

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
CONCENTRATED ANIMAL FEEDING	)	R 2012-023(A)
OPERATIONS (CAFOS): PROPOSED	)	(Rulemaking – Water)
AMENDMENTS TO 35 ILL. ADM. CODE	)	
501, 502 AND 504	)	

**NOTICE OF ELECTRONIC FILING**

To: **Attached Service List**

PLEASE TAKE NOTICE that on February 3, 2015, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois: **ENVIRONMENTAL GROUPS’ RESPONCE TO AGENCY COMMENTS** on behalf of Prairie Rivers Network, Illinois Citizens for Clean Air and Water, Natural Resources Defense Council and Environmental Law & Policy Center (collectively, “Environmental Groups”) copies of which are attached hereto and herewith served upon you.

Respectfully Submitted,




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February 3, 2015

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**ENVIRONMENTAL GROUPS’ RESPONSE TO AGENCY COMMENTS**

In its December 3, 2015 filing, Illinois Environmental Protection Agency (“IEPA” or “Agency”) presented to the Illinois Pollution Control Board (“IPCB” or “Board”) the information it possesses regarding concentrated animal feeding operations (CAFOs) in Illinois. This submission reveals that IEPA indeed does not have a comprehensive inventory of these facilities as it is required to have by law. Further, IEPA has not shown that it is likely to complete such an inventory in the foreseeable future. Therefore, the reporting rule the Board proposed in Section 501.505 of the First Notice Rule it published on January 15, 2014 in IPCB 12-23 and the Second Notice Rule it published on April 17, 2014 is necessary, and is not redundant as the Joint Committee on Administrative Rules (JCAR) had suggested in its June 26, 2014 letter to the Board.

This comment from Illinois Citizens for Clean Air and Water (ICCAW), Prairie Rivers Network and Environmental Law & Policy Center (collectively “Environmental Groups”) will:

- summarize IEPA’s obligation to create a comprehensive inventory of Illinois large CAFOs;
- demonstrate that IEPA is currently unaware of a vast number of large CAFOs in Illinois;
- show that the data IEPA has on the CAFOs it knows about is insufficient;
- respond to the information IEPA provided to the Board’s questions in its December 3, 2014 filing; and
- suggest further questions the Board should ask IEPA regarding the information it presented.

**I. IEPA must have a comprehensive inventory of CAFOs, but has not developed one despite years of urging by USEPA and the public**

Clean Water Act regulations require that IEPA maintain a comprehensive inventory of CAFOs in Illinois. To retain authority over the National Pollutant Discharge Elimination System (NPDES) program, the state must “be capable of making comprehensive surveys of all facilities and activities” potentially subject to regulation.<sup>1</sup> Discharges of pollutants from CAFOs are considered point sources and require NPDES permits. Therefore, to comply with the regulation, IEPA must possess basic information about the universe of CAFOs in Illinois. It does not.

In the IPCB R12-23 rulemaking, the IEPA could not provide a calculation of how many of the estimated 24,500 livestock facilities would be defined as CAFOs or what universe of facilities had discharged in the past.<sup>2</sup> As Environmental Groups describe below and in our previous comments to the Board,<sup>3</sup> Illinois is currently not capable of completing a comprehensive inventory of its CAFOs because the information it is relying on to build the inventory---including data from the Illinois Department of Agriculture (IDOA), the Illinois Department of Public Health (IDPH) and IEPA citizen complaint and inspection records---does not account for all large CAFOs in the state.

The U.S. Environmental Protection Agency (USEPA) has found serious deficiencies in IEPA’s CAFO Clean Water Act program.<sup>4</sup> IEPA does not have inspection and surveillance procedures sufficient to determine compliance or noncompliance with applicable program

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<sup>1</sup> See 40 CFR 123.26(b).

<sup>2</sup> IPCB R12-23 Ex. 12 (Illinois Agriculture, USDA, NASS, Illinois Field Office; printed 4/1/11); Yurdin, 8/21/12 TR at 116 and 146-147.

<sup>3</sup> IPCB R12-23 Environmental Groups Final Comments, 1/16/2013 PC#20 at 12-13; See also, IPCB R12-23 Prefiled Testimony of Kendall Thu 10/16/2012, at 5-6 and Bruce Yurdin Tr. 8/21/2012 TR at 105-106. For example, the Illinois Department of Agriculture does not have documentation of livestock facilities built prior to the enactment of the Livestock Management Facilities Act, 510 ILCS 77/1 (1996).

<sup>4</sup> IPCB R12-23 Ex. 14 (September 28, 2010 Letter from USEPA to IEPA re: Petition to Withdraw the Illinois NPDES Program and USEPA Investigation Report) at 20.

requirements.<sup>5</sup> Nor has the IEPA been conducting periodic inspections of CAFOs that may be subject to NPDES regulation.<sup>6</sup> The Agency has a very low inspection rate of livestock operations and CAFOs,<sup>7</sup> inspecting only about 150-200 operations per year.<sup>8</sup>

As the Board is aware, citizen groups submitted a “dedelegation petition” to USEPA to withdraw IEPA’s authority to administer the CAFO NPDES program because it does not comply with the law. In its dedelegation petition investigation report, USEPA carefully noted a series of unmet Performance Partnership Agreement (PPA) commitments by IEPA going as far back as 2000.<sup>9</sup> Notably, the 2002 PPA committed the IEPA to “continue to develop its AFO inventory” and in developing this inventory, IEPA was to “compile data from existing sources...”<sup>10</sup> More than a decade has now passed and the IEPA still has yet to compile a viable CAFO inventory with existing sources of information to allow it to fulfill its responsibilities under the Clean Water Act.

The Agency’s continued resistance to a rule requiring information submission is surprising. In its response to USEPA’s initial investigation of Illinois’ CAFO program, the Agency committed to proposing a revision to the state livestock regulations requiring livestock producers to file basic information with the Agency.<sup>11</sup> The Agency did not base its commitment on mirroring federal action, but rather noted that such a requirement would be useful for prioritization of inspections and permitting decisions.

