

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1997

IN THE MATTER OF:)
)
LIVESTOCK WASTE REGULATIONS) R97-15 (A)
35 ILL. ADM. CODE 506) (Rulemaking - Land)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter comes before the Board upon a petition for rulemaking filed by the Illinois Department of Agriculture (Department of Agriculture) on November 21, 1996 pursuant to the Livestock Management Facilities Act (LMFAct) (510 ILCS 77/1 *et seq.*; adopted as P.A. 89-456, eff. May 21, 1996). In accordance with the LMFAct and the Illinois Administrative Procedure Act (APAct) (5 ILCS 100/1-1 *et seq.* (1994)), the Board today adopts such regulations for implementation by the Department of Agriculture.

BACKGROUND

The LMFAct sets forth an outline for the proper design, construction, operation, and management of livestock management facilities and associated waste handling structures. It further provides for education and certification of livestock managers, research, proper disposal of livestock waste, and financial responsibility for closure of lagoons. While many provisions of the LMFAct require no further regulatory implementation, the legislature recognized that some of the provisions would need regulatory implementation. To accomplish this, the LMFAct sets forth a participatory rulemaking process to provide the State, the agricultural community, environmental associations, and interested citizens with a public forum for the development of standards and rules implementing the LMFAct.

In this regard, the LMFAct established a Livestock Management Facilities Advisory Committee (Advisory Committee), comprised of the directors of the Department of Agriculture, the Illinois Department of Natural Resources (IDNR), the Illinois Department of Public Health (IDPH), and the Illinois Environmental Protection Agency (IEPA). The LMFAct also directed the Department of Agriculture to seek input from the Advisory Committee and, based upon the recommendations from the Advisory Committee, propose rules to the Board for the implementation of the LMFAct.

On November 21, 1996 the Department of Agriculture submitted proposed rules to the Board, as required, within six (6) months of the effective date of the LMFAct.¹ Pursuant to

¹ Before the Department of Agriculture filed the instant proposal, the Department of Agriculture proposed to the Board emergency rules related to the LMFAct on October 15, 1996. On October 29, 1996 the Board adopted emergency rules that immediately implemented

the LMFAct, the Board is required to adopt rules for the implementation of the LMFAct within six (6) months after the Department of Agriculture filed the proposed rules with the Board. Due to the stringent time-limitations for completing this rulemaking, the Board on December 5, 1996 sent the proposed rules to first notice without commenting on the merits of the proposal.

Due to the intense public and legislative interest in the issues presented by this rulemaking, the Board held five (5) public hearings on the Department of Agriculture's proposed rule. Each public hearing was different in character, but was informative in providing insight into the impact, effect, deficiencies, and advantages of the proposed rules. The hearings were held in Jacksonville on January 14, 1997, in DeKalb on January 27, 1997, in Galesburg on January 29, 1997, in Mt. Vernon on January 31, 1997, and in Urbana on February 7, 1997.² In addition to the testimony and exhibits received at these hearings, the Board also received 79 written public comments during this first-notice period.³ On March 20, 1997 the Board adopted rules for second notice in this proceeding. (See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506, (March 20, 1997) R97-15(A) & (B).) The testimony, public comments, and exhibits received during the first-notice period collectively constituted the record upon which the Board based its decision in adopting rules for second notice.⁴

certain provisions of the LMFAct. (In the Matter of: Emergency Rulemaking: Livestock Waste Regulations 35 Ill. Adm. Code 505, (October 29, 1996) R97-14, published at 20 Ill. Reg. 14903, effective October 31, 1996.) Pursuant to Section 5-45 of the APAct (5 ILCS 100/5-45 (1994)), however, the emergency rules are only effective "for a period not longer than 150 days." To avoid a gap between the expiration of the emergency rules and the promulgation of the final rules, the Board readopted the emergency rules on March 20, 1997. (See P.A. 89-0714, eff. February 21, 1997 (amending Section 5-45 of the APAct); see also In the Matter of: Emergency Rulemaking: Repromulgation of Livestock Waste Regulations 35 Ill. Adm. Code 505, (March 20, 1997) R97-14, published at 21 Ill. Reg. 4313, effective March 31, 1997.) The emergency rules will no longer apply upon the effective date of the rules we adopt here today.

² Due to inclement weather, the Urbana hearing, originally set for January 16, 1997, was rescheduled to February 7, 1997.

³ The record of the five (5) hearings are cited herein in the sequence that the hearings occurred, respectively as Tr1. through Tr5. The exhibits (Exh.) are cited in numerical order, as entered into the record. The public comments (PC) are cited in numerical order, as received by the Board.

⁴ "Second notice" is a term used in administrative proceeding to identify the period of time commencing on the day proposed rules are filed with the Joint Committee on Administrative Rules and ending 45 days thereafter. (See 5 ILCS 100/5-40(c) (1994).) For a detailed explanation of the rules adopted for second notice, the Board directs the reader to the Board's opinion and order adopting rules for second notice. (See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506, (March 20, 1997) R97-15(A) & (B).)

Pursuant to the APAct, the rules were filed on March 21, 1997 with the Joint Committee on Administrative Rules (JCAR).⁵ Since that time, the Board has received 17 additional public comments which were docketed as Public Comments 80 through 96. While the Board appreciates the continued comments on this rulemaking, the Board recognizes that it can only make substantive changes to the proposed rules during the second-notice period in response to “an objection or suggestion” by JCAR. (5 ILCS 100/5-40(c) (1994).) Because the Board cannot make changes to the rules based on the public comments received during the second-notice period, the Board strikes these comments. Additionally, the Board notes that the Illinois Pork Producers Association, Illinois Beef Association, and the Illinois Farm Bureau (collectively the Farm Group) filed a motion to file comments in light of JCAR’s suggestions on May 5, 1997 (PC 92) and an amended motion on May 6, 1997 (PC 94). On May 13, 1997 the Illinois Stewardship Alliance filed a motion to file comments in light of the Farm Group’s comments (PC 96). Because the Board is constrained by the APAct to only make changes during the second-notice period based on the objections or suggestions by JCAR, the Board denies the pending motions and further strikes the motions as public comments.

JCAR considered the rules at their regularly scheduled meeting on April 15, 1997. (See 1 Ill. Adm. Code 220.800.) At that public meeting, Board Chairman Claire A. Manning appeared before the legislative members of JCAR to answer questions regarding the proposed rules. On issues where the legislators voiced specific suggestions for rule changes, Chairman Manning agreed to relay those suggestions to the Board for its consideration in adopting final rules. The minutes of the April 15, 1997 JCAR meeting are hereby made a part of this record and docketed as Exhibit No. 95.

At the conclusion of the legislators’ questions to Chairman Manning, JCAR declined to take action on the proposed rules, letting the rules pass through without a vote of objection, prohibition, or non-objection. By JCAR’s failure to take any action on the rules, the Board may adopt final rules after expiration of the second-notice period which ended on May 4, 1997. (See 5 ILCS 100/5-40(d) (1994); 1 Ill. Adm. Code 220.1100(a)(1).) Accordingly, the Board today proceeds to final adoption of these regulations.

As previously noted, pursuant to the APAct, the only changes in the rules that may be made between second notice and final adoption of the rules are those changes “made in response to an objection or suggestion of [JCAR].” (5 ILCS 100/5-40(c) (1994).) The Board today makes several non-substantive and substantive changes to the rules in direct response to

⁵ JCAR is a legislative oversight committee that may “examine any proposed rule, amendment to a rule, and repeal of a rule to determine whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based; whether the rule, amendment to a rule, or repeal of a rule is in proper form; and whether the notice was given before its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment, or repeal. In addition, [JCAR] may consider whether the agency has considered alternatives to the rule that are consistent with the stated objectives of both the applicable statutes and regulations and whether the rule is designed to minimize economic impact on small businesses.” (5 ILCS 100/5-110(a) (1994).)

specific suggestions by JCAR.⁶ The suggestions for substantive change that the Board discusses in this opinion came either from JCAR staff in the normal course of the second-notice process or from the legislators themselves at the JCAR meeting. A discussion of the specific issues raised by JCAR, as well as the Board's treatment of those issues, follows. A summary of the Board's final rules follows that discussion.

SUMMARY OF SECOND NOTICE CHANGES

Section 506.101 Applicability

The first substantive change results from a suggestion of JCAR staff that the Board more clearly explain the relationship of these rules to the Board's emergency rules, which were promulgated on October 31, 1996 to implement certain provisions of the LMFAct and repromulgated on March 20, 1997. (See In the Matter of: Emergency Rulemaking: Livestock Waste Regulations 35 Ill. Adm. Code 505, (October 29, 1996) R97-14, published at 20 Ill. Reg. 14903, effective October 31, 1996; see also In the Matter of: Emergency Rulemaking: Repromulgation of Livestock Waste Regulations 35 Ill. Adm. Code 505, (March 20, 1997) R97-14, published at 21 Ill. Reg. 4313, effective March 31, 1997.) Accordingly, the Board includes a note in Section 506.101 which makes clear that upon the effective date of these rules, the emergency rules are no longer applicable. The Board agrees that the inclusion of such a note is important to reduce any confusion that may result regarding the applicability of the emergency rules after today's final adoption of permanent rules.

Section 506.101 Definitions

"New facility." While the Board's final rules will continue to include the statutory definition of "new facility" without clarification, the Board provides the following discussion for purposes of future interpretation of this definition at the request of JCAR. During the JCAR meeting, the committee co-chairman suggested that the Board clarify the definition of "new facility" as it relates to the expansion of facilities. Specifically, questions were raised as to when the expansion of an existing facility constitutes a new facility for purposes of bringing into play the setback provisions of the LMFAct.

The definition of "new facility" contained in the Board's rules is taken virtually verbatim from the LMFAct and the Department of Agriculture's rule proposal. It provides:

"New facility" means a livestock management facility or a livestock waste handling facility the construction or expansion of which is commenced on or after May 21, 1996 (the effective date of the Livestock Management Facilities Act). Expanding a facility where the fixed capital cost of the new components constructed within a 2-year period does not exceed 50% of the fixed capital cost

⁶ The Board notes that while several members of JCAR expressed concern with certain aspects of the rules, the Board can only deal with those concerns which resulted in specific objections or suggestions. (See 5 ILCS 100/5-40(c) (1994).)

of a comparable entirely new facility shall not be deemed a new facility as used in the Livestock Management Facilities Act. [510 ILCS 77/10.45]

(510 ILCS 77/10.45.) During the Board's five (5) public hearings and extensive public comment period, the Board received no specific comments to amend or clarify the definition, nor did we hear any objections to including the definition in the rules. Nonetheless, the Board agrees that the language is ambiguous, and because a clear understanding of its meaning is important to a livestock producer who wishes to expand, we provide the following background and interpretation.

The portion of the "new facility" definition dealing with expansion appears to have derived, in relevant part, from the Board's existing agriculture-related regulations, commonly known as the Board's Subtitle E regulations (see 35 Ill. Adm. Code 501.246), where a very similar definition of livestock facility expansion exists for the same purpose it exists in the LMFAct.⁷ Upon adoption of that definition in 1991, the Board observed that the definition attempted to "strike a balance between the rights of the producer to pursue the growth of his business and the rights of an established population to be free from unreasonable additional air pollution." (See In the Matter of: Amendments to 35 Ill. Adm. Code 501 Agriculture-Related Pollution (Management of Livestock Wastes), (May 9, 1991) R90-7, slip op. 5.)

The Board believes that the legislature in adopting the definition of "new facility" in the LMFAct also attempted to strike that balance. The Board appreciates the concerns expressed by JCAR and agrees that this definition, as contained in the Board's rules, should not be read in a manner which would inhibit the legitimate expansion of existing family farms. Further, the Board agrees with JCAR that, as the definition reads, the two-year period is not a one-time limitation on expansion, but would be rolling, or reoccurring. Therefore, for the setback provisions to apply to an existing facility, that facility would have to, in any two-year period, expand beyond "50% of the fixed capital cost of a comparable entirely new facility."

