

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2000

IN THE MATTER OF:)
) R01-18
LIVESTOCK WASTE REGULATIONS) (Rulemaking - Land)
(35 ILL. ADM. CODE 506))
)
)

Proposed Rule. First Notice.

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

The Board today moves to first notice on a Department of Agriculture (Department) proposal, submitted to the Board on December 4, 2000, to amend the Board's livestock waste regulations (35 Ill. Adm. Code 506) (Part 506). The amendments repeal provisions of Part 506 which will be superseded by the livestock management facility regulations promulgated by the Department at 8 Ill. Adm. Code 900, effective January 1, 2001. This rulemaking will eliminate Board rules that duplicate those adopted by the Department. In an effort to expedite this rulemaking, the Board moves to first notice without commenting on the merits of the Department's proposal.

BACKGROUND

On May 21, 1996, Public Act 89-456 created the Livestock Management Facilities Act (LMFAct) (510 ILCS 77). The LMFAct sets forth requirements for the siting, construction, and operation of livestock management and waste handling facilities, and requires the Department to propose rules to the Board based on recommendations from a Livestock Management Facility Advisory Committee (Advisory Committee). On November 21, 1996, the Department submitted proposed rules to the Board. On May 15, 1997, the Board adopted those rules for implementation by the Department. See In re Livestock Waste Regulations, 35 Ill. Adm. Code 506 (May 15, 1997), R97-15(A). Included in Part 506 are standards for the construction of livestock waste lagoons, the development of waste management plans, the certification of livestock managers, and the implementation of setback distances. Rules for lagoon financial surety were promulgated in a separate rulemaking. See In re Livestock Waste Regulations, 35 Ill. Adm. Code 506 (November 12, 1998), R97-15(B).

Since the adoption of the Part 506 rules, the legislature amended the LMFAct (see Pub. Act 90-565, effective January 2, 1998; and Pub. Act 91-110, eff. July 13, 1999). Changes to the LMFAct included the following requirements for lagoons: secondary containment, public informational meetings, waste release reporting, increased inspections, and odor control. Other changes involved: notice of intent to construct filing, construction plan approval for non-lagoon facilities, public informational meetings for non-lagoon facilities, increased construction standards in environmentally sensitive areas, waste release reporting for non-lagoon facilities, animal unit threshold reduction for waste management plan compliance, and

the inclusion of a phosphorus standard for livestock waste application fields.

Pursuant to Section 55 of the LMFAct (510 ILCS 77/55), the Board is required to adopt rules for the implementation of design and construction standards for livestock waste handling facilities, based on a proposal from the Department. The Department, in conjunction with the Advisory Committee, is required to develop rules for the implementation of all other aspects of the LMFAct.

After several meetings of the Advisory Committee involving livestock industry and environmental group representatives, the Department, on December 17, 1999, issued a first-notice proposal for the implementation of the LMFAct, excluding design and construction standards. The Board's Part 506 rules served as a guide for requirements other than construction standards. Following hearings and the receipt of public comments, the Department made substantial changes to the proposed rules, which prompted a second comment period. The rules were considered by the Joint Committee on Administrative Rules on October 17, 2000. The final rules (8 Ill. Adm. Code 900) were filed on November 30, 2000, with the Secretary of State's Office, and will become effective on January 1, 2001.

On January 1, 2001, the Department and the Board will each have rules implementing some of the same provisions in the LMFAct. Accordingly, on December 4, 2000, the Department proposed to the Board an emergency rulemaking to repeal or amend the language in the Board's Part 506 rules that duplicates the language at 8 Ill. Adm. Code 900.

OVERVIEW OF THE RULES

The rules proposed today do not add any new language, except several changes in definitions to be consistent with definitions adopted at 8 Ill. Adm. Code 900. Following is a summary of the proposed changes to Part 506.

Subpart A: General Provisions

Subpart A provided the definitions, incorporations by reference, and other general items applicable to the entire rule. The applicability language related to deleted portions of the rule is eliminated in Section 506.101. Defined terms that are no longer referenced are removed. Definitions contained in 8 Ill. Adm. Code 900 have been included in Part 506. Specifically, the terms "animal unit," "livestock waste handling facility," and "new facility" have been modified. "Animal unit" was expanded in Part 900 to include a factor for laying hens and broilers at facilities that do not have continuous overflow watering or a liquid manure handling system, and a method to determine the animal unit factor for other species of animals that are not listed. Language was added to the definition of "livestock waste handling facility" to duplicate the exemptions that are currently in the definition of "livestock management facility." The addition to the definition of "new facility" was obtained from Section 13(k) of the LMFAct. Recordkeeping requirements of Section 506.105 are now found in 8 Ill. Adm. Code 900 (Section 900.105).