IEPA has cited resource constraints as a reason it has not fulfilled its commitment to compile an inventory and complete inspections of facilities to identify those over 1000 animal

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<sup>5</sup> IPCB R12-23 Ex. 14 (September 28, 2010 Letter from USEPA to IEPA re: Petition to Withdraw the Illinois NPDES Program and USEPA Investigation Report) at 20.

<sup>6</sup> IPCB R12-23 Ex. 14 at 20.

<sup>7</sup> IPCB R12-23 James, 10/30/12 TR at 248: 13-24.

<sup>8</sup> IPCB R12-23 Ex. 7 at 3; James, 10/30/12 TR at 248: 21-24.

<sup>9</sup> USEPA Investigation Report, Id. *supra* note 9 at 31-33.

<sup>10</sup> USEPA Investigation Report, Id at 33.

<sup>11</sup> Attachment C to IEPA’s December 3, 2015 filing, p. 3.

units.<sup>12</sup> Yet IEPA continues to pursue an approach that demands an even greater outlay of Agency resources in order to comply with the law. To complete a comprehensive inventory of Illinois CAFOs, it could take hours of investigation by multiple IEPA staff members to gather the necessary data for an individual facility. Despite this effort, if IEPA continues to rely on sources other than the CAFOs themselves, there is no guarantee that the information gathered is accurate or complete. To complete the comprehensive inventory that is required, IEPA would have to repeat this process hundreds of times. By contrast, responsible CAFO owners and operators should be able to comply with the basic reporting requirement proposed in Section 501.505 in a matter of minutes. Thus, the current approach places a much greater burden on the Agency (and with less accurate results) than would be placed on individual CAFO owners or operators by asking them to provide the same information.

## **II. IEPA has vastly underestimated the number of large CAFOs in Illinois**

The IEPA CAFO inventory provided in Attachment I to the Agency's December 3, 2014 filing is certainly not comprehensive. Below we show two lines of evidence indicating that the number of large CAFOs should be at least twice as many as the 254 IEPA found. First we describe IDOA data indicating there could be at least 516 large CAFOs in the inventory. Next, we present findings from an inventory of large CAFOs assembled by Illinois Citizens for Clean Air and Water, which lead to estimates of as many as 560 large CAFOs statewide. Taking these estimates in context with USEPA's estimate of 500 large CAFOs in Illinois,<sup>13</sup> the weight of the evidence shows that IEPA's current inventory is seriously lacking and that a reporting rule is necessary.

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<sup>12</sup> *Id.* at 32.

<sup>13</sup> USEPA Investigation Report, IEPA Attachment B at pgs. 13-14.

**A. IDOA data shows that IEPA should have found at least twice as many large CAFOs than it reported to the Board**

First, the IDOA’s website of facility statistics (<http://www.agr.state.il.us/lmfa-stats>) suggests that many more large CAFOs have been constructed than the 254 noted in the Agency’s attachment. According to IDOA, as of November 2013, 516 facilities of 1,000 or more animal units had been constructed and 34 more were under construction. As explained below, a facility that is 1,000 animal units or more would generally be considered a large CAFO by IEPA.

IDOA tracks facilities by animal units rather than the number of animals present. IEPA defines a large CAFO based on the number of animals (not animal units) present. To translate between the two, an IDOA chart converts animal units to number of animals.<sup>14</sup> The table below uses that IDOA chart and the definition of a large CAFO from 35 IAC 502.103 to show that facilities with at least 1,000 animal units are generally considered large CAFOs.

<b>Animal Type</b>	<b>IDOA: number of animals equaling 1,000 animal units</b>	<b>IEPA: number of animals equaling a large CAFO</b>
Swine over 55 lbs	2,500	2,500
Swine under 55 lbs	33,334	10,000
Dairy	714	700
Cattle	1,000	1,000
Turkeys	50,000	55,000

This table shows that the 516 facilities with more than 1,000 animal units that IDOA has identified should closely track IEPA’s identification of large CAFOs. In fact, 516 may be an underestimate of large CAFOs because 1,000 animal units sometimes represents more animals than

<sup>14</sup> Available at <http://www.agr.state.il.us/livestock-management-facilities-program/>.

the minimum number for a large CAFO as defined in 35 IAC 502.103. For example, the table above shows that for two types of facilities (young swine and dairy), the definition of 1,000 animal units sets a higher bar (i.e. requires more animals) than the definition of a large CAFO. This underscores the importance of a reporting rule requiring every facility to provide IEPA with current information regarding the number of animals present.

Furthermore, it is important to note that the IDOA database itself is not comprehensive. The IDOA database is compiled using notices of intent to construct required under the Livestock Management Facilities Act, which did not go into effect until 1996. As such, the IDOA database lacks information on CAFOs constructed before 1996. Again, the reporting rule is necessary to fill in this important gap in existing data.

### **III. An independent attempt to assemble an inventory of large CAFOs in Illinois again shows that IEPA should have twice as many large CAFOs in its inventory.**

In an attempt to get a more accurate picture of the number of large CAFOs in the state, ICCAW used data gathered from various sources<sup>15</sup> to assemble inventories of large CAFOs in 17