JCAR also raised questions concerning various potential interpretations of "fixed capital cost" and "comparable entirely new facility." Since the second-notice opinion of the Board did not deal with these concepts, Chairman Manning was hesitant to offer a public interpretation at the JCAR meeting. Because the record in this rulemaking is devoid of any discussion of these concepts, the Board is hesitant to offer an interpretation in this opinion. This is especially true given that, under the LMFAct, the implementation of these rules is within the province of the Department of Agriculture, and the Board will have no ongoing

⁷ In Section 501.246 of the Board's rules, the term "expansion" is defined as "[c]ommencement of construction at a livestock management facility or livestock waste-handling facility where the fixed capital cost of the new components constructed within a 2-year period exceeds 50% of the fixed capital cost of a comparable entirely new facility." (See 35 Ill. Adm. Code 501.246.) That definition was derived from the definition of a "potential secondary source" contained in the Environmental Protection Act (EPAct) (415 ILCS 5/3.60 (1994)).

interpretative role.⁸ The Board suggests that, to the extent further rulemaking is necessary, such rulemaking could be pursued by the Department of Agriculture as a proposal to the Board in Docket B.⁹

“Occupied Residence.” Today, the Board changes the definition of “occupied residence” to reflect concerns raised to JCAR and raised to the Board by JCAR staff. As proposed for second notice, the Board’s definition of occupied residence provided:

“Occupied residence” means a residence that is suitable for human occupancy 50% or more of the year and is currently occupied or has been occupied in the last five years. For the purposes of this definition, “suitable for human occupancy” means the residence provides for water and sanitation.”

(Section 506.103.) In an attempt to clarify the phrase “suitable for human occupancy” and to alleviate concerns regarding occupancy rate and time, the Board, after discussions with JCAR staff, adopts the following definition of “occupied residence”:

“Occupied residence” means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, “intended or used for human occupancy” means running water and sanitation are provided within the residence.

(Section 506.103.)

During the JCAR meeting, a JCAR member requested that the Board consider further amending the definition to include as “occupied residences” those residences that are under construction. While the Board appreciates the member’s concern regarding houses under

⁸ The Board’s authority in this rulemaking arises primarily pursuant to Section 55(c) of the LMFAAct. Unlike the Board’s authority to review contested decisions of the IEPA under the EPAct (415 ILCS 5/5(d) (1994)), the Board has no role to review final administrative determinations by the Department of Agriculture’s under the LMFAAct.

⁹ The Department of Agriculture’s proposed rules did not include rules establishing the level of surety required for the closure of lagoons. Rather, the Department of Agriculture requested that it be allowed to adopt the necessary rules. The Board, however, found that the LMFAAct required that financial surety rules be adopted by the Board. (See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506, (March 20, 1997) R97-15(A) & (B), slip op. 9.) Because no proposal had been submitted to the Board, the Board severed the docket in R97-15 into Dockets A and B. While Docket B will contain the specific procedures and criteria necessary to determine the level of surety required, pursuant to the LMFAAct, the Board also indicated that the Department of Agriculture could submit in this rulemaking any additional rule necessary to implement specific provisions of the LMFAAct. (See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506, (March 20, 1997) R97-15(A) & (B), slip op. 10.)

construction, but not yet occupied, the Board declines to make the suggested modification. The term “occupied residence” is statutory; only the Board’s definition is regulatory. The Board cannot change by regulation that which is set forth in statute. Given the plain language of the term “occupied residence,” we cannot make the requested change to include in the definition residences that are under construction, but not yet occupied.

Section 506.301 Purpose

JCAR staff noted that certain language adopted for second notice regarding waste management plans was potentially inconsistent with the LMFAct. (See 510 ILCS 77/20(f)(4).) That language, contained in the Department of Agriculture’s original rule proposal and adopted by the Board at second notice without modification, provided:

Livestock waste management plans shall be prepared by livestock management facility owners or operators to provide for adequate land area for the proper application of livestock waste at rates not to exceed the agronomic nitrogen requirement of the crop to be grown during the growing season.

(Section 506.301.) While the above rule provides that the waste shall not exceed the agronomic nitrogen requirements of the crop to be grown during the growing season, the LMFAct more specifically provides that application of livestock waste shall not exceed the agronomic nitrogen demand of the crops to be grown when averaged over a five-year period. To remove any inconsistency, the Board amends the definition to provide:

Livestock waste management plans shall be prepared by livestock management facility owners or operators to provide for adequate land area for the proper application of livestock waste at rates not to exceed the agronomic nitrogen demand of the crops to be grown when averaged over a 5-year period [510 ILCS 77/20(f)(4)].

(Section 506.301.)

Section 506.703 Initial Determination of Setbacks

JCAR raised two issues for the Board to consider that relate to the determination of whether an owner of a livestock facility had complied with the setbacks distances. The first issue relates to how one determines who the owner of neighboring properties might be for purposes of neighbor notification in the setback determination process. The second issue relates to the question of how setback distances are measured from common places of assembly.

The setback process developed in the Board’s rules at second notice was the product of the information gained from the record of the Board’s five (5) public hearings. During those hearings, an issue arose concerning when setbacks become applicable and cannot be altered by subsequent events. For instance, the Board heard testimony regarding a livestock management

facility that purchased land and began construction of a livestock facility and lagoon. Later, a trailer, that had been placed on land directly adjacent to the facility site and within the projected setback distance, was claimed to qualify as a residence in order to defeat the setback distance. (PC 17; Tr3. at 169.) To ensure that this type of situation did not reoccur, participants urged that the Board adopt a formal mechanism to preserve the rights of both the neighboring landowner and the livestock producer.

Based on the record at second notice, the Board added a new section to the regulations that established a process for the initial determination of setback distances and notification to those potentially affected by the proposed construction of a livestock facility in their community. These provisions do not apply to new livestock management or livestock waste handling facilities serving less than 50 animal units, since the statutory setbacks do not so apply.

Specifically, these new provisions provided that an owner or operator of a new livestock management or livestock waste handling facility must file a notice of intent to construct with the Department of Agriculture prior to construction to establish an initial determination of setbacks. The owner or operator of the facility is also required to mail the notice of intent to construct to the owner(s) of the property within the setback distances. Within 30 days after receipt of the notice of intent to construct, the Department of Agriculture must notify the owner or operator in writing whether the setback distance has been met. Events that occur subsequent to the filing of this notification will not defeat the setback distances unless construction of the facility has not begun or a lagoon registration form has not been filed within one (1) year after receipt of the Department of Agriculture's determination regarding compliance with the setbacks. If the Department of Agriculture determines that the owner or operator has complied with the setback requirements, later-constructed or erected residences or places of common assembly cannot operate to alter the setback as initially determined.

During the JCAR meeting, the committee co-chairman asked the Board to clarify that the owner of property located in the setback area who was to be mailed the notice of intent to construct was to be identified according to the tax rolls. The Board believes that in order to reduce any confusion that may result as to how to identify the owner of land in the setback area, a modification to the provision is warranted. The Board therefore modifies the language to make clear that the owner(s) of the property located in the setback distances are presumed, unless established to the contrary, "to be the person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed." (See Section 506.703(c).)

Also, at the JCAR meeting, Chairman Manning was asked whether the process for measuring from common places of assembly when the activity is primarily outdoors could be changed to reflect that the owner(s) of land in the setback area are required to identify the "first or closest" common place of assembly, rather than having the Department of Agriculture make that determination.¹⁰ Specifically, it was suggested that the owner or operator of a

¹⁰ The question posed to Chairman Manning concerning the process for measuring from a

facility or the Department of Agriculture contact the owner of the land in the setback area and ask them to identify the closest point of assembly where 50 or more people would be congregating. Chairman Manning stated at the JCAR meeting that the Board had extensively debated the issues surrounding how setbacks should be measured from a “common place of assembly” when the activity is primarily outdoors during deliberations concerning the second-notice opinion. Nonetheless, the Chairman agreed to bring this specific aspect of the issue back to the Board for its consideration.

Based on the change suggested by JCAR, the Board has again deliberated over the issue of measurement of “common place of assembly” when the place is an outdoor area frequented by 50 or more people a week. As proposed at second notice, the rules provided that the legal property lines of a common place of assembly were to serve as the measuring point when determining setback distances if areas were used primarily for people’s outdoor activities. The Board reached this conclusion after much thought and extensive deliberation. Ultimately, the Board attempted to strike a balance between the right of the livestock producer to raise livestock and the right of the public to be free from potential environmental concerns associated with livestock facilities. We did this by indicating that waivers could be obtained from owners of residences, non-farm businesses, and common places of assembly. While the process of obtaining waivers may seem burdensome, the Department of Agriculture may always provide assistance when dealing with waivers from State, federal, and local units of government.

The Board also attempted to provide a rule that was workable. Although it was stated at the JCAR meeting that the suggested change is only one step beyond the Board’s rule, the Board has concerns that the recommended process may not work as easily as suggested. First, the effect of the suggestion is that it shifts the burden to the neighboring landowners to identify common places of assembly on the land in the setback area. Second, the Board notes that under the Board’s proposal, the setback is measured from a point that already exists and may be easily identified -- the property line. JCAR’s suggestion, by contrast, would require that measurement to be made from boundaries established by the neighboring landowner upon request. The latter approach seems much more likely to give rise to disputes and

common place of assembly was based on the Board’s determination in the second-notice opinion and order that the legal property lines of a common place of assembly, when the primary activity at the common place of assembly was an outdoor activity, were to serve as the measuring point when determining setback distances. (See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506, (March 20, 1997) R97-15(A) & (B), slip op. 14-19.) For an outdoor place to qualify as a common place of assembly, the place must be frequented by at least 50 persons at least once per week, if the place operates 52 weeks out of the year. If the place operates less than 52 weeks per year, it must be frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur. The Board emphasizes that the definition of common place of assembly was not intended to include places that are only operational for one day out of the year, but instead encompasses those places that are open on a seasonal or weekly basis.

administrative difficulties for all concerned, which is what the Board sought to avoid in deciding to measure the setback from the property line.

The Board understands the concerns expressed by those regarding measuring setbacks from the property lines of common places of assembly where the activity is primarily outdoors. However, based on the record before us, we cannot change the process established at second notice at this late stage in the rulemaking proceeding without additional public comment. The process ultimately adopted was based on the public comments, exhibits, and testimony received. Therefore, additional hearing and public comment on the proposal is necessary to ensure that any amendment is premised on a fully developed record.

Finally, the Board's immediate decision to not change the rule does not foreclose changing it in the future. After final adoption of these rules, a petition may be filed with the Board to amend the rules. (See 415 ILCS 5/28 (1994); 35 Ill. Adm. Code 102.120, 102.160.) Moreover, if it is believed that the current process is unduly burdensome on the owners or operators of a livestock facility, the Department of Agriculture can submit proposed language to amend this process in the R97-15(B) rulemaking docket or the legislature can provide clarification of how to measure from the corner of a common place of assembly.

SUMMARY OF THE RULES

The Board today adopts rules to implement the provisions of the LMFAct for final notice. The rules adopted today are substantially the same as those adopted for second notice, with the exceptions noted above. In adopting these rules, the Board is cognizant, as we were in adopting the emergency rules and the rules for second notice, of the legislative declarations set forth in the LMFAct, specifically that the livestock industry is vital to Illinois' economy and that it is the policy of Illinois, pursuant to the LMFAct, to maintain an economically viable livestock industry. (510 ILCS 77/5(b).) The Board also recognizes that Illinois farmers have played, and continue to play, a vital role in Illinois' culture, tradition, and history and that the farm industry represents a major economic activity in Illinois (510 ILCS 77/5(a)(3)).

Moreover, the Board is aware that the livestock industry is experiencing rapid changes as a result of "increased sophistication of production technology, increased demand for capital to maintain or expand operations and changing consumer demands for a quality product." (510 ILCS 77/5(a)(2).) Because of the trend in the livestock industry for larger concentrations of animals at a livestock management facility, there is a potential for greater impacts on the immediate area. (510 ILCS 77/5(a)(4), (6).) In passing the LMFAct, the legislature recognized that enhancements to the current regulations dealing with livestock production facilities were needed for today's industry and that livestock waste lagoons must be constructed according to standards to maintain structural integrity and to protect Illinois' groundwater. (510 ILCS 77/5(a)(7).) Moreover, as the legislature stated in the LMFAct, "[s]ince a majority of odor complaints result from manure application, livestock producers must be provided with an educational program that will enhance neighbor awareness and their environmental management skills, with emphasis on management of livestock waste." (510 ILCS 77/5(a)(8).)

The Board believes that the regulations it adopts today are an important step forward in protecting the quality of Illinois' air, land, and water. Within the specific context of the LMFAct, the regulations are environmentally protective as well as economically reasonable and technologically feasible. Moreover, the Board emphasizes that the LMFAct does not supplant the EPAct or rules promulgated thereunder. The EPAct prohibits the discharge or emission of any pollutant into Illinois air, water, or land by any person, business, or industry in a way that adversely impacts the environment or unreasonably interferes with a citizen's enjoyment of life or property. (See 415 ILCS 5/9, 5/12, 5/21 (1994).) A salient principle under the EPAct is that any Illinois industry that generates waste assumes the risk, responsibility, and accountability for any pollution caused by that waste. Thus, livestock facilities that violate the provisions of the EPAct have always been and will continue to be responsible for any violations of the EPAct or rules promulgated thereunder.

