. Counsel added that she had been preparing to meet an October 20, 2014, deadline to file post hearing comments in Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Adm. Code 841, R14-10. *Id.* at 1-2. Counsel stated that she "will be unable to prepare responses to the Board's questions before November 3, 2014." *Id.* at 2.

The Agency requested that the "the Board extend the deadline for the Agency's written responses until December 3, 2014, and extend the deadline for written response comments by any participant until on or before February 3, 2015." Mot. at 2, citing 35 Ill. Adm. Code 101.522 (Motions for Extension of Time). The motion states that the Agricultural Coalition¹ "has no objection to this request for extension of time." *Id.* Counsel for the Agency states that she attempted to contact counsel for the Environmental Groups² but had not succeeded in doing so. *Id.*

¹ In the underlying rulemaking docket R12-23, the Agricultural Coalition consisted of the Illinois Pork Producers Association, the Illinois Farm Bureau, the Illinois Beef Association, and the Illinois Milk Producers Association.

² In the underlying rulemaking docket R12-23, the Environmental Groups consisted of the Environmental Law and Policy Center, Prairie Rivers Network, Illinois Citizens for Clean Air and Water, and the Environmental Integrity Project.

The Board's procedural rules provide that "[t]he Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document . . . either before or after the expiration of time." 35 Ill. Adm. Code 101.522.

The procedural rules also provide that,

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period. . . . 35 Ill. Adm. Code 101.500(d).

While conceivably the Board may yet receive a timely response to the Agency's motion, the original deadline of November 3, 2014, has passed. Under these circumstances, allowing the full response period to run would result in undue delay. Accordingly, the Board proceeds to decide the motion.

Having reviewed the substance of that motion, and in the absence of any objection to granting it, the Board grants the Agency's motion and extends the comment deadlines as requested.

For the convenience of the participants, the Board restates that its October 2, 2014 order directed the Agency to submit written comments addressing matters including, but not limited to, those listed below. The Board directs the Agency to file those comments on or before Wednesday, December 3, 2014.

1. Please submit a copy of any agreement(s) currently in effect under which the Agency is required to compile and maintain an inventory, database, or similar compilation of CAFOs that are not required to be covered by an NPDES permit.
2. Please submit any Agency regulations, guidance, policy, or other means through which the Agency implements any agreement(s) described in Question 1.
3. JCAR describes information collected under an agreement between the Agency and USEPA with the assistance of the Illinois Departments of Agriculture and Public Health. Please, for each department, list the items of information, including animal types and number of animals, supplied to the Agency, how each department collects each item of information, what period of time is covered by each item of information, how frequently each department submits information to the Agency,
4. Please identify any other sources used to collect information on unpermitted CAFOs. Please identify sources both inside and outside of the Agency.

5. Please describe the process the Agency uses to compile information identified in response to Questions 3 and 4. Specifically, please identify the software used for each dataset identified as well as the database software used by the Agency to compile the identified information. Also, please comment on whether the Agency's database administrator can be granted read-only access to the databases of other departments identified in response to Questions 3 and 4.
6. Please provide a copy of any inventory, database or similar compilation of CAFOs that are not required to be covered by an NPDES permit that is maintained by the Agency. Please comment on whether this information is available to the public through the Agency's website or other medium. Also, please provide language requiring public availability of this information that the Board can consider if it proceeds to first notice.
7. Please address any differences between any information compiled by the Agency as described in Questions 3 through 6 and the requirements of Section 501.505 as proposed by the Board at Second Notice.
8. In its June 26, 2014 letter to the Board, JCAR stated that the information required under the Board's proposed Section 501.505 is already collected by the Agency, with one difference regarding location. JCAR reported that the Agency collected information about a facility's location in terms of latitude and longitude only, because it is the most specific locator. Please comment on whether the Agency continues to consider longitude and latitude as more specific than other information, and propose language requesting location information that the Board can consider if it proceeds to first notice.
9. In its June 26, 2014 letter to the Board, JCAR stated that the information required under the Board's proposed Section 501.505 is already collected by the Agency, with one difference regarding animal types and numbers. JCAR reported that the Agency maintains information on facilities' animal type and maximum number of each animal type based on a facility's most recent permit application of other recent data submitted to the Department of Agriculture or the Department of Public Health. Please comment on how frequently the Agency receives these permit applications and other data from the departments, and propose language on animal type and maximum number of each animal type that the Board can consider if it proceeds to first notice.
10. For any information submitted as described in Questions 3 through 6, please describe how the Agency addresses any changes in information, *e.g.*, change in ownership or change in type of animal stabled or confined at the facility.
11. For any information submitted as described in Question 3 through 6, please describe how the Agency addresses any facility that ceases operation.

12. If USEPA has issued any response, finding, or other determination regarding information as described in Question 3 through 6, please provide a copy to the Board.
13. Please explain how the Agency intends to comply with federal regulations requiring Illinois to maintain a program “capable of making comprehensive surveys of all facilities and activities subject to the [Agency’s] authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements.” 40 C.F.R. 123.26(b)(1).
14. How many Large CAFOs currently operate in Illinois?
15. How many Large CAFOS in Illinois are currently covered by an NPDES permit?

The Board directs any participant wishing to respond to the Agency’s comment or address issues raised by JCAR in its June 26, 2014 letter to Board to file those comments on or before Tuesday, February 3, 2015.

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 November 6, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board