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<sup>15</sup> Baron, Valerie, 2013 Illinois Department of Agriculture (IDOA): Freedom of Information Act (FOIA) 5 ILCS § 140/1, Any and All Databases Related to Livestock Facilities, request filed October 7, 2013 on behalf of the Environmental Integrity Project; Environmental Working Group (EWG) 2015a. U.S. Department of Agriculture Livestock Subsidies Database, FOIA request, 5 U.S.C. § 552, Jansen Dairy Inc., Jasper County Livestock Subsidies, Accessed January 14, 2015, <http://farm.ewg.org/persondetail>; Global Pork Production Enterprises, Ltd (GPPE) Corporate Website; Director of Production, Shawn O'Brien, 4,800 Sow Center, Pittsfield, IL, USA, Accessed September 18, 2014, <http://www.gppeltd.com/staff/shawno'bri>; Google Earth 2014a Kinderhook IL, Pike County 39°40.123' N, 91°8.128' W, eye alt 3,963 ft. Blue Creek LLC, plotted CAFO by Sterling, Eric A., Image Date: 9/10/2012, Accessed May 19, 2014; Google Maps Satellite View 2015a. Quincy IL, Adams County, Silver Creek Dairy LLC, USDA Farm Service Agency Map Data, plotted CAFO and overlay by Sterling, Eric A., Accessed January 14, 2015, 2015b. Oakford IL, Cass County, Brauer Pork Inc., USDA Farm Service Agency Map Data, plotted CAFO and overlay by Sterling, Eric A., Accessed January 9, 2015 2015c. Teutopolis IL, Hartke Swine Center, Effingham County, USDA Farm Service Agency Map Data, plotted CAFO and overlay by Sterling, Eric A., Accessed January 10, 2015; 2015d. St. Marie IL, Borgic Enterprises, Jasper County, USDA Farm Service Agency Map Data, plotted CAFO and overlay by Sterling, Eric A., Accessed January 12, 2015; IDOA 2014a. IDOA Livestock Management Facilities Act (LMFA) Recent Notices of Intent to Construct Database, Accessed August 5, 2014, <http://www.agr.state.il.us/Environment/LMFA/noitelist.php>; Illinois Secretary of State (ISOS) 2014a; Illinois Department of Business Services Database, CORP/LLC Certificate of Good Standing, Elm Creek Farms Ltd., <http://www.ilsos.gov/corporatellc/> 2014b.; Illinois Department of Business Services Database, CORP/LLC Certificate of Good Standing, Silver Creek Dairy LLC Managers, <http://www.ilsos.gov/corporatellc/> 2015c Illinois Department of Business Services Database, CORP/LLC Certificate of Good Standing, Dot Farms LLC, Cass County, <http://www.ilsos.gov/corporatellc/> 2014d Illinois Department of Business Services Database, CORP/LLC Certificate of

Illinois counties. ICCAW then compared those inventories with IEPA's inventory and again found that IEPA should have identified about twice as many large CAFOs as it reported to the Board.

First, ICCAW selected seventeen Illinois counties with modest to large concentrations of CAFOs: Adams, Cass, Clinton, DeKalb, Effingham, Hancock, Henderson, Henry, Jasper, Knox, LaSalle, Livingston, Mercer, Peoria, Pike, Warren, and Whiteside.<sup>16</sup> Next, data on CAFOs was collected from a variety of sources, including facility data obtained from Freedom of Information Act requests of IDOA data and information found on U.S Department of Agriculture (USDA) and Illinois Secretary of State websites. That data was amalgamated and entered into an excel spreadsheet, and facilities were plotted onto Google Earth.

A CAFO was considered "Large" and included in the county inventory if 1) its animal unit numbers exceeded 1,000 units and 2) the facility was visually confirmed to exist in the Google Earth satellite images. When accurate records of animal units were unavailable, (such as in Livingston County), ICCAW used a conservative estimate that at least 25,000 square feet of building space would be required for a large CAFO. Building size was visually estimated using map tools on Google Earth satellite images.

It should be noted that these findings simply show that the universe of large CAFOs in Illinois is unknown and will remain so until a reporting program is implemented. There are likely additional large CAFOs in those seventeen counties that ICCAW's review did not and could not

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Good Standing, Blue Creek LLC, <http://www.ilsos.gov/corporatellc/> 2014e. Illinois Department of Business Services Database, CORP/LLC Certificate of Good Standing, Prairie Ridge LLC, Involuntary Dissolution, <http://www.ilsos.gov/corporatellc/>; Sterling, Eric A. 2014a IDOA: FOIA 5ILCS § 140/1 request, Adams County Public Information Meeting Transcriptions under the Livestock Management Facilities Act, Ryan Rabe Facility, transcription of 6/26/06 PIM at the Adams County Courthouse. 2014b IDOA: FOIA 5 ILCS § 140/1 request, Adams County Public Information Meeting Transcriptions under the Livestock Management Facilities Act, Scott Wray & Kasey Cornwell Farm, transcription of 9/21/06 PIM at the Adams County Courthouse. 2014c IDOA: FOIA 5 ILCS § 140/1 request, Adams County Public Information Meeting Transcriptions under the Livestock Management Facilities Act, Terry Vollbracht Facility, transcription of July 8, 2002 PIM at the Liberty School's Media Center. 2014d IDOA: FOIA 5 ILCS § 140/1 request, Pike County Public Information Meeting (PIM) Transcription under the Livestock Management Facilities Act, Panther Creek LLC transcription of 5/19/09 PIM at the Pike County Courthouse.

<sup>16</sup> IEPA December 3, 2014 Answer to IPCB questions, Attachment W1-W3.

detect because of inaccurate and/or incomplete data available to us. Nonetheless, extrapolating from ICCAW's data to all 102 Illinois counties, one can estimate that at least 306 large CAFOs are missing from the IEPA inventory.<sup>17</sup>

<b>COUNTY/ IEPA SUCCESS RATE</b>	<b># LARGE CAFOS FOUND IN ICCAW INVENTORY</b>	<b># LARGE CAFOS IN IEPA INVENTORY</b>
Adams / 21%	19	4
Cass / 76%	17	13
Clinton / 83%	18	15
DeKalb / 67%	12	8
Effingham / 0%	8	0
Hancock / 80%	15	12
Henderson / 83%	6	5
Henry / 83%	12	10
Jasper / 0%	7	0
Knox / 64%	14	9
LaSalle / 75%	4	3
Livingston / 14%	8	1
Mercer / 60%	5	3
Peoria / 75%	4	3
Pike / 62%	26	16
Warren / 0%	3	0
Whiteside / 70%	10	7
<b>TOTAL / 58%</b>	<b>188</b>	<b>109</b>

<sup>17</sup> The extrapolation extends the omission rate ICCAW found to the rest of Illinois counties. ICCAW sampled 17% of Illinois' 102 counties and they have a collective omission rate of 42%. If you assume a general 42% omission rate elsewhere there are a number of ways to extrapolate. ICCAW found 51 missing CAFOs from 17 counties, or on average 3 per county. Extrapolated to 85 counties ICCAW did not evaluate is  $3 \times 85 = 255$  missing large CAFOs in those counties plus the 51 ICCAW found in its sample 17 counties for a total of 306.