Nonetheless, the Board recognizes, as did the legislature in adopting the LMFAct, that the public interest and good public policy require that pollution of our environment be averted prior to its generation.¹¹ The LMFAct and these rules, accordingly, take a preventative approach to pollution. Through setback distances, education, waste management plans, and requirements for the registration, design, construction, operation, and maintenance of lagoons and livestock waste handling facilities, the Board believes that any risk to Illinois' environment from livestock facilities is greatly diminished.

In this rulemaking, the Board has attempted to provide a framework for the administration and implementation of the LMFAct and Board rules. It is the intent of this Board that the rules be clear, flexible, easily complied with, and administered in a fair and impartial manner. Accordingly, the rules set forth administrative requirements such as standards and procedures that the Department of Agriculture must follow in making various administrative determinations under these rules. The rules also contain a section that mandates that records be kept of all determinations and that such records be subject to public inspection.

Regarding setbacks, the regulations require that new livestock management and livestock waste handling facilities provide notification to the Department of Agriculture of their intent to build prior to construction. Further, the Board rules provide a process that is designed to ensure that all statutory setback distances are adhered to and that notice is given to all owners of property located within the setback areas. Where ambiguities exist in the statutory setback language, the Board, based upon the testimony and arguments made at the hearings and the legislative intent of the LMFAct, attempted to provide clarity.

The Department of Agriculture is also required to certify that the applicable setback distances have been complied with before construction begins. Where the LMFAct allows for the Department of Agriculture to provide for a decrease of the statutory setbacks if innovative

¹¹ See 89th Ill. Gen. Assem., Senate Proceedings, May 2, 1996, at 21 (statements by Senator Donahue); 89th Ill. Gen. Assem., House Proceedings, April 19, 1996, at 1 (statements by Representative Myers).

designs are incorporated into the facility, the Board rules require that the owner or operator attach to the request for decrease a certification by a Licensed Professional Engineer that the innovative designs incorporated into the facility will achieve a greater amount of odor protection than the waived setbacks.

The rules also substantially mirror the provisions of the LMFAct and provide that setbacks may be decreased when waivers are obtained from owners of occupied residences, non-farm businesses, and common places of assembly that are located within the setback area. The request for a setback decrease must be in writing, and the owner or operator seeking the decrease must attach to the request, copies of the written and notarized waivers from the owner(s) of the property located within the setback area. The rules further provide that the Department of Agriculture must notify the owner or operator in writing of the setback decrease within 30 days after receipt of the request for decrease.

Regarding design of lagoons, these rules require specific design standards for livestock waste lagoons which are in accord with established engineering practices. Specifically, the rules require that the owner or operator of a new or modified lagoon register that lagoon with the Department of Agriculture and hire a Licensed Professional Engineer or Licensed Professional Geologist to perform a site investigation prior to construction. The site investigation requires soil borings to determine the distance of the lagoon bottom to any aquifer material. Depending on the proximity of such material, liners and/or groundwater monitoring will be required. Construction can only begin after proper licensed professional certification is made to the Department of Agriculture. The regulations also allow the Department of Agriculture to require changes in design that might be necessary to protect the groundwater. Moreover, the rules direct the Department of Agriculture, as a condition of the issuance of a livestock waste lagoon registration, to conduct periodic site inspections to assess the degree of compliance with the requirements of the LMFAct.

Regarding the management of livestock management facilities, the rules provide that waste management plans be prepared by certain facilities that meet the statutory threshold animal unit requirement and further set forth provisions concerning application of livestock waste to the land. Moreover, the rules establish that a livestock waste handling facility that serves a certain number of animal units be managed by a certified livestock manager. The rules presume, as did the legislature in passing the LMFAct, that the good management practices required by these rules and the plans which must be developed will considerably reduce potential odor problems.¹²

Regarding penalties, the rules provide that the Department of Agriculture may issue cease and desist orders, and otherwise order necessary penalties, for the violation of any of these rules. Regarding financial assurance and requirements for closure, the rules recite the statutory language. Moreover, the Board, as previously noted, opened a Docket B for the purpose of receiving a proposal from interested parties, including the Department of

¹² 89th Ill. Gen. Assem., House Proceedings, April 19, 1996, at 4 (statements by Representative Myers).

Agriculture, on this subject as required by the LMFAct. (See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506, (March 20, 1997) R97-15(A) & (B), slip op. at 9.) Finally, where the LMFAct allows the Department of Agriculture to grant an alternative, modification, or waiver of these rules, the Board rules set forth a specific process to ensure that any such alternatives, modifications, or waivers are environmentally protective.

Regarding odor, the Board believes that the rules do everything that can be done within the context of the LMFAct to effectively deal with the odor issue. For example, besides prescribing setback distances, the rules also contain provisions regarding design standards for lagoons, waste management plans, livestock waste application on land, and certified livestock managers. The Board anticipates that these provisions will dissipate the odor problems associated with livestock facilities.

CONCLUSION

The Board today adopts regulations to implement the LMFAct. The Board finds that the LMFAct and the regulations adopted herein aid in ensuring that livestock facilities will be constructed, operated, and maintained in a manner that is both fiscally and environmentally responsible. Moreover, the Board believes that these rules are a positive step in establishing consistent and responsible operations of livestock facilities in Illinois.

ORDER

The Board hereby directs that the Clerk of the Board cause the filing of the following adopted rules for final notice and publication in the *Illinois Register* with the Secretary of State, pursuant to Section 5-40 of the APAct.

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

PART 506
LIVESTOCK WASTE REGULATIONS

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AUTHORITY: Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act (see P.A. 89-456, effective May 21, 1996 [510 ILCS 77/1]).

SOURCE: Adopted in R97-15 at 21 Ill. Reg. _____, effective _____.

NOTE: In this Part, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets; and SUM means the summation series or sigma function as used in mathematics.

SUBPART A: GENERAL PROVISIONS

Section 506.101 Applicability

This Subpart applies to 35 Ill. Adm. Code 506. The applicability of Subpart B, Standards for Livestock Waste Lagoons, is set forth at Section 506.201 of this Part. The applicability of Subpart C, Waste Management Plan, is set forth at Section 506.302 of this Part. The applicability of Subpart D, Certified Livestock Manager, is set forth at Section 506.401 of this Part. The applicability of Subpart F, Financial Responsibility, is set forth at Section 506.601 of this Part. The applicability of Subpart G, Setbacks, is set forth at Section 506.701 of this Part.

BOARD NOTE: Upon the effective date of this Part, the emergency rules at 35 Ill. Adm. Code 505, Livestock Waste Regulations, will no longer apply. This Part will take the place of those emergency rules.

Section 506.102 Severability

If any provision of this Part or its application to any person or under any other circumstances is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 506.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included herein shall have their associated meaning as follows:

“AGENCY” MEANS THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY. [510 ILCS 77/10.5]

“ANIMAL FEEDING OPERATION” MEANS A FEEDING OPERATION AS DEFINED IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND THE RULES PROMULGATED UNDER THAT ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.7]

“ANIMAL UNIT” MEANS A UNIT OF MEASUREMENT FOR ANY ANIMAL FEEDING OPERATION CALCULATED AS FOLLOWS:

BROOD COWS AND SLAUGHTER AND FEEDER CATTLE
MULTIPLIED BY 1.0.

MILKING DAIRY COWS MULTIPLIED BY 1.4.

YOUNG DAIRY STOCK MULTIPLIED BY 0.6.

SWINE WEIGHING OVER 55 POUNDS MULTIPLIED BY 0.4.

SWINE WEIGHING UNDER 55 POUNDS MULTIPLIED BY 0.03.

SHEEP, LAMBS, OR GOATS MULTIPLIED BY 0.1.

HORSES MULTIPLIED BY 2.0.

TURKEYS MULTIPLIED BY 0.02.

LAYING HENS OR BROILERS MULTIPLIED BY 0.01 (IF THE FACILITY HAS CONTINUOUS OVERFLOW WATERING).

LAYING HENS OR BROILERS MULTIPLIED BY 0.03 (IF THE FACILITY HAS A LIQUID MANURE HANDLING SYSTEM).

DUCKS MULTIPLIED BY 0.02. [510 ILCS 77/10.10]

“Aquifer material” means sandstone which is five feet or more in thickness, or fractured carbonate which is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined herein, such that there is at least two feet or more present within any

five foot section of a soil boring performed in accordance with Section 506.202 of this Part.

“CERTIFIED LIVESTOCK MANAGER” MEANS A PERSON THAT HAS BEEN DULY CERTIFIED BY THE DEPARTMENT AS AN OPERATOR OF A LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.15]

“DEPARTMENT” MEANS THE ILLINOIS DEPARTMENT OF AGRICULTURE. [510 ILCS 77/10.20]

“FARM RESIDENCE” MEANS ANY RESIDENCE ON A FARM OWNED OR OCCUPIED BY THE FARM OWNERS, OPERATORS, TENANTS, OR SEASONAL OR YEAR-ROUND HIRED WORKERS. FOR PURPOSES OF THIS DEFINITION, A “FARM” IS THE LAND, BUILDINGS, AND MACHINERY USED IN THE COMMERCIAL PRODUCTION OF FARM PRODUCTS, AND “FARM PRODUCTS” ARE THOSE PLANTS AND ANIMALS AND THEIR PRODUCTS WHICH ARE PRODUCED OR RAISED FOR COMMERCIAL PURPOSES AND INCLUDE BUT ARE NOT LIMITED TO FORAGES AND SOD CROPS, GRAINS AND FEED CROPS, DAIRY AND DAIRY PRODUCTS, POULTRY AND POULTRY PRODUCTS, LIVESTOCK, FRUITS, VEGETABLES, FLOWERS, SEEDS, GRASSES, TREES, FISH, HONEY AND OTHER SIMILAR PRODUCTS, OR ANY OTHER PLANT, ANIMAL, OR PLANT OR ANIMAL PRODUCT WHICH SUPPLIES PEOPLE WITH FOOD, FEED, FIBER, OR FUR. [510 ILCS 77/10.23]

“Gravel” or “Sand and gravel” means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of “sand” and particles larger than two millimeters in size.

“LAGOON” or “Earthen livestock waste lagoon” MEANS ANY EXCAVATED, DIKED, OR WALLED STRUCTURE OR COMBINATION OF STRUCTURES DESIGNED FOR BIOLOGICAL STABILIZATION AND STORAGE OF LIVESTOCK WASTES. A LAGOON DOES NOT INCLUDE STRUCTURES SUCH AS MANUFACTURED SLURRY STORAGE STRUCTURES OR PITS UNDER BUILDINGS AS DEFINED IN RULES UNDER THE ENVIRONMENTAL PROTECTION ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.25]

“LICENSED PROFESSIONAL ENGINEER” MEANS A PERSON, CORPORATION OR PARTNERSHIP LICENSED UNDER THE LAWS OF THE STATE OF ILLINOIS TO PRACTICE PROFESSIONAL ENGINEERING. [415 ILCS 5/57.2]

“LICENSED PROFESSIONAL GEOLOGIST” MEANS AN INDIVIDUAL WHO IS LICENSED UNDER the laws of the State of Illinois TO ENGAGE IN THE PRACTICE OF PROFESSIONAL GEOLOGY IN ILLINOIS. [225 ILCS 745/15]

“LIVESTOCK MANAGEMENT FACILITY” MEANS ANY ANIMAL FEEDING OPERATION, LIVESTOCK SHELTER, OR ON-FARM MILKING AND ACCOMPANYING MILK-HANDLING AREA. TWO OR MORE LIVESTOCK MANAGEMENT FACILITIES UNDER COMMON OWNERSHIP, WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE, AND THAT SHARE A COMMON LIVESTOCK WASTE HANDLING FACILITY SHALL BE CONSIDERED A SINGLE LIVESTOCK MANAGEMENT FACILITY. LIVESTOCK MANAGEMENT Facilities AT EDUCATIONAL INSTITUTIONS, LIVESTOCK PASTURE OPERATIONS, facilities WHERE ANIMALS ARE HOUSED ON A TEMPORARY BASIS SUCH AS COUNTY AND STATE FAIRS, LIVESTOCK SHOWS, RACE TRACKS, AND HORSE BREEDING AND FOALING FARMS, AND MARKET HOLDING FACILITIES ARE NOT SUBJECT TO THE Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

“LIVESTOCK WASTE” MEANS LIVESTOCK EXCRETA AND ASSOCIATED LOSSES, BEDDING, WASH WATERS, SPRINKLING WATERS FROM LIVESTOCK COOLING, PRECIPITATION POLLUTED BY FALLING ON OR FLOWING ONTO AN ANIMAL FEEDING OPERATION, AND OTHER MATERIALS POLLUTED BY LIVESTOCK. [510 ILCS 77/10.35]

“LIVESTOCK WASTE HANDLING FACILITY” MEANS INDIVIDUALLY OR COLLECTIVELY THOSE IMMOVABLE CONSTRUCTIONS OR DEVICES, EXCEPT SEWERS, USED FOR COLLECTING, PUMPING, TREATING, OR DISPOSING OF LIVESTOCK WASTE OR FOR THE RECOVERY OF BY-PRODUCTS FROM THE LIVESTOCK WASTE. TWO OR MORE LIVESTOCK WASTE HANDLING FACILITIES UNDER COMMON OWNERSHIP AND WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE SHALL BE CONSIDERED A SINGLE LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.40]

“MODIFIED” MEANS STRUCTURAL CHANGES TO A LAGOON THAT INCREASE ITS VOLUMETRIC CAPACITY. [510 ILCS 77/10.43]

“NEW FACILITY” MEANS A LIVESTOCK MANAGEMENT FACILITY OR A LIVESTOCK WASTE HANDLING FACILITY THE CONSTRUCTION OR EXPANSION OF WHICH IS COMMENCED ON OR AFTER May 21, 1996 (THE EFFECTIVE DATE OF THE Livestock Management Facilities ACT). EXPANDING A FACILITY WHERE THE FIXED CAPITAL COST OF THE NEW COMPONENTS CONSTRUCTED WITHIN A 2-YEAR PERIOD DOES NOT EXCEED 50% OF THE FIXED CAPITAL COST OF A COMPARABLE ENTIRELY NEW FACILITY SHALL NOT BE DEEMED A NEW FACILITY AS USED IN THE Livestock Management Facilities ACT. [510 ILCS 77/10.45]

“NON-FARM RESIDENCE” MEANS ANY RESIDENCE WHICH IS NOT A FARM RESIDENCE. [510 ILCS 77/10.47]

“Occupied residence” means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, “intended or used for human occupancy” means running water and sanitation are provided within the residence.

“OWNER OR OPERATOR” MEANS ANY PERSON WHO OWNS, LEASES, CONTROLS, OR SUPERVISES A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE-HANDLING FACILITY. [510 ILCS 77/10.50]

“PERSON” MEANS ANY INDIVIDUAL, PARTNERSHIP, CO-PARTNERSHIP, FIRM, COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ESTATE, POLITICAL SUBDIVISION, STATE AGENCY, OR ANY OTHER LEGAL ENTITY OR THEIR LEGAL REPRESENTATIVE, AGENT, OR ASSIGNS. [510 ILCS 77/10.55]

“Placed in service” means the placement of livestock waste in a livestock waste lagoon upon the completion of construction or modification in accordance with the requirements of this Part.

“POPULATED AREA” MEANS ANY AREA WHERE AT LEAST 10 INHABITED NON-FARM RESIDENCES ARE LOCATED OR WHERE AT LEAST 50 PERSONS FREQUENT A COMMON PLACE OF ASSEMBLY OR A NON-FARM BUSINESS AT LEAST ONCE PER WEEK. [510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

“Residence” means a house or other structure, including all attachments to the house or structure, which is used as a place of human habitation.

“Sand” means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which according to the USDA soil texture classification scheme includes soil textures of sand, and loamy sand, and portions of sandy loam and sandy clay loam.

Section 506.104 Incorporations by Reference

- a) The Board incorporates the following materials by reference:
- 1) APHA. American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005, (202) 789-5600, “Standard Methods for the Examination of Water and Wastewater”, 19th Edition, 1995.
 - 2) ASAE. American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085-9659, (616) 429-5585:
 “Design of Anaerobic Lagoons for Animal Waste Management”, ASAE Standards 1992, ASAE EP403.1, 1992, pp. 498-500.
 “Design of Anaerobic Lagoons for Animal Waste Management”, ASAE Standards 1993, ASAE EP403.2, 1993, pp. 543-546.
 - 3) NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600, “Methods for the Determination of Inorganic Substances in Environmental Samples”, EPA Publication No. EPA-600/R-93/100 (August 1993), Doc. No. PB 94-120821.
 - 4) USDA-NRCS. United States Department of Agriculture - Natural Resources Conservation Service, 1902 Fox Drive, Champaign, IL 61820, “Waste Treatment Lagoon”, Illinois Field Office Technical Guide, Section IV, IL359, p. 5, June 1992.
- b) This Section incorporates no later amendments or editions.

Section 506.105 Recordkeeping

- a) The Department shall maintain a file for all facilities registering or otherwise filing documents with the Department under these regulations.
- b) The file shall contain all registration materials, along with all supporting data and justifications, records of Department certification and determinations, groundwater monitoring results (if required), waste management plans (if required), and any other information submitted to the Department by the owner or operator of a facility.

- c) Copies of materials in the file for a registered facility shall be available for public inspection.

Section 506.106 Alternatives, Modifications and Waivers

- a) All requests for alternatives, modifications, and waivers to these regulations, where allowed by Sections 15(a) and (e) of the Act [510 ILCS 77/15(a), (e)] or this Part (Sections 506.202(d), 506.204(h), 506.205(f), 506.206(j), 506.209(a)(2)) shall be made in writing to the Department. Construction may not begin or continue until the request for alternative, modification, or waiver is granted.
- b) Each request for an alternative, modification, or waiver shall contain a certification from a Licensed Professional Engineer or Licensed Professional Geologist, as relevant, that the grant of the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.
- c) The Department shall notify the applicant in writing of its determination within 30 days after receipt of the request for an alternative, modification, or waiver. To grant the requested alternative, modification, or waiver, the Department must determine that the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.

SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

Section 506.201 Applicability

- a) This Subpart applies to any lagoon that is new or modified and has not been placed in service as of the effective date of this Part.
- b) For the purposes of this Subpart the number of animal units at a livestock management facility is the maximum design capacity of the livestock management facility.
- c) In addition, a lagoon registered and certified pursuant to the emergency rules adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996 and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be considered as registered and certified pursuant to this Subpart.

Section 506.202 Site Investigation

- a) The owner or operator of a new or modified livestock waste lagoon shall conduct a site investigation in accordance with the requirements of this Section to determine if aquifer material is present (or not present) within 50 feet of the planned bottom of the lagoon.
- b) The owner or operator shall perform one or more soil borings which shall be located within the final lagoon area or within 20 feet of the final exterior berm toe. The boring shall be performed to determine the presence of aquifer material as follows:
 - 1) The soil boring shall extend to a depth that includes 50 feet from the bottom of lagoon native soil or to bedrock;
 - 2) If bedrock is encountered, additional soil borings may be necessary to verify the presence of aquifer material;
 - 3) Continuous samples shall be recovered from each soil boring to ensure that no gaps occur in the sample column; and
 - 4) Upon completion, the boring(s) shall be properly abandoned and sealed pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120.
- c) If the Department determines that additional soil borings are necessary to ensure the protection of the groundwater, surface water and the structural integrity of the livestock waste management facility, the Department shall require additional soil borings.
- d) As an alternative to performing the soil boring(s) required under subsection (b) or (c) of this Section, the owner or operator of a livestock waste lagoon may propose to the Department to utilize alternative information sources. The Department shall evaluate the proposal; shall determine whether the alternative information source will result in a site investigation that will be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as would have resulted from data resulting from soil borings; and shall notify the owner or operator of the Department's finding.
- e) The site investigation in accordance with subsection (b), (c) or (d) of this Section shall be conducted under the direction of a Licensed Professional Engineer or Licensed Professional Geologist. Upon completion of the site investigation as required under subsection (b), (c) or (d) of this Section, the supervising Licensed Professional Engineer or Licensed Professional Geologist shall certify that the site investigation meets all the applicable requirements of this Section, and whether aquifer material shall be considered present (or not

present) within 50 feet of the planned bottom of the lagoon in accordance with Section 506.203 of this Part. Such certification shall include all supporting data and justification.

Section 506.203 Registration

- a) Prior to new construction or modification of ANY EARTHEN LIVESTOCK WASTE LAGOON AFTER THE EFFECTIVE DATE OF this Part, such earthen livestock waste lagoon SHALL BE REGISTERED BY THE OWNER OR OPERATOR WITH THE DEPARTMENT ON A FORM PROVIDED BY THE DEPARTMENT in accordance with the requirements of this Section. LAGOONS CONSTRUCTED PRIOR TO THE EFFECTIVE DATE OF this Part MAY REGISTER WITH THE DEPARTMENT AT NO CHARGE. [510 ILCS 77/15(b)]

- b) The registration form, accompanied by a \$50 fee, shall include the following:
 - 1) NAME(S) AND ADDRESS(ES) OF THE OWNER AND OPERATOR WHO ARE RESPONSIBLE FOR THE LIVESTOCK WASTE LAGOON;
 - 2) GENERAL LOCATION OF LAGOON;
 - 3) DESIGN CONSTRUCTION PLANS AND SPECIFICATIONS (including a lagoon plot plan with dimensions and elevations);
 - 4) SPECIFIC LOCATION INFORMATION (noted on a facility site map or the lagoon plot plan):
 - A) The location and DISTANCE TO the nearest PRIVATE OR PUBLIC POTABLE WELL;
 - B) The location and DISTANCE TO THE CLOSEST OCCUPIED PRIVATE RESIDENCE (OTHER THAN ANY OCCUPIED BY the OWNER OR OPERATOR);
 - C) The location and DISTANCE TO THE NEAREST STREAM;
 - D) The location and DISTANCE TO THE NEAREST POPULATED AREA;
 - E) The location and distance to the nearest abandoned or plugged well, drainage well or injection well; and

- F) The location of any subsurface drainage lines within 100 feet of the lagoon;
 - 5) ANTICIPATED BEGINNING AND ENDING DATES OF LAGOON CONSTRUCTION;
 - 6) TYPE OF LIVESTOCK AND NUMBER OF ANIMAL UNITS;
 - 7) A certification by the supervising Licensed Professional Engineer or Licensed Professional Geologist, accompanied by supporting justification and data, certifying that the site investigation meets all the applicable requirements of Section 506.202 of this Part, whether aquifer material is considered present (or not present) within 50 feet of the planned bottom of the lagoon; and
 - 8) Where applicable, a copy of the synthetic liner manufacturer's compatibility statement and liner maintenance guidelines. [510 ILCS 77/15(b)]
- c) THE DEPARTMENT UPON RECEIPT OF A LIVESTOCK WASTE LAGOON REGISTRATION FORM SHALL REVIEW THE FORM TO DETERMINE THAT ALL REQUIRED INFORMATION HAS BEEN PROVIDED. THE PERSON FILING THE REGISTRATION SHALL BE NOTIFIED WITHIN 15 WORKING DAYS of receipt by the Department THAT REGISTRATION IS COMPLETE OR THAT CLARIFICATION INFORMATION IS NEEDED. NO LATER THAN 10 WORKING DAYS AFTER THE RECEIPT OF THE CLARIFICATION INFORMATION, THE DEPARTMENT SHALL NOTIFY THE OWNER OR OPERATOR THAT REGISTRATION IS COMPLETE or that additional clarification information is needed. [510 ILCS 77/15(b)]
- d) The Department may, as a condition of the issuance of a livestock waste lagoon registration, conduct periodic site inspections of a livestock waste lagoon to assess its degree of compliance with the requirements of the Livestock Management Facilities Act [510 ILCS 77] and the requirements of this Part. THE PERSON MAKING ANY INSPECTION SHALL COMPLY WITH REASONABLE ANIMAL HEALTH PROTECTION PROCEDURES AS REQUESTED BY THE OWNER OR OPERATOR. [510 ILCS 77/15(b)]
- e) CONSTRUCTION SHALL NOT BEGIN UNTIL 30 DAYS AFTER SUBMITTAL OF A REGISTRATION FORM BY CERTIFIED MAIL TO THE DEPARTMENT. [510 ILCS 77/15(b)]