Among the 17 counties examined, ICCAW found 79 large CAFOs that IEPA has not accounted for. To illustrate what ICCAW found in a bit more detail, we will look a bit closer at six of these counties.

Adams County

For Adams County, the IEPA inventory includes just 4 large CAFOs. ICCAW’s review identified 19. Below we list the large CAFOs found in Adams County followed by a satellite photo of a large Adams County CAFO not included in IEPA’s inventory.

## None of the Following Adams County Facilities are on the IEPA Large CAFO List

Name/Owner	Source	Animal Units
Bear Creek Genetics II/ Professional Swine Management	IDOA FOIA (Baron 2013)	1,100 AUs
Brent Obert	IDOA FOIA (Baron 2013)	1,779 AUs
Bruce Duesterhaus	IDOA FOIA (Baron 2013)	1,115A Us
D & V Pork	IDOA FOIA (Baron 2013) (IDOA 2014a)	Intent to Construct 5/15/13 +960 =2880 AUs total
Elm Creek Farms Ltd/ Professional Swine Management Gary L Donley, Kenneth Wright	IDOA FOIA (Baron 2013) (ISOS 2014a)	1,120 AUs
Hugenberg Hogs	IDOA FOIA (Baron 2013) (IDOA 2014a)	Intent to Construct 4/19/13 + 960 =2660 AUs
Marvin Yoder	IDOA Website IDOA FOIA (Baron 2013)	Intent to Construct 9/5/2013, + 91=1051 AUs
Peter Brothers Pork/ Ragan M Peter	IDOA Website IDOA FOIA (Baron 2013) (IDOA 2014a)	Intent to Construct 10/05/12 "New" 992 AUs and 5/23/14 "New" site 992 AUs

## None of the Following Adams County Facilities are on the IEPA Large CAFO List

Name/Owner	Source	Animal Units
R & D Genenbacher Farms	IDOA Website IDOA FOIA (Baron 2013) (IDOA 2014a)	Intent to Construct 4/26/13 +400 =1175 AUs
Rich Gastler	IDOA Website (Baron 2013) (IDOA 2014a)	Intent to Construct 7/26/13 New site, 1984 AUs
R J Rabe Farm	IDOA FOIA of Public Information Meeting (Sterling 2014a)	2006, 2,000 AUs
Scott Wray & Kasey Cornwell Farm	IDOA Website IDOA FOIA of Public Information Meeting (Sterling 2014b)	Intent to Construct 11/13/12 + 992 =2992
Marilyn Shriver & Son, Dan Shriver	IDOA FOIA (Baron 2013)	1,500 AUs
Silver Creek Dairy LLC/ Professional Swine Management	IDOA FOIA (Baron 2013) (Google Maps 2014a) (ISOS 2014b)	1,110 Dairy Cows
Terry Vollbracht	IDOA, FOIA of Public Information Meeting (Sterling 2014c)	2,880 AUs

## Silver Creek Dairy LLC Not on IEPA Large CAFO Inventory



(Google Maps Satellite View 2015a)

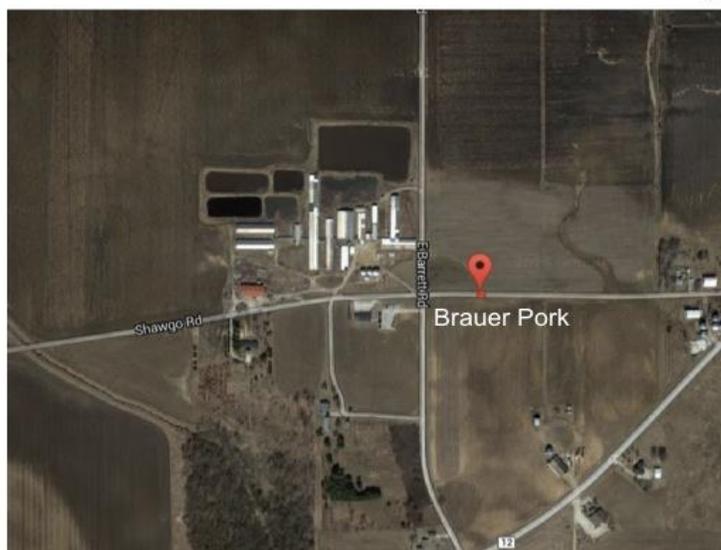
Cass County

For Cass County, the IEPA inventory includes 13 large CAFOs. ICCAW found 17. The additional 4 ICCAW found are identified below, followed by a satellite photo of one of them.

## None of the Following Cass County Facilities are on IEPA Large CAFO List

Name/Owner	Source	Animal Units
Mach 9/ The Maschhoffs LLC	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,272 AUs
Brauer Pork Inc./ James Brauer	(EWG 2014a) (ISOS 2015a) (Google Maps 2015b)	No Information on Animal Units
Dot Farm LLC/ Steve Schneider	IDOA FOIA (Baron 2013) (IDOA 2014a) (ISOS 2014c)	1,440 AUs
JDS Farm/ Joe Sidwell	IDOA FOIA (Baron 2013) (IDOA 2014a)	1,200 AUs

### Brauer Pork Inc., Cass County



(Google Maps Satellite View 2015b)

Effingham County

For Effingham County, the IEPA lists no large CAFOs. ICCAW’s review revealed 8. Below we list the 8 large CAFOs and provide a satellite photo of one of them.