- a) The owner or operator of ANY LIVESTOCK WASTE LAGOON SUBJECT TO this Part SHALL CONSTRUCT OR MODIFY the lagoon IN ACCORDANCE WITH:
- 1) “DESIGN OF ANAEROBIC LAGOONS FOR ANIMAL WASTE MANAGEMENT”, ASAE ENGINEERING PRACTICE 403.1, as updated by ASAE Engineering Practice 403.2; OR THE GUIDELINES PUBLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE’S NATURAL RESOURCE CONSERVATION SERVICE TITLED “WASTE TREATMENT LAGOON”, which are incorporated by reference in 35 Ill. Adm. Code 506.104; and
 - 2) The additional design standards specified in subsections (c) through (h) of this Section. [510 ILCS 77/15(a)]
- b) THE DEPARTMENT MAY REQUIRE CHANGES IN DESIGN OR ADDITIONAL REQUIREMENTS TO PROTECT GROUNDWATER, SUCH AS EXTRA LINER DEPTH OR SYNTHETIC LINERS, WHEN IT APPEARS GROUNDWATER COULD BE IMPACTED. [510 ILCS 77/15(a)]
- c) The owner or operator shall conduct a site investigation in accordance with Section 506.202 of this Part to determine if aquifer material is present (or not present) within 50 feet of the planned bottom of the lagoon.
- d) The owner or operator shall, as a part of the lagoon design, include the use of a liner and implement groundwater monitoring in accordance with following conditions:
- 1) If the uppermost aquifer material is located above or within 20 feet of the lowest point of the planned lagoon bottom (as measured from the top of any proposed liner), then the lagoon design shall include both a liner and groundwater monitoring.
 - 2) If the uppermost aquifer material is located between 20 to 50 feet from the lowest point of the planned lagoon (as measured from the top of any proposed liner), then the lagoon design shall include a liner, but no groundwater monitoring is required.
 - 3) If no aquifer material is located within 50 feet from the lowest point of the planned lagoon (as measured from the top of any proposed liner), then the lagoon design shall require neither a liner nor groundwater monitoring.
- e) If the owner or operator determines that a liner is required for the lagoon pursuant to this Section, the design of the lagoon shall include an in-situ soil

liner, borrowed clay or clay/bentonite mixture, or a synthetic liner meeting the requirements of Section 506.205 of this Part.

- f) If the owner or operator determines that groundwater monitoring is required for the lagoon pursuant to this Section, the design of lagoon shall include the implementation of a groundwater monitoring program in accordance with Section 506.206 of this Part.
- g) Any livestock waste lagoon subject to the provisions of this Part shall meet or exceed the following:
 - 1) Berm:
 - A) The minimum berm top width shall be 8 feet;
 - B) The berm may contain no outlet piping that extends through the berm unless the piping discharges to another lagoon;
 - 2) Berm slope:
 - A) Exterior and normally exposed interior (above the liquid level elevation corresponding to the summation of the sludge volumes and minimum design volume) earthen walls shall have side slopes not steeper than a 3 to 1 ratio of horizontal to vertical and a vegetative cover shall be established on any exposed berm areas and kept mowed or otherwise maintained to eliminate erosion or other berm deterioration;
 - B) Interior berm earthen walls below the liquid level elevation corresponding to the summation of the sludge volumes and minimum design volume shall have side slopes not steeper than a 3 to 1 ratio of horizontal to vertical; or a 2 to 1 ratio of horizontal to vertical if designed by a Licensed Professional Engineer and maintained to eliminate berm deterioration;
 - 3) The lagoon's total design volume shall be not less than the volume calculated as the summation of the following:
 - A) A minimum design volume, as calculated pursuant to subsection 5.4.1.1, ASAE EP403.2, ASAE Standards 1993, pp. 543-545;
 - B) A livestock waste volume, which shall be sufficient to store the waste generated by the facility for a period not less than 270 days as determined in accordance with ASAE EP403.2, ASAE Standards 1993, p. 543;

- C) Runoff and wash down volumes, based on a 6-inch rainfall covering the lagoon surface and any other areas such as open lots, roofs or other surfaces where collected precipitation is directed into the lagoon plus the volume of any wash down liquids utilized within the facility which are also directed into the lagoon; and
 - D) A sludge accumulation volume, as calculated pursuant to subsection 5.4.1.4, ASAE EP403.2, ASAE Standards 1993, p. 545;
- 4) In addition to the lagoon's total design volume, a freeboard shall be provided as follows:
- A) For lagoons serving a livestock management facility with a maximum design capacity of less than 300 animal units and not collecting runoff from areas other than the exposed surface of the lagoon (including associated interior berm slopes and flat berm top areas), the top of the settled embankment shall be not less than 1 foot above the fluid surface level of the lagoon total design volume; or
 - B) For all other lagoons, the top of the settled embankment shall be not less than 2 feet above the fluid surface level of the lagoon total design volume;
- 5) Subsurface drainage lines in the immediate area of the livestock waste lagoon shall be removed or relocated to provide for a minimum separation distance of not less than 50 feet between the outermost extent of the lagoon (exterior toe of the berm) and the subsurface drainage line;
- 6) The minimum separation distance between the outermost extent of a lagoon (exterior toe of the berm) and any potential route of groundwater contamination, as defined in the Illinois Environmental Protection Act [415 ILCS 5] shall be not less than 100 feet. In addition, the minimum separation distance between the outermost extent of a lagoon (exterior toe of the berm) and a non-potable well, an abandoned or plugged well, drainage well or injection well shall be not less than 100 feet;
- 7) The design and construction of the lagoon shall include the installation of a lagoon liquid level board or staff gauge within the interior of the liquid storage volume. The liquid level board or staff gauge shall include a mark at the liquid level elevation corresponding to the summation of the sludge volume and minimum design volume and shall be designated as

the “STOP PUMPING” elevation. The liquid level board or staff gauge shall also be marked at the liquid level elevation corresponding to the summation of the sludge volume, minimum design volume, and livestock waste volume and shall be designated as the “START PUMPING” elevation;

- 8) Water shall be added to a newly constructed or modified lagoon to at least 60% of the design volume prior to the initial addition of waste; and
 - 9) The location of the lagoon and the associated livestock management facility shall be in compliance with all setback provisions of the Illinois Environmental Protection Act [415 ILCS 5], the Livestock Management Facilities Act [510 ILCS 77], and the rules promulgated thereunder.
- h) THE OWNER OR OPERATOR OF THE EARTHEN LIVESTOCK LAGOON MAY, upon written request and WITH written APPROVAL FROM THE DEPARTMENT, MODIFY OR EXCEED THESE STANDARDS IN ORDER TO MEET SITE SPECIFIC OBJECTIVES. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

Section 506.205 Liner Standards

- a) The design of a liner constructed from in-situ soils, borrowed clay or a clay/bentonite mixture, or a synthetic liner pursuant to Section 506.204(d) of this Part shall comply with the requirements of this Section.
- b) A liner constructed using in-situ soil or borrowed clay or clay/bentonite mixtures shall meet the following standards:
 - 1) The minimum liner thickness shall be 2 feet;
 - 2) The liner shall be constructed in lifts not to exceed 6 inches in thickness;
 - 3) The liner shall be compacted to achieve a hydraulic conductivity equal to or less than 1×10^{-7} centimeters/second; and
 - 4) The construction and compaction of the liner shall be carried out to reduce void spaces and allow the liner to support the loadings imposed by the waste disposal operation without settling.
- c) Any synthetic liner used in the construction of a livestock waste lagoon shall meet the following standards:

- 1) The liner shall be designed to perform equivalent to or better than a liner that conforms to subsection (b) of this Section;
 - 2) The liner manufacturer shall provide to the owner or operator the liner maintenance guidelines and shall certify that the liner is chemically compatible with:
 - A) The livestock waste being stored; and
 - B) The supporting soil materials;
 - 3) The liner shall be supported by a compacted base free from sharp objects;
 - 4) The liner shall have sufficient strength and durability to function at the site for the design period under the maximum expected loadings imposed by the waste and equipment and stresses imposed by settlement, temperature, construction and operation;
 - 5) The liner seams shall be made in the field according to the manufacturer's specifications. All sections shall be arranged so that the use of field seams is minimized and seams are oriented in the direction subject to the least amount of stress; and
 - 6) The owner or operator shall maintain a copy of the manufacturer's compatibility statement and liner installation and maintenance guidelines at the facility.
- d) The design, construction and installation of the liner in accordance with this Section shall be conducted under the direction of a Licensed Professional Engineer. Upon completion of construction or installation of the liner, the supervising Licensed Professional Engineer shall certify that the liner meets all the applicable requirements of this Section. Such certification shall include all supporting justification and data.
 - e) The owner or operator of a livestock waste lagoon shall submit to the Department a copy of the Licensed Professional Engineer's Certification prior to placing the lagoon in service in accordance with Section 506.207 of this Part.
 - f) THE OWNER OR OPERATOR OF THE EARTHEN LIVESTOCK LAGOON MAY, upon written request and WITH written APPROVAL FROM THE DEPARTMENT, MODIFY OR EXCEED THESE STANDARDS IN ORDER TO MEET SITE SPECIFIC OBJECTIVES. The owner or operator shall demonstrate that such modification shall be at least as protective of the

groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

Section 506.206 Groundwater Monitoring

- a) The owner or operator of any livestock waste lagoon required to implement groundwater monitoring pursuant to Section 506.204(d) of this Part shall implement a monitoring program which meets the requirements of this Section.
- b) The groundwater monitoring network shall consist of a minimum of three monitoring wells on the basis of local groundwater conditions within 20 feet of the exterior toe of the berm with at least two wells down gradient of the lagoon. For the purposes of groundwater monitoring network design, multiple cell lagoons shall be considered as a single lagoon.
- c) The monitoring wells shall be installed in accordance with the following:
 - 1) The requirements of Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.170;
 - 2) The top of the well screen shall be set at the estimated seasonal low water table elevation;
 - 3) Monitoring wells shall utilize a five foot screened interval; and
 - 4) The screen shall be set in a sand pack of no less than five feet and no greater than seven feet.
- d) Prior to placing the lagoon in service, water level measurements shall be made at each monitoring well to establish the local groundwater gradient at the lagoon site.
- e) The owner or operator shall sample each monitoring well at least once prior to placing the lagoon in service and at least quarterly thereafter. The samples shall be collected and analyzed consistent with the methods specified in Section 506.104(a)(1) and (3) of this Part for each of the following:
 - 1) Nitrate-nitrogen;
 - 2) Phosphate-phosphorous;
 - 3) Chloride;
 - 4) Sulfate;

- 5) Ammonia-nitrogen;
 - 6) Escherichia coli or fecal coliform; and
 - 7) Fecal Streptococcus.
- f) The Department may collect and analyze samples or split samples from monitoring wells installed pursuant to this Section at the Department's discretion. The Department shall provide notice to the owner or operator of the livestock waste lagoon of such activity and SHALL COMPLY WITH REASONABLE ANIMAL HEALTH PROTECTION PROCEDURES AS REQUESTED BY THE OWNER OR OPERATOR. [510 ILCS 77/15(b)]
- g) Analytical results as determined in subsection (e) of this Section shall be submitted to the Department within 45 days after sample collection and shall include a discussion relative to the significance of the results. Such discussion of significance shall include:
- 1) A comparison of the results to the initial sampling made prior to the lagoon being placed in service; and
 - 2) A description of any proposed response action necessary to mitigate potential impacts to groundwater.
- h) The Department shall review the submittal provided pursuant to subsection (g) of this Section, evaluate the proposed response action, and provide a time frame for the correction of any identified deficiencies. As a result of the evaluation, the Department may approve or modify the monitoring program or response action including, but not limited to, the following:
- 1) Increase or decrease the monitoring well sampling frequency;
 - 2) Add or delete items from the list of sample analytes; or
 - 3) Require changes to the design, construction or operation of the lagoon or changes in the operation of the livestock management facility which shall be implemented by the owner or operator within the time frame established by the Department.
- i) Failure of the owner or operator to submit the information required pursuant to subsection (g) of this Section or to implement the response action approved or modified by the Department shall be considered a failure to construct a lagoon in accordance with the requirements of this Part and shall subject the owner or operator to penalties set forth in this Part and the Livestock Management Facilities Act [510 ILCS 77].