## IEPA Reported No Large CAFOs in Effingham County: Eight Omissions Below

Name/Owner	Source	Animal Units
Goeckner Farms/ Troy Goeckner	IDOA FOIA (Baron 2013) (IDOA 2014a)	3,575 AUs
Brummer Porkers/ Greg & Paul Brummer	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,160 AUs
Beckman Farms Inc./ John & Paul Beckman	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,720 AUs
Hartke Swine Center/ Phil Hartke	IDOA FOIA (Baron 2013) (IDOA 2014a) (Google Maps 2015c)	264 + 455 + 413= 1,132 AUs
Hamland Acres Inc./ Mark Brummer	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,971 AUs
New Fashion Pork LLC Twenty-First Century Pork/ Phil Hartke	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,108 + 724= 2,832 AUs
Beckman Farms/ Donald Beckman	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,720 AUs
Niemerg Farms/ Eugene Niemerg	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,880 AUs

### Hartke Swine Center, Effingham County



(Google Maps Satellite View 2015c)

Jasper County

The IEPA inventory contains no large CAFOs in Jasper County. ICCAW found 7, which are listed below, followed by a satellite photo of Borgic Enterprises.

### IEPA Reported No Large CAFOs in Jasper County: Seven Omissions Below

Name/Owner	Source	Animal Units
Pitchco/ Wes and Anthony Pitcher	IDOA FOIA (Baron 2013) (IDOA 2014a)	2,515 AUs
Kocher Swine Enterprises/ Edward & Steven Kocher	IDOA FOIA (Baron 2013)	4,603 AUs
McClure Farms/ Gordon McClure	IDOA FOIA (Baron 2013)	694 + 752= 1,446 AUs
Borgic Enterprises/ Jeff Borgic	IDOA FOIA (Baron 2013) (Google Maps 2015d)	8,698 AUs
Keller Grain & Livestock/ Robert A. Keller	IDOA FOIA (Baron 2013)	5,760 AUs
Jansen Dairy Inc./	IDOA FOIA (Baron 2013) (EWG 2014a)	3,364.2 AUs
Probst Grain & Livestock/ Randall and Christopher Probst	IDOA FOIA (Baron 2013)	1,711.5 AUs

### Borgic Enterprises, Jasper County



(Google Maps Satellite View 2015d)

Livingston County

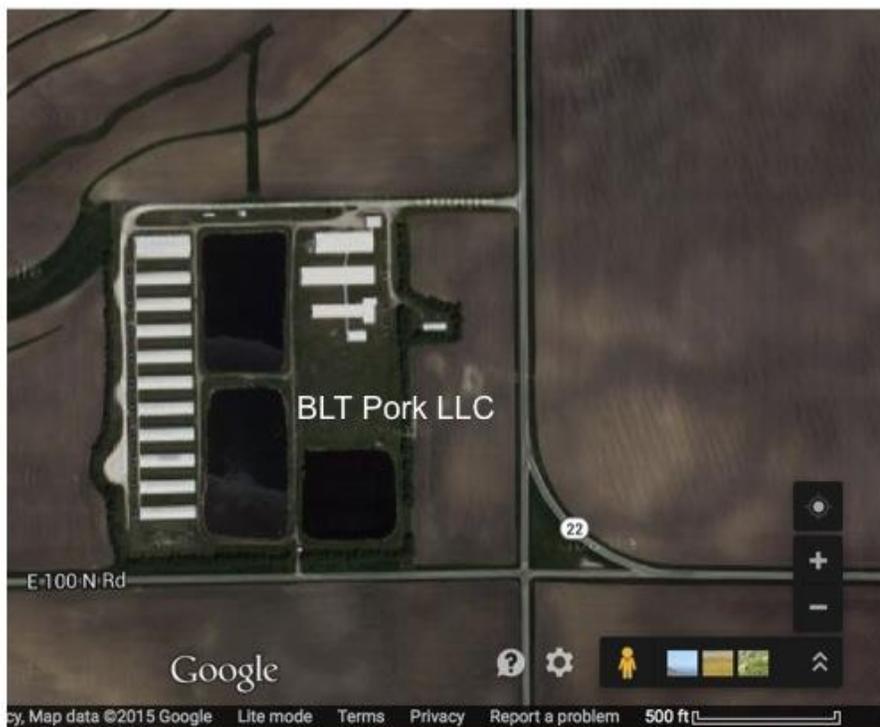
The IEPA inventory contains one large CAFO in Livingston County, and ICCAW's review found 8. The additional 7 ICCAW found are identified below followed by a satellite photo of one of these facilities.

The 2012 Census of Agriculture - County Data, USDA, National Agricultural Statistics Service indicated that Livingston County had 34 swine operations with over 1,000 Animal Units. Visual confirmation of seven facilities via satellite view of 25,000+ square feet of building space indicated a large CAFO. 25,000+ square feet is a very conservative indicator of the building space required for a large CAFO.

## Livingston County Omissions

Name/Owner	Source	Animal Units
BLT Pork Inc./ Bob Frase, John Traub, Thomas A Jennings	IDOA 2014 (ISOS 2014)	Unknown
H Lazy Inc./ Kip Harms	IDOA 2014	1,800 AUs
Indian Creek Farm/ Fehr Farms, Multiple Facilities	EWG 2014	Unknown
KP Pigs/ Zimmerman Farms Multiple Facilities	IDOA 2014	Unknown
Schaffer Dairy	IDOA 2014	Unknown
Tri-Spec Sow Center LLC/ Kuntz Farms Multiple Facilities	IDOA 2014	Unknown
Yoder Hog Farm/ Multiple Facilities	IDOA 2014	Unknown

# BLT Pork LLC



(Google Maps Satellite View 2015e)

Pike County

The IEPA inventory contains 16 large CAFOs in Pike County, and ICCAW's review found 26. The additional 10 ICCAW found are identified below followed by a satellite photo of one of these facilities.