- j) THE OWNER OR OPERATOR OF THE EARTHEN LIVESTOCK LAGOON MAY, upon written request and WITH written APPROVAL FROM THE DEPARTMENT, MODIFY OR EXCEED THESE STANDARDS IN ORDER TO MEET SITE SPECIFIC OBJECTIVES. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

Section 506.207 Certification of Construction

- a) THE DEPARTMENT SHALL INSPECT AN EARTHEN LIVESTOCK WASTE LAGOON AT LEAST ONCE DURING THE PRE-CONSTRUCTION, CONSTRUCTION or POST-CONSTRUCTION PHASE and SHALL REQUIRE MODIFICATIONS WHEN NECESSARY to ensure the project will be in compliance with the requirements of this Part. [510 ILCS 77/15(b)]
- b) Upon completion of construction or installation of a liner, the supervising Licensed Professional Engineer shall certify that the liner meets all the applicable requirements of Section 506.205 of this Part. Such certification shall be submitted to the Department prior to placing the lagoon in service and shall include supporting data and justification.
- c) UPON COMPLETION OF THE CONSTRUCTION OR MODIFICATION, BUT PRIOR TO PLACING THE LAGOON IN SERVICE, THE OWNER OR OPERATOR OF THE LIVESTOCK WASTE LAGOON SHALL CERTIFY ON A FORM PROVIDED BY THE DEPARTMENT THAT THE LAGOON HAS BEEN CONSTRUCTED OR MODIFIED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN SUBSECTION (a) OF SECTION 15 of the Livestock Management Facilities Act [510 ILCS 77] and the requirements of this Part AND THAT THE INFORMATION PROVIDED ON THE REGISTRATION FORM and other supporting documents as required by this Part IS CORRECT. THE CERTIFICATION NOTICE TO THE DEPARTMENT SHALL INCLUDE A CERTIFICATION STATEMENT AND SIGNATURE. [510 ILCS 77/15(b)]
- d) THE OWNER OR OPERATOR OF THE LAGOON MAY PROCEED TO PLACE THE LAGOON IN SERVICE NO EARLIER THAN 10 WORKING DAYS AFTER SUBMITTING TO THE DEPARTMENT A CERTIFICATION OF COMPLIANCE STATEMENT. [510 ILCS 77/15(b)]

Section 506.208 Failure to Register or Construct in Accordance with Standards

- a) THE OWNER OR OPERATOR OF ANY EARTHEN LIVESTOCK WASTE LAGOON SUBJECT TO REGISTRATION THAT HAS NOT BEEN REGISTERED OR CONSTRUCTED IN ACCORDANCE WITH STANDARDS SET FORTH IN SUBSECTION (a) OF SECTION 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and in this Part SHALL, UPON BEING IDENTIFIED AS SUCH BY THE DEPARTMENT, BE GIVEN WRITTEN NOTICE BY THE DEPARTMENT TO REGISTER AND CERTIFY THE LAGOON WITHIN 10 WORKING DAYS after RECEIPT OF THE NOTICE. THE DEPARTMENT MAY INSPECT SUCH LAGOON AND REQUIRE COMPLIANCE IN ACCORDANCE WITH SUBSECTIONS (a) AND (b) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and this Part. IF THE OWNER OR OPERATOR OF THE LIVESTOCK WASTE LAGOON THAT IS SUBJECT TO REGISTRATION FAILS TO COMPLY WITH THE NOTICE, THE DEPARTMENT MAY ISSUE A CEASE AND DESIST ORDER UNTIL SUCH TIME AS COMPLIANCE IS OBTAINED WITH THE REQUIREMENTS OF Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and this Part. FAILURE TO CONSTRUCT THE LAGOON IN ACCORDANCE WITH THE CONSTRUCTION PLAN AND DEPARTMENT RECOMMENDATIONS IS A BUSINESS OFFENSE PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000. [510 ILCS 77/15(f)]
- b) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations occurring during lagoon construction, a cease and desist order to stop construction may be issued by the Department. Changes shall be made to the lagoon by the owner or operator to ensure construction according to the provisions of the Livestock Management Facilities Act [510 ILCS 77] and this Part. The cease and desist order shall be canceled by the Department upon submission of the registration materials by the lagoon owner or operator to the Department, and after the Department's review of the construction plans and specifications and lagoon registration materials, and after determination of compliance with the Livestock Management Facilities Act and this Part by the Department.
- c) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations which occur after completion of lagoon construction, an operational cease and desist order may be issued by the Department. Any necessary changes shall be made to the lagoon by the lagoon owner or operator to comply with the Livestock Management Facilities Act and this Part. The operational cease and desist order shall be canceled by the Department after the Department determines compliance with the Livestock Management Facilities Act and this Part.

- a) WHEN ANY EARTHEN LIVESTOCK WASTE LAGOON IS REMOVED FROM SERVICE, IT SHALL BE COMPLETELY EMPTIED. APPROPRIATE CLOSURE PROCEDURES SHALL BE FOLLOWED AS DETERMINED BY the requirements of this Part. [510 ILCS 77/15(e)]
- 1) In the event that any earthen livestock waste lagoon is to be removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met and the owner or operator shall submit a lagoon closure plan to the Department for review and approval. The plan shall provide for the following:
 - A) The sampling, analysis and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior consistent with the requirements of Section 506.312 of this Part;
 - B) The removal of all remaining livestock waste including sludge, the removal of a minimum 6 inch thickness of soil from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates consistent with the provisions of the site livestock waste management plan or their otherwise proper disposal;
 - C) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures;
 - D) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filled and the area immediately returned to its pre-construction condition;
 - E) The proper abandonment of any monitoring wells installed pursuant to Section 506.206 of this Part which shall be conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120; and
 - F) A proposed time frame for the completion of the closure activities which will be no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.
 - 2) The Department shall review and approve or request additional information relative to the lagoon closure plan. THE DEPARTMENT

MAY also GRANT A WAIVER TO any of THE BEFORE-STATED CLOSURE REQUIREMENTS THAT WILL PERMIT THE LAGOON TO BE USED FOR AN ALTERNATIVE PURPOSE. [510 ILCS 77/15(e)]

- 3) Upon completion of the lagoon closure activities as prescribed by the Department-approved closure plan, the owner or operator shall notify the Department to allow for post closure inspection. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.
- b) UPON A CHANGE IN THE OWNERSHIP OF A REGISTERED EARTHEN LIVESTOCK WASTE LAGOON, THE new OWNER SHALL NOTIFY, in writing, THE DEPARTMENT OF THE CHANGE WITHIN 30 WORKING DAYS OF THE CLOSING OF THE TRANSACTION. [510 ILCS 77/15(e)]

SUBPART C: WASTE MANAGEMENT PLAN

Section 506.301 Purpose

Livestock waste management plans shall be prepared by livestock management facility owners or operators to provide for adequate land area for the proper application of livestock waste at rates not to exceed the agronomic nitrogen DEMAND OF THE CROPS TO BE GROWN WHEN AVERAGED OVER A 5-YEAR PERIOD [510 ILCS 77/20(f)(4)].

Section 506.302 Scope and Applicability

- a) A waste management plan shall be prepared according to the requirements contained in Section 20 of the Livestock Management Facilities Act [510 ILCS 77/20] and in this Subpart. THE APPLICATION OF LIVESTOCK WASTE TO THE LAND IS AN ACCEPTABLE, RECOMMENDED, AND ESTABLISHED PRACTICE IN ILLINOIS. HOWEVER, WHEN LIVESTOCK WASTE IS NOT APPLIED IN A RESPONSIBLE MANNER, IT MAY CREATE POLLUTIONAL PROBLEMS. IT SHOULD BE RECOGNIZED THAT, IN MOST CASES, IF THE AGRONOMIC NITROGEN RATE IS MET, THE PHOSPHORUS APPLIED WILL EXCEED THE CROP REQUIREMENTS, BUT NOT ALL OF THE PHOSPHORUS MAY BE AVAILABLE FOR USE BY THE CROP. IT WILL BE CONSIDERED ACCEPTABLE, THEREFORE, TO PREPARE AND IMPLEMENT A WASTE MANAGEMENT PLAN BASED ON THE NITROGEN RATE. [510 ILCS 77/20(f)]
- b) THE LIVESTOCK MANAGEMENT FACILITY OWNER OR OPERATOR AT A FACILITY OF LESS THAN 1,000 ANIMAL UNITS SHALL NOT BE

REQUIRED TO PREPARE AND MAINTAIN A WASTE MANAGEMENT PLAN. [510 ILCS 77/20(b)]

- c) THE LIVESTOCK MANAGEMENT FACILITY OWNER OR OPERATOR AT A FACILITY OF 1,000 OR GREATER ANIMAL UNITS BUT LESS THAN 7,000 ANIMAL UNITS SHALL PREPARE, maintain and implement a waste management plan and comply with the following: [510 ILCS 77/20(c)]
- 1) For facilities which commence operations or reach or exceed 1,000 animal units after the effective date of this Part, the owner or operator shall prepare, maintain, and implement a waste management plan within 60 working days after commencing operations or exceeding 1,000 animal units;
 - 2) Prior to the expiration of the waste management plan preparation period, the owner or operator shall submit to the Department a form certifying that a waste management plan has been prepared. The form shall also list the location of the plan;
 - 3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours; and
 - 4) NOTWITHSTANDING the above provisions, A LIVESTOCK MANAGEMENT FACILITY SUBJECT TO THIS SUBSECTION (c) MAY BE OPERATED ON AN INTERIM BASIS BUT NOT TO EXCEED 6 MONTHS AFTER THE EFFECTIVE DATE OF this Part TO ALLOW FOR THE OWNER OR OPERATOR OF THE FACILITY TO DEVELOP A WASTE MANAGEMENT PLAN. [510 ILCS 77/20(c)]
- d) THE LIVESTOCK MANAGEMENT FACILITY OWNER OR OPERATOR AT A FACILITY OF 7,000 OR GREATER ANIMAL UNITS SHALL PREPARE, MAINTAIN, implement, AND SUBMIT TO THE DEPARTMENT THE WASTE MANAGEMENT PLAN FOR APPROVAL [510 ILCS 77/20(d)] and comply with the following:
- 1) For facilities which commence operations after the effective date of this Part, the owner or operator shall submit a waste management plan to the Department. The facility shall not commence operation before the Department approves the plan;
 - 2) For existing facilities that reach or exceed 7,000 animal units through expansion, the owner or operator shall submit to the Department a waste

management plan within 60 working days after reaching or exceeding 7,000 animal units for approval by the Department; and

- 3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours.
- e) A separate waste management plan shall be developed for each livestock waste handling facility. Livestock waste from each different type of livestock waste storage structure or system shall be accounted for in separate waste management plans or as separate sections of one plan. Waste from different types of storage structures may be applied to the same land provided that the nitrogen rate to obtain targeted crop yield goals is not exceeded.
- f) Notwithstanding the above provisions, a facility owner or operator who prepared a waste management plan pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996 and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be deemed to have prepared a waste management plan pursuant to this Subpart.
- g) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility shall be determined as the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.

Section 506.303 Waste Management Plan Contents

The Livestock Waste Management Plan shall contain the following items:

- a) Name, address, and phone number of the owner(s) of the livestock facility;
- b) Name, address, and phone number of the manager or operator if different than the owner(s);
- c) Address, phone number, and plat location of the facility, and directions from nearest post office;
- d) Type of waste storage for the facility;
- e) Species, general size, number of animals, and number of animal units at the facility;

- f) Aerial photos and maps outlining fields available and intended for livestock waste applications with available acreage listed and with residences, non-farm businesses, common places of assembly, streams, wells, waterways, lakes, ponds, rivers, drainage ditches, and other water sources indicated;
- g) For application fields not owned or rented, copies of waste application agreements between the owner or operator of the livestock facility and the owner of the land where livestock waste will be applied;
- h) AN ESTIMATE OF THE VOLUME OF WASTE TO BE DISPOSED OF ANNUALLY [510 ILCS 77/20(f)(1)];
- i) Cropping schedule for each field for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year;
- j) Targeted crop yield goal for each crop in each field;
- k) Estimated nutrient content of the livestock waste;
- l) Livestock waste application methods;
- m) Calculations showing the following:
 - 1) Amount of available livestock waste for application;
 - 2) Amount of nitrogen available for application;
 - 3) Nitrogen loss due to method of application;
 - 4) Amount of plant-available nitrogen including mineralization of organic nitrogen;
 - 5) Amount of nitrogen required by each crop in each field based on targeted crop yield goal;
 - 6) Nitrogen credits from previous crops, from other sources of fertilizer applied for the growing season, and from any manure applications during the previous three years for each application field;
 - 7) Livestock waste application rate based on nitrogen for each application field; and
 - 8) Land area required for application;