**None of the Following Pike County Facilities are on the IEPA Large CAFO List**

Name/Owner	Source	Animal Units
Blue Creek LLC/ Maschhoffs Larry & Christopher Borrowman *** Largest CAFO in Pike County	IDOA FOIA (Baron 2013) (Google Earth 2014a) (ISOS 2014d)	1,918 + 720 + 805= 3,443AUS
Deer Run Pork LLC/ Jeff Hurtz, DEAN R SIEREN, KEOTA IA,	IDOA FOIA (Baron 2013)	1,760AUS
Global Pork Production Enterprises Ltd/ (GPPE), Jeff Galle, Shawn O'Brien	4,800 Sow Center (GPPE Website)	1,920 Approx.
Honey Creek Hogs Inc./ BRANDON M. GERARD	IDOA FOIA (Baron 2013) (IDOA 2014a)	200 + 420 + 400= 1,020AUS
Jerry Heavner	IDOA FOIA (Baron 2013)	1,100AUS
PANTHER CREEK PORK INC./ Jonathan Curless, Maschhoffs	FOIA of Public Information Meeting (Sterling 2014d)	1,440AUS
Pikeland LLC/ Robert Williams	IDOA FOIA (Baron 2013) (Google Earth 2014c)	1,838AUS
Prairie Ridge LLC/ The Maschhoffs Sean O' Brien	IDOA FOIA (Baron 2013) INVOLUNTARY DISSOLUTION 2010 CPS MANAGEMENT Inc. (ISOS 2014d)	640 + 1,300= 1,940AUS
Timberline Farm LLC	IDOA FOIA (Baron 2013) (IDOA 2014b)	992 + 1,212= 2,204AUS
Twin River Sow LLC/ PATRICK L GRAHAM, GHRIST VETERINARY CLINIC	IDOA FOIA (Baron 2013) (IDOA 2014b)	395 + 803= 1,198AUS

**Blue Creek LLC  
Not on IEPA Large CAFO Inventory**



(Google Earth 2014a)

**IV. Not only does IEPA's inventory miss many large CAFOs in the state, it also lacks key information**

In its December 3, 2014 filing to the Board, the Agency submitted its updated CAFO inventory and a redacted version of its CAFO database as Attachments I and W, respectively. A review of these attachments reveals that the Agency lacks key information on the facilities in its inventory. For example, Attachment W does not contain the following fields:

- Operators mailing addresses and phone numbers
- Location of the facility according to quarter section
- For the previous 12 month period, maximum number of each animal type (*note: "animal #" is a field, but is not necessarily a recent or maximum number*)
- Identification of types of animal holding areas, including pastures, confinement barns, and open lots.

Of the unredacted fields that are in the report (Attachment W) and required by Section 501.505, the Agency does not have information on every facility for the following fields:

- Name of all owners and operators and their contact information
- Section
- Township
- Animal number

We cannot comment on the completeness of the redacted fields in the report. However, based on the information that is visible, it appears that the Agency's database and inventory are not fully populated. For example, it appears information in the following fields is missing for a large number of facilities:

- Waste containment type

- Waste storage volume.

**V. Comments on IEPA's responses to the Board's questions/requests for information.**

On December 3, 2014, IEPA filed responses to the questions presented by the Board in its October 2, 2014 Order. Environmental Groups' comments below help to provide additional information and important context for the information supplied by the Agency.

**Question 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.*

The agreement currently in effect (Illinois Program Work Plan 2014-2016) will not result in a comprehensive survey of Illinois CAFOs. For one, IEPA has only agreed to rely upon available resources such as existing data from other agencies. As demonstrated above, reliance on available resources will not identify all large CAFOs.

The Illinois Program Work Plan is short-term in nature, expiring at the end of calendar year 2016. There is no certainty that future agreements will require the Agency to maintain or complete its CAFO inventory. In contrast, codification of a reporting requirement would make certain that the inventory will be completed and maintained.

Furthermore, in the work plan agreements of 2011-2012 and 2013, it was clear that the strategy of using existing sources of information from IDOA and IDPH records was intended as only an "interim" or "short term" strategy.<sup>18</sup> It should also be noted that the interim inventory was for the purpose of serving as a basis for a final Workload Assessment – not to serve as the state's "comprehensive inventory" per the pending dedelegation. While USEPA may have accepted the interim inventory of CAFOs for the purposes of the Workload Assessment, there is an outstanding

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<sup>18</sup> See 2011-2012 Work Plan (p. 5, Objective 2 and pp. 6-7 item 1(b) of Attachment E); 2013 Work Plan (p. 5 item 1(b) of Attachment F).

question as to how the IEPA will continually update the inventory and ensure its accuracy.<sup>19</sup> There has been no final agreement on the sufficiency of the inventory or the long-term plans for maintaining a comprehensive inventory per the dedelegation case.

It should be further noted that the 2014 Work Plan states that it was agreed that IEPA would “continue the progress to meet the Objectives established in the 2011 and 2013 Work Plan Agreements,” both of which included the goal of creating an interim inventory of CAFOs.<sup>20</sup> While IEPA has provided lists of CAFOs in its Attachments G and I for the 2013 and 2014 inventories, those lists only contain facility names, county, city and primary animal type – not enough information to evaluate these operations for the purpose of prioritizing inspections, etc.

**Question 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,*

We note that in its response to this question, IEPA has failed as requested to identify the period of time covered by the items of information collected from the IDOA and the IDPH. This failure is significant, because as we have maintained throughout this rulemaking proceeding, the IDOA and IDPH databases are limited in scope. IDOA’s database dates to 1996, when the LMFA was passed and the Department was able for the first time to track notices of intent to construct. As such, the LMFA database lacks information from CAFOs constructed prior to this date.

It is also important to note that the IDPH data only includes information on dairies, whereas the vast majority of CAFOs in Illinois are hog CAFOs. In addition, the IDPH dataset includes only

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<sup>19</sup> Personal communication between ICCAW and USEPA, June 2014.