- n) A listing of fields and the planned livestock waste application amounts for each field;
- o) A PROVISION THAT LIVESTOCK WASTE APPLIED WITHIN 1/4 MILE OF ANY RESIDENCE NOT PART OF THE FACILITY SHALL BE INJECTED OR INCORPORATED ON THE DAY OF APPLICATION. HOWEVER, LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE HANDLING FACILITIES THAT HAVE IRRIGATION SYSTEMS IN OPERATION PRIOR TO May 21, 1996, OR EXISTING FACILITIES APPLYING WASTE ON FROZEN GROUND ARE NOT SUBJECT TO THE PROVISIONS OF THIS subsection (o) [510 ILCS 77/20(f)(5)];
- p) A PROVISION THAT LIVESTOCK WASTE MAY NOT BE APPLIED WITHIN 200 FEET OF SURFACE WATER UNLESS THE WATER IS UPGRADE OR THERE IS ADEQUATE DIKING AND WASTE WILL NOT BE APPLIED WITHIN 150 FEET OF POTABLE WATER SUPPLY WELLS [510 ILCS 77/20(f)(6)];
- q) A PROVISION THAT LIVESTOCK WASTE MAY NOT BE APPLIED IN A 10-YEAR FLOOD PLAIN UNLESS THE INJECTION OR INCORPORATION METHOD OF APPLICATION IS USED [510 ILCS 77/20(f)(7)];
- r) A PROVISION THAT LIVESTOCK WASTE MAY NOT BE APPLIED IN WATERWAYS. For the purposes of this Part, a grassed area serving as a waterway may receive livestock waste through an irrigation system if there is no runoff, the distance from applied livestock waste to surface water is greater than 200 feet, the distance from applied livestock waste to potable water supply wells is greater than 150 feet; the distance from applied livestock waste to a non-potable well, an abandoned or plugged well, a drainage well, or an injection well is greater than 100 feet; and precipitation is not expected within 24 hours [510 ILCS 77/20(f)(8)];
- s) A PROVISION THAT IF WASTE IS SPREAD ON FROZEN OR SNOW-COVERED LAND, THE APPLICATION WILL BE LIMITED TO LAND AREAS ON WHICH:
 - 1) LAND SLOPES ARE 5% OR LESS; OR
 - 2) ADEQUATE EROSION CONTROL PRACTICES EXIST [510 ILCS 77/20(f)(9)];
- t) For livestock facilities utilizing an earthen lagoon or other earthen waste storage structure, a provision that the owner, operator, or certified livestock manager 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 two weeks; and

- u) A provision that livestock waste may not be applied during a rainfall or to saturated soil and that conservative waste loading rates will be used in the case of a high water table or shallow earth cover to fractured bedrock. Caution should be exercised in applying livestock wastes, particularly on porous soils, so as not to cause nitrate or bacteria contamination of groundwaters.

Section 506.304 Livestock Waste Volumes

The volume of available livestock waste for application, as required in Section 506.303(m)(1) of this Part, shall be determined from site specific measurements of the waste storage structure. Calculations and a description of the volume determination shall be included in the waste management plan.

Section 506.305 Nutrient Content of Livestock Waste

- a) For new facilities without a waste management plan or facilities where a waste management plan is being initially prepared pursuant to this Part, the owner or operator shall obtain the nitrogen content of the livestock waste, as required in Section 506.303(m)(2) of this Part, from the results of a laboratory analysis of livestock waste samples from the waste storage facility, or from estimated values provided by the University of Illinois Cooperative Extension Service or the Natural Resources Conservation Service of the United States Department of Agriculture.
- b) The livestock waste handling facility owner or operator shall annually obtain a laboratory analysis of the nutrient content of the livestock waste to be applied to land as provided within the waste management plan. Livestock waste shall be sampled during the application process. Multiple subsamples shall be obtained and may be combined into one sample for analysis so that a representative sample is used for preparation of the waste management plan. A sample taken during waste application the previous year can be used as a representative sample of the waste to be applied the following year unless there has been a change in the waste management practices.
- c) Livestock waste sampling shall be performed under the direction of a certified livestock manager to ensure a representative sample from the livestock waste storage facility and to preserve the integrity of the sample.
- d) The laboratory analysis of the livestock waste sample shall include, but not be limited to, total nitrogen, ammonium nitrogen, total phosphorus, and total

potassium. Results of the analysis shall be included in the waste management plan.

Section 506.306 Adjustments to Nitrogen Availability

Adjustments shall be made to nitrogen availability to account for nitrogen loss from livestock waste due to method of application, as required in Section 506.303(m)(3), and to account for the conversion of organic nitrogen into a plant available form, as required in Section 506.303(m)(4) of this Part.

Section 506.307 Targeted Crop Yield Goal

- a) The targeted crop yield goal, as required in Section 506.303(m)(5) of this Part, shall be determined for each field where the livestock waste is to be applied. The targeted crop yield goal shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The following listing of sources of data shall be utilized to determine the targeted crop yield goal.
 - 1) Proven yields. The proven yield shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The owner or operator shall indicate the method used to determine the proven yield. Data from years with crop disasters may be discarded. Proven yields shall be used unless there is a sound agronomic basis for predicting a different targeted crop yield goal;
 - 2) Crop insurance yields. A copy of the crop insurance yields shall be included in the plan; or
 - 3) Farm Service Agency - United States Department of Agriculture yields. A copy of the assigned crop yields shall be included in the plan.
- b) Soils based yield data from the Natural Resources Conservation Service of the United States Department of Agriculture shall be used if the owner or operator cannot obtain a targeted crop yield goal pursuant to subsection (a) of this Section. A soil map of the application areas shall be included in the plan. The targeted crop yield goal shall be determined by a weighted average of the soil interpretation yield estimates for the areas that will receive livestock waste.

Section 506.309 Nitrogen Credits

- a) Nitrogen credits shall be calculated by the livestock facility owner or operator, pursuant to Section 506.303(m)(6) of this Part, 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.

- b) Nitrogen credits shall be calculated by the livestock facility 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.

Section 506.310 Records of Waste Disposal

Records of the livestock waste disposal shall include the following items:

- a) Date of livestock waste application;
- b) The field where livestock waste application was made;
- c) Method of livestock waste application;
- d) Livestock waste application rate;
- e) Number of acres receiving waste; and
- f) Amount of livestock waste applied.

Section 506.311 Approval of Waste Management Plans

- a) Department approval of livestock waste management plans shall be based on the following criteria:
 - 1) Livestock waste application rate of nitrogen not to exceed the crop nitrogen requirements for targeted crop yield goals;
 - 2) Demonstration of adequate land area for livestock waste application based on Section 506.303 of this Part; and
 - 3) Completeness and accuracy of plan contents as specified in Section 506.303 of this Part.
- b) The owner or operator of the livestock management facility shall be notified by the Department within 30 working days after receipt of the livestock waste management plan that the plan has been approved or that further information or changes are needed. The owner or operator shall provide the information or changes within 30 working days.

Section 506.312 Sludge Removal

- a) Within 60 days prior to periodic removal of sludge from a livestock waste storage structure, the livestock facility owner or operator shall test the sludge for nutrient content pursuant to Section 506.305(c) and (d) of this Subpart. Application of the sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown.
- b) Prior to the removal of the remaining livestock waste, soil, and sludge during a lagoon closure, the waste, soil, and sludge shall be tested for nutrient content pursuant to Section 506.305(c) and (d) of this Subpart. Application of the waste, soil, and sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown.
- c) Nitrogen requirements based on targeted yields for the crop to be grown may be met but shall not be exceeded by any combination of the following:
 - 1) Livestock waste applications;
 - 2) Periodic sludge applications; or
 - 3) Remaining livestock waste, soil, or sludge applications during a waste storage structure closure.

Section 506.313 Plan Updates

- a) The waste management plan shall be reviewed annually by the livestock facility owner or operator and updated, if necessary, after receipt by the owner or operator of the nutrient content results from the laboratory analysis of the livestock waste as required in Section 506.305(b), (c), and (d) of this Subpart, but prior to the next application period of the livestock waste to the land.
- b) The waste management plan shall also be updated when at least one of the following occurs:
 - 1) A change in the amount of land area needed to dispose of the livestock waste based upon a change in the waste volume to be disposed of, nitrogen content of the livestock waste, or other factors;
 - 2) A change in land that is available for livestock waste application if the land is not currently included in the waste management plan;
 - 3) Method of livestock waste disposal or application changes; or
 - 4) Cropping sequence changes which alter the amount of livestock waste to be applied.

Section 506.314 Penalties

- a) ANY PERSON WHO IS REQUIRED TO PREPARE, MAINTAIN, and implement A WASTE MANAGEMENT PLAN AND WHO FAILS TO DO SO SHALL BE ISSUED A WARNING LETTER BY THE DEPARTMENT FOR THE FIRST VIOLATION AND SHALL BE GIVEN 30 WORKING DAYS TO PREPARE A WASTE MANAGEMENT PLAN. FOR FAILURE TO PREPARE, MAINTAIN, and implement A WASTE MANAGEMENT PLAN, THE PERSON SHALL BE FINED AN ADMINISTRATIVE PENALTY OF UP TO \$500 BY THE DEPARTMENT AND SHALL BE REQUIRED TO ENTER INTO AN AGREEMENT OF COMPLIANCE TO PREPARE, MAINTAIN, and implement A WASTE MANAGEMENT PLAN WITHIN 30 WORKING DAYS. FOR FAILURE TO PREPARE, MAINTAIN, and implement A WASTE MANAGEMENT PLAN AFTER THE SECOND 30 DAY PERIOD OR FOR FAILURE TO ENTER INTO A COMPLIANCE AGREEMENT, THE DEPARTMENT MAY ISSUE AN OPERATIONAL CEASE AND DESIST ORDER UNTIL COMPLIANCE IS ATTAINED. [510 ILCS 77/20(g)]
- b) The operational cease and desist order procedures may be suspended by the Department upon submittal of a waste management plan by the owner or operator to the Department. The cease and desist order shall be canceled by the Department upon approval of the waste management plan by the Department.
- c) A waste management plan prepared as a result of a warning letter or compliance agreement shall be subject to approval by the Department.
- d) Penalties shall not be imposed for excessive nitrogen application for unplanned cropping changes due to weather or other unforeseeable circumstances.

SUBPART D: CERTIFIED LIVESTOCK MANAGER

Section 506.401 Applicability

- a) A LIVESTOCK WASTE HANDLING FACILITY SERVING 300 OR GREATER ANIMAL UNITS SHALL BE OPERATED ONLY UNDER THE SUPERVISION OF A CERTIFIED LIVESTOCK MANAGER. NOT WITHSTANDING THE BEFORE-STATED PROVISION, A LIVESTOCK WASTE HANDLING FACILITY MAY BE OPERATED ON AN INTERIM BASIS, BUT NOT TO EXCEED 6 MONTHS, TO ALLOW FOR THE OWNER OR OPERATOR OF THE FACILITY TO BECOME CERTIFIED. For the purposes of this Subpart, being operated under the supervision of a certified livestock manager shall mean that the certified livestock manager shall be immediately available to the workers at a livestock waste handling facility

either in person or via telecommunications and shall have the ability to be physically present at the livestock waste handling facility within one hour after notification. [510 ILCS 77/30(a)]

- b) Persons may become certified livestock managers by demonstrating an understanding of and competence for the operation of livestock waste handling facilities as established in Section 30 of the Livestock Management Facilities Act [510 ILCS 77] and further described in this Subpart. Livestock managers shall establish or re-establish certification when required to do so in accordance with Section 30 of the Livestock Management Facilities Act.
- c) A livestock manager certified pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996 and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be considered as certified pursuant to this Subpart.
- d) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility is the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.
- e) For violations pertaining to the certified livestock manager requirements, the owner or operator SHALL BE ISSUED A WARNING LETTER FOR THE FIRST VIOLATION AND SHALL BE REQUIRED TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN 30 WORKING DAYS. FOR FAILURE TO COMPLY WITH THE WARNING LETTER WITHIN THE 30 DAY PERIOD, THE PERSON SHALL BE FINED AN ADMINISTRATIVE PENALTY OF UP TO \$500 BY THE DEPARTMENT AND SHALL BE REQUIRED TO ENTER INTO AN AGREEMENT TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN 30 WORKING DAYS. FOR FAILURE TO COMPLY WITH THE AGREEMENT TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN THE 30 DAY PERIOD OR FOR FAILURE TO ENTER INTO A COMPLIANCE AGREEMENT, THE PERSON SHALL BE FINED UP TO \$1,000 BY THE DEPARTMENT AND SHALL BE REQUIRED TO ENTER INTO AN AGREEMENT TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN 30 WORKING DAYS. FOR CONTINUED FAILURE TO COMPLY, THE DEPARTMENT MAY ISSUE AN OPERATIONAL CEASE AND DESIST ORDER UNTIL COMPLIANCE IS ATTAINED. [510 ILCS 77/30(g)] The cease and desist order shall be canceled by the Department upon presentation to the Department of a valid certified livestock manager certificate issued in the name of the owner, operator, or current employee of the livestock facility.