<sup>20</sup> See Attachment H to IEPA’s December 3, 2014 filing, pg. 3.

the name, address and other location information for each facility. There is no data regarding maximum number of animals, holding areas or types and capacity of waste containment structures.

**Question 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.*

According to IEPA, additions will be made to the CAFO database after Agency inspections of livestock facilities “as staffing and priorities allow.”<sup>21</sup> This response further demonstrates the inadequacy of IEPA’s approach to comprehensive inventory creation. First, the IEPA is relying on submission of information from IDOA and IDPH that has been shown to be incomplete. Inspections cannot occur at facilities that none of these agencies know about. Second, according to the IEPA, it has committed to an annual inspection rate of just 20% of the facilities already on its list.<sup>22</sup> It is incomprehensible how such an approach will allow the Agency to build a complete inventory. Although the Agency may conduct additional inspections in response to citizen complaints and “as staffing and priorities allow,” this is hardly a reliable approach for building a comprehensive CAFO inventory.

**Question 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.*

We note from its response to this question that IEPA does not plan to make the inventory available to the public except via the Freedom of Information Act (FOIA). The FOIA can be a cumbersome and lengthy process for both state agencies and the public. According to the Agency’s

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<sup>21</sup> IEPA December 3, 2014 filing, p. 5.

<sup>22</sup> Attachment J to IEPA’s Responses to Board Questions, 12/3/2014.

2013 Work Plan Agreement with USEPA, the inventory shall be “easily” accessible to the public.<sup>23</sup> The expectation of easy access is repeated in the 2014-2016 Work Plan.<sup>24</sup> The public would be able to easily access the inventory if IEPA made it available on a website, as Minnesota<sup>25</sup> and Wisconsin<sup>26</sup> have done.

In addition, we note that IEPA did not “provide language requiring public availability of this information that the Board can consider if it proceeds to first notice.” We urge the Board to consider the following language:

The large CAFO inventory is considered a public document and shall be made available to the public at any reasonable time upon request and on the Illinois EPA website.

Finally, the Ag Coalition claims that disclosure of certain information threatens privacy rights of CAFOs are unfounded. Many other states (e.g., Wisconsin, Minnesota, Michigan) either require all CAFOs to obtain NPDES permits or other equivalent state operating permits (regardless of their discharge status) or require CAFOs to report their operations to regulators.<sup>27</sup> For example, Minnesota has a registration program for all feedlots that house over 50 units<sup>28</sup> and requires all large CAFOs to obtain NPDES or State Disposal System (SDS) operating permits.<sup>29</sup> Wisconsin<sup>30</sup> and Minnesota<sup>31</sup> have websites where the public can locate CAFOs and find basic facility information.

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<sup>23</sup> Attachment F to IEPA’s December 3, 2014 filing, pg. 6.

<sup>24</sup> Attachment H to IEPA’s December 3, 2014 filing, pg. 5.

<sup>25</sup> See <http://pca-gis02.pca.state.mn.us/wimn2/index.html>.

<sup>26</sup> See <http://dnr.wi.gov/topic/AgBusiness/CAFO/StatsMap.html>.

<sup>27</sup> Environmental Groups Post-Hearing Comments IPCB 12-23 (PC #20) (Jan. 16, 2013), Section IV, pdf pg. 38-41.

<sup>28</sup> Minnesota Rules, part 7020.0350, Registration requirements for animal feedlots and manure storage areas. *See also additional examples*, Delaware, Pennsylvania, Kansas, Arizona, Texas, and South Dakota – noted in IPCB R12-23 Environmental Groups Final Comments, 1/16/2013 PC#20 at 37.

<sup>29</sup> Minn. R. 7020.0405, Permit requirements.

<sup>30</sup> See <http://dnr.wi.gov/topic/AgBusiness/CAFO/StatsMap.html>.

<sup>31</sup> See <http://pca-gis02.pca.state.mn.us/wimn2/index.html>.

**Question 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.*

IEPA submitted its CAFO inventory (Attachment I) and CAFO database (Attachment W) to the Board on December 3, 2014. As noted above, a review of Attachment W shows that the following fields that are required by proposed Section 501.505 are not included in the Agency's CAFO database:

- Operators mailing addresses and phone numbers
- Location of the facility according to quarter section
- For the previous 12 month period, maximum number of each animal type
- Identification of types of animal holding areas, including pastures, confinement barns, and open lots.

There are several other problems with the database. For example, the un-redacted portions of the CAFO database that were submitted contain many holes. As discussed above, information regarding names of owners and operators, section and township location, and animal numbers is missing for many CAFOs listed.

The database also lumps owner name with operator name, instead of distinguishing between the two.

While the number of animals is indicated in Attachment W, it is unlikely that all of these numbers reflect the previous 12-month period or the maximum number, as required in 501.505(c)(4). Since the Agency used data at least as old as 1988 to populate its database, it is very possible that the reported animal numbers are no longer accurate.

And finally, since Attachment W has a field but no un-redacted data for "containment type," it is unclear whether containment type refers to "types of animal holding areas" required in

501.505(c)(5) or if it refers to “livestock waste containment” required in 501.505(c)(6). The IEPA inspection checklist (Attachment U) refers to “confinement type” in the livestock facility description section, but that term is not used as a field in Attachments V or W. Therefore, it is unclear whether the Agency has information that would be required by 501.505(c)(5).

**Question 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.*

In its response to this question, IEPA stated that latitude and longitude provide a more specific location than township, county, section, and quarter section. The Agency then stated that if the Board proceeds to first notice, the proposed language in Section 501.505(c)(2) is unnecessary. We suspect this is a typo, and that the Agency meant to say that (c)(3) is unnecessary. While latitude and longitude may provide a more precise location for agency officials, not many members of the public know how to locate a place based on latitude and longitude. We believe retaining both (c)(2) and (c)(3) is beneficial. .

In addition, it is unclear how IEPA will populate the inventory using latitude and longitude with existing sources of information given that the IDOA does not require latitude and longitude in its NOI form or application process. While the IDPH database does contain latitude and longitude, that database only includes information about dairy CAFOs. Clearly, if IEPA believes latitude and longitude is the most accurate location information, it would make sense that CAFOs should have to submit this information to the Agency, as opposed to the Agency expending resources to track down the latitude and longitude for each facility in its inventory.

**Question 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.*

We concur with IEPA's suggestion that 501.505(c)(4) require both 1) identification of the number and animal type of any animal stabled or confined at the facility within the last 12 months and 2) specification of the maximum design capacity of the facility.

**Question 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.*

Changes in CAFO ownership happen frequently. ICCAW data suggest that a number of the facilities listed in the Agency's existing inventory are businesses that have been dissolved. According to information obtained from the Illinois Secretary of State's Office, the following businesses contained in the IEPA's inventory have been dissolved:

- Borrowman Bros. Hog Farm (Pike County)
- Bradshaw Finishers Site 2 (Pike County)
- Double H Pork (Pike County)
- East Ridge (Pike County)
- Old School Pork (Pike County)
- Webel Farms (Pike County)
- Knuffman Family Farm (Adams County)
- Applewood Farms (Cass County)
- New Dominion Farms (Cass County)

The IEPA states that changes in information will be identified through inspections. If IEPA relies on inspections to identify changes in information, it could be years before the Agency realizes a CAFO business is no longer in existence or ownership has changed. Furthermore, the Agency cannot inspect facilities it does not know exist. An inventory that is outdated and incomplete cannot serve to properly prioritize inspections, and inspections cannot be relied upon to maintain current information about important changes in CAFO operations.

**Question 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.*

It is our understanding that USEPA has not officially “approved” either the IEPA’s inventory as a “comprehensive inventory” or its proposed Standard Operating Procedures for developing, updating and maintaining the inventory. These matters are still being reviewed or are still under investigation by USEPA.<sup>32</sup>

**Question 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).*

The IEPA appears to believe that compliance with the most recent Work Plan Agreement fulfills its state program obligations under 40 CFR 123.26(b)(1). We disagree. It appears that IEPA has a goal of inspecting 20% of CAFOs in its inventory annually. While the inventory lists some large CAFOs, 40 C.F.R. 123.26(b)(1) charges the Agency with identifying all facilities and activities subject to regulation. This would include large CAFOs not identified in the inventory, as well as small and medium operations too. Based on the rate IEPA intends to conduct inspections, the Agency would arguably not be able to fulfill its obligations under 40 C.F.R. 123.26(b)(1) for decades. We also note that IEPA has had this responsibility since receiving delegation of its Clean

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<sup>32</sup> Personal communication between ICCAW and USEPA, February 2, 2015.

Water Act program since the 1970s and has also committed to developing a comprehensive inventory of CAFOs using existing sources of information for decades. IEPA has still not followed through on this commitment, and, as we have explained above, still does not have an inventory that complies with 40 CFR 123.26(b)(1).

**Question 14 - *How many Large CAFOs currently operate in Illinois?***

According to IEPA, the Agency has identified just 254 Large CAFOs in Illinois. It is not clear from the Agency's answer how many of these are currently operating. What is clear is that there are many large CAFOS in Illinois that the Agency has not identified. As explained above, according to IDOA, from 1996 to November 2013, there were 516 livestock facilities with 1,000 or more animal units constructed and 34 under construction. The ICCAW inventory of large CAFOs in select counties identified many more large CAFOs than identified by IEPA. Finally, USEPA's 2010 investigative report of Illinois' NPDES program estimates there are 500 large CAFOs in Illinois.<sup>33</sup> This shows that without a CAFO reporting program, it is highly likely that perhaps hundreds of CAFOs will continue to operate without Agency knowledge of their existence. These missing facilities may require permits for their pollution discharges, but the Agency has no method to discover their violations. These missing facilities may be responsible for downstream water quality impairments, but the Agency has no way of identifying them as potential sources of the impairments. This is an untenable regulatory situation that must be remedied by the proposed reporting rule.

**VI. Questions the Board Should Ask IEPA Regarding Its Submission.**

- Why do all the swine facilities in the inventory have animals greater than 55 pounds? There should be facilities with swine under 55 pounds.
- Why is there a discrepancy in the number of large CAFOs as reported by IEPA (n=254), USEPA (n≈500), and IDOA (n>516)?

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<sup>33</sup> USEPA Investigation Report, IEPA Attachment B at pgs. 13-14.

- How will IEPA keep the inventory current if inspections will be conducted “as staffing and priorities allow?”

Nevertheless, we believe that the Board has all the information it needs to confirm that no comprehensive inventory of Illinois CAFOs will exist unless the Board adopts the reporting rule proposed in Section 501.505.

## VII. CONCLUSION

In conclusion, Illinois is failing to comply with federal regulations requiring delegated states to maintain a program capable of making comprehensive surveys of CAFOs. It is clear that IEPA’s inventory is not only missing large CAFOs, it is also missing important information about the CAFOs the Agency is aware of. IEPA is relying on a complicated process to compile and maintain its inventory, drawing upon incomplete (and in some cases, outdated) datasets from other agencies and its own inspections. IEPA plans to update its inventory by conducting inspections over at least the next five years, which will prolong the length of time Illinois is out of compliance with the federal regulations. It makes far more sense for Illinois to require all unpermitted large CAFOs to submit facility information to IEPA, so the data in the inventory is complete and current. Therefore we ask the Board to adopt the reporting requirement proposed in Section 501.505.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I, Jessica Dexter, hereby certify that I have filed the attached **NOTICE OF FILING and ENVIRONMENTAL GROUPS' RESPONSE TO AGENCY COMMENTS** upon the attached service list by depositing said documents in the United States Mail, postage prepaid (or via email where indicated) in Chicago, Illinois on February 3, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

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February 3, 2015

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R2012-023

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