SUBPART E: PENALTIES

Section 506.501 General

The penalties for violations of the Livestock Management Facilities Act [510 ILCS 77] and this Part shall be those as identified in the Livestock Management Facilities Act and further described in this Part and Subpart. Warning letters and written notices from the Department shall be sent via certified mail to the livestock facility owner or operator.

SUBPART F: FINANCIAL RESPONSIBILITY

Section 506.601 Applicability

OWNERS OF NEW OR MODIFIED LAGOONS REGISTERED UNDER THE PROVISIONS OF the Livestock Management Facilities Act [510 ILCS 77] SHALL ESTABLISH AND MAINTAIN EVIDENCE OF FINANCIAL RESPONSIBILITY TO PROVIDE FOR THE CLOSURE OF THE LAGOONS AND THE PROPER DISPOSAL OF THEIR CONTENTS WITHIN THE TIME PROVISIONS OUTLINED IN Section 17 of the Livestock Management Facilities Act. [510 ILCS 77/17]

Section 506.602 Evidence of Financial Responsibility

- a) FINANCIAL RESPONSIBILITY MAY BE EVIDENCED BY ANY COMBINATION OF THE FOLLOWING:
 - 1) COMMERCIAL OR PRIVATE INSURANCE;
 - 2) GUARANTEE;
 - 3) SURETY BOND;
 - 4) LETTER OF CREDIT; or
 - 5) CERTIFICATE OF DEPOSIT OR DESIGNATED SAVINGS ACCOUNT. [510 ILCS 77/17]
- b) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon, the new owner shall establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.

Section 506.603 Level of Surety

THE LEVEL OF SURETY REQUIRED SHALL BE DETERMINED BY RULE AND BE BASED UPON THE VOLUMETRIC CAPACITY OF THE LAGOON. [510 ILCS 77/17]

SUBPART G: SETBACKS

Section 506.701 Applicability

- a) All new livestock management or livestock waste handling facilities shall comply with the setback distances as established in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35] and with the provisions of this Subpart.
- b) Commencement of operations at a facility reconstructed within two years after partial or total destruction due to natural causes such as tornado, fire, flood, or earthquake, shall not be considered the location of a new livestock management or waste handling facility for setback purposes. Likewise, a residence partially or totally destroyed due to natural causes, such as tornado, fire, flood, or earthquake, shall retain its original setback for a period of no greater than two years, to allow for reconstruction of the residence.

Section 506.702 Procedures

- a) GRANDFATHER PROVISION: FACILITIES IN EXISTENCE PRIOR TO JULY 15, 1991. LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE HANDLING FACILITIES IN EXISTENCE PRIOR TO JULY 15, 1991 SHALL COMPLY WITH SETBACKS IN EXISTENCE PRIOR TO JULY 15, 1991, AS SET FORTH IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(a)]
- b) GRANDFATHER PROVISION: FACILITIES IN EXISTENCE ON EFFECTIVE DATE AND AFTER JULY 15, 1991. LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE HANDLING FACILITIES IN EXISTENCE ON May 21, 1996 (THE EFFECTIVE DATE OF the Livestock Management Facilities ACT) BUT AFTER JULY 15, 1991 SHALL COMPLY WITH SETBACKS IN EXISTENCE PRIOR TO May 21, 1996, AS SET FORTH IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(b)]
- c) NEW LIVESTOCK MANAGEMENT OR LIVESTOCK WASTE HANDLING FACILITIES. ANY NEW FACILITY SHALL COMPLY WITH THE FOLLOWING SETBACKS: [510 ILCS 77/35(c)]

- 1) Residence and Non-Farm Residence: FOR PURPOSES OF DETERMINING SETBACK DISTANCES, MINIMUM DISTANCES SHALL BE MEASURED FROM THE NEAREST CORNER OF THE RESIDENCE TO THE NEAREST CORNER OF THE EARTHEN WASTE LAGOON OR LIVESTOCK MANAGEMENT FACILITY, WHICHEVER IS CLOSER.
- 2) Common Place of Assembly or Non-Farm Business: For the purposes of determining setback distances between a common place of assembly or non-farm business:
 - A) When the primary activity at a common place of assembly or non-farm business is an outdoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest point on the legal property line of the common place of assembly or non-farm business.
 - B) When the primary activity at a common place of assembly or non-farm business is not an outdoor activity and is an indoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest corner of the structure where the indoor activity takes place.
- 3) A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE HANDLING FACILITY SERVING LESS THAN 50 ANIMAL UNITS SHALL BE EXEMPT FROM SETBACK DISTANCES AS SET FORTH IN the Livestock Management Facilities ACT BUT SHALL BE SUBJECT TO RULES PROMULGATED UNDER THE ILLINOIS ENVIRONMENTAL PROTECTION ACT.
- 4) FOR A LIVESTOCK MANAGEMENT FACILITY OR WASTE HANDLING FACILITY SERVING 50 OR GREATER BUT LESS THAN 1,000 ANIMAL UNITS, THE MINIMUM SETBACK SHALL BE 1/4 MILE FROM THE NEAREST OCCUPIED NON-FARM RESIDENCE AND 1/2 MILE FROM THE NEAREST POPULATED AREA.
- 5) FOR A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE HANDLING FACILITY SERVING 1,000 OR GREATER BUT LESS THAN 7,000 ANIMAL UNITS, THE SETBACK IS AS FOLLOWS:

- A) FOR A POPULATED AREA, THE MINIMUM SETBACK SHALL BE INCREASED 440 FEET OVER THE MINIMUM SETBACK OF 1/2 MILE FOR EACH ADDITIONAL 1,000 ANIMAL UNITS OVER 1,000 ANIMAL UNITS.
 - B) FOR ANY OCCUPIED RESIDENCE, THE MINIMUM SETBACK SHALL BE INCREASED 220 FEET OVER THE MINIMUM SETBACK OF 1/4 MILE FOR EACH ADDITIONAL 1,000 ANIMAL UNITS OVER 1,000 ANIMAL UNITS.
- 6) FOR A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE HANDLING FACILITY SERVING 7,000 OR GREATER ANIMAL UNITS, THE SETBACK IS AS FOLLOWS:
- A) FOR A POPULATED AREA, THE MINIMUM SETBACK SHALL BE 1 MILE.
 - B) FOR ANY OCCUPIED RESIDENCE, THE MINIMUM SETBACK SHALL BE 1/2 MILE.
- d) REQUIREMENTS GOVERNING THE LOCATION OF A NEW LIVESTOCK MANAGEMENT FACILITY AND NEW LIVESTOCK WASTE-HANDLING FACILITY AND CONDITIONS FOR EXEMPTIONS OR COMPLIANCE WITH THE MAXIMUM FEASIBLE LOCATION AS PROVIDED IN 35 Ill. Adm. Code 501.402 CONCERNING AGRICULTURE Related POLLUTION SHALL APPLY TO THOSE FACILITIES IDENTIFIED IN SUBSECTIONS (b) AND (c) OF THIS SECTION. WITH REGARD TO THE MAXIMUM FEASIBLE LOCATION REQUIREMENTS, ANY REFERENCE TO A SETBACK DISTANCE IN 35 Ill. Adm. Code 501.402 SHALL MEAN THE APPROPRIATE DISTANCE AS SET FORTH IN THIS SECTION. [510 ILCS 77/35(d)]
- e) SETBACK CATEGORY SHALL BE DETERMINED BY THE DESIGN CAPACITY IN ANIMAL UNITS OF THE LIVESTOCK MANAGEMENT FACILITY. [510 ILCS 77/35(e)]
- f) SETBACKS MAY BE DECREASED WHEN INNOVATIVE DESIGNS AS APPROVED BY THE DEPARTMENT ARE INCORPORATED INTO THE FACILITY. [510 ILCS 77/35(f)]
- 1) An owner or operator shall request a setback decrease in writing prior to construction.

- 2) An owner or operator shall attach to the request for decrease a certification by a Licensed Professional Engineer that in the professional judgment of the Licensed Professional Engineer the innovative designs incorporated into the facility will provide more odor protection than the original setbacks.
 - 3) The Department shall notify the owner or operator of its determination within 30 days after the receipt of the request for decrease. In approving a reduction in setbacks due to innovative designs, the Department shall specifically find that such use of an innovative design will provide more odor protection than the original setbacks.
 - 4) Where the Department grants such a decrease from the setbacks, the Department must maintain a file which includes all supporting data and justification which it relied upon in making its determination. This file is subject to public inspection.
- g) A SETBACK MAY BE DECREASED WHEN WAIVERS ARE OBTAINED FROM OWNERS OF RESIDENCES THAT ARE OCCUPIED AND LOCATED IN THE SETBACK AREA. [510 ILCS 77/35(g)] A setback also may be decreased when waivers are obtained from owners of non-farm businesses or common places of assembly that are located in the setback area.
- 1) An owner or operator request for a setback decrease shall be in writing and submitted to the Department prior to construction.
 - 2) An owner or operator shall attach to the request copies of the written and notarized waivers from all the owner(s) of the residence(s), non-farm business(es), and common place(s) of assembly that are located within the setback area.
 - 3) Within 30 days after receipt of the request and waivers, the Department shall notify the owner or operator in writing of the setback decrease.
 - 4) When such a decrease from the setbacks is requested, the Department must maintain a file which includes all supporting data and justification concerning the setback decrease. This file is subject to public inspection.

Section 506.703 Initial Determination of Setbacks

The requirements of this Section do not apply to new livestock management facilities or new livestock waste handling facilities serving less than 50 animal units.

- a) An owner or operator shall file a notice of intent to construct which meets the informational requirements of subsection (b) of this Section for a new livestock management facility or new livestock waste handling facility with the Department prior to construction to establish an initial determination of setbacks.
- b) The notice of intent to construct shall contain a legal description of the land on which the livestock facility will be constructed; the name(s) and addresses of the owner(s) or operator(s) of the facility; the type and size of the facility and number of animal units; the names and addresses of the owner(s), including local, State and federal governments, of the property located within the setback area; the distance to the nearest populated area, residence, non-farm business, and common place of assembly; a map or sketch showing the proposed facility and setbacks; and a statement identifying whether a request for decrease in setbacks, pursuant to Section 506.702(f) or (g), has been sought and whether the request has been granted or denied yet.
- c) The owner or operator shall mail by certified mail the notice of intent to construct to the owner(s) of the property located within the setback distances. The owner(s) of the property located within the setback distances are presumed, unless established to the contrary, to be the person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed.
- d) Within 30 days after receipt of the notice to construct, the Department shall notify the owner or operator in writing whether the setback distances have been met.
- e) The date the notice of intent to construct is filed with the Department establishes the base date for the determination of whether residences, non-farm businesses, or common places of assembly exist for setback purposes and shall remain the base date if construction begins within one year following receipt of the Department's determination or if a lagoon registration form is filed with the Department within one year after receipt of the Department's determination of compliance with the setback distances.
- f) If the Department determines that the owner or operator has complied with the setback requirements, later constructed or erected residences, non-farm businesses, or common places of assembly cannot operate to alter the setback as initially determined, subject to the limitation in subsection (e) of this Section.
- g) Where an intent to construct has been filed, the Department must maintain a file which includes all filings and supporting data and justification which it relied upon in making its determination regarding compliance with the setback distances. This file is subject to public inspection.

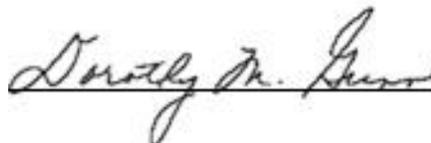
Section 506.704 Penalties

- a) For violations of the setback distance requirements, the Department may issue one of the following to the owner or operator of the livestock management facility or livestock waste handling facility:
 - 1) If during construction, a cease and desist order which prohibits further construction of the livestock management facility or livestock waste handling facility, prohibits entry of livestock into the livestock management facility, and prohibits use of the livestock waste handling facility; or
 - 2) An operational cease and desist order.
- b) A cease and desist order issued by the Department pursuant to subsection (a) of this Section shall be canceled by the Department pursuant to the following:
 - 1) Submission to the Department of a valid waiver as provided for in Section 506.702(g) of this Subpart by the livestock management facility owner or operator or the livestock waste handling facility owner or operator; or
 - 2) Verification by the Department of compliance with the appropriate setback distances as described in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35].

IT IS SO ORDERED.

Board Members R.C. Flemal and G.T. Girard dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 15th day of May, 1997, by a vote of 4-2.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board