Subpart B: Standards for Livestock Waste Lagoons

Subpart B provided the design standards for the construction of lagoons, including a site investigation, liner standards, monitoring wells, certifications, closure, and ownership transfer. Subsection (c) of Section 506.201 is now found in 8 Ill. Adm. Code 900 (Section 900.601(b)). The requirements for lagoon registration have moved to Section 900.603 of Part 900. In Section 506.205, a portion of subsection (d) and all of subsection (e) deal with a certification process that is now found in Part 900. Section 506.206, Groundwater Monitoring, contains construction standards and operational requirements now found in Section 900.611.

Subparts C through G

Subpart C contained the requirements for the development and implementation of waste management plans. Subpart D provided the details pertaining to the certified livestock manager requirement. Subpart E had one section for general penalties. Subpart F outlined the financial responsibility for lagoons, while Subpart G provided the requirements for setbacks, including the notice of intent to construct provision. Appendix A contained illustrations of a surety bond and a standby letter of credit. Since all of these Subparts pertain to aspects which are included in 8 Ill. Adm. Code 900, the language has been proposed for deletion.

The Board has also attached a cross reference chart that identifies, in 8 Ill. Adm. Code 900, the corresponding section from Part 506. This chart is included simply as a guide to identifying the portions of the Part 506 which the Department incorporates into Part 900.

EMERGENCY JUSTIFICATION

The Department's proposal submitted to the Board on December 4, 2000, requested that the Board repeal its rules at Part 506 by emergency rulemaking procedures. Section 5-45 of the Illinois Administrative Procedural Act (IAPA) (5 ILCS 100) provides in pertinent part:

“Emergency” means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare. If any agency finds that any emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing of notice of emergency rulemaking with the Secretary of State under Section 5-70.

Emergency rules are scrutinized by both the Pollution Control Board and by the courts to determine whether “there exists a situation which reasonably constitutes a threat to the public interest, safety or welfare.” Citizens for a Better Environment v. Illinois Pollution Control Board, 162 Ill. App. 3d 105, 504 N.E.2d 166, 169 (1st Dist. 1987).

The Department believes that an emergency situation exists which requires the

emergency adoption of amendments to Part 506 to avoid two agencies having potentially duplicate regulations implemented by the LMFAct.

In the Board's opinion, emergency rules are not justified in the present case. There is no immediate threat to the public which will occur pending the Board's completion of this general rulemaking. The first-notice rule issued today will be published in the *Illinois Register*, providing notice to the regulated industry. Although the Board and the Department may have duplicate rules for several months pending the completion of this rulemaking, the regulated industry has worked closely with the Department on the 8 Ill. Adm. Code 900 rules, and they are unlikely to be confused about which rules to follow.

ORDER

The Board directs the Clerk to cause the filing of the following proposed rule with the Secretary of State for publication in the *Illinois Register*.

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

PART 506 LIVESTOCK WASTE REGULATIONS

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SUBPART F: FINANCIAL RESPONSIBILITY

Section

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- 506.603 — Level of Surety
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- 506.615 — Participation in a Livestock Waste Lagoon Closure Fund

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SUBPART G: SETBACKS

Section

506.701 — Applicability

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506.703 — Initial Determination of Setbacks

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APPENDIX A — Surety Instruments

ILLUSTRATION A — Surety Bond

ILLUSTRATION B — Irrevocable Standby Letter of Credit

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 [510 ILCS 77].

SOURCE: Adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997; amended in R97-15(B) at 22 Ill. Reg. 20605, effective November 12, 1998; amended at 25 Ill. Reg. _____, effective _____.

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.

SUBPART A: GENERAL PROVISIONS

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 the following meanings:

~~“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 0.005.

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]

For species of animals in an animal feeding operation not specifically listed in this definition, the animal unit factor shall be determined by dividing the average mature animal weight by 1,000. The average mature animal weight shall be determined by the Department with guidance from the University of Illinois Cooperative Extension Service.

“Aquifer material” means sandstone that is five feet or more in thickness, or fractured carbonate that 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] Livestock waste handling 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 foiling farms, and market holding facilities are not subject to the Livestock Management Facilities Act or the requirements of this Part.

“Maintained” means, with reference to a livestock waste lagoon, that the livestock waste lagoon is inspected (including but not limited to inspection for burrow holes, trees and woody vegetation, proper freeboard, erosion, settling of berm, berm top integrity, leaks, and seepage) and preventive action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances.

“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] For facilities that have ceased operation on or after July 13, 1999, commencement of operations at a facility that has livestock shelters left intact and that has completed the requirements imposed under Section 13(k) of the Livestock Management Facilities Act [510 ILCS 77/13(k)] and Section 900.508 of this Part and that has been operated as a livestock management facility for 4 consecutive months at any time within the previous 10 years shall not be considered a new or expanded livestock management or waste handling facility. [510 ILCS 77/13(k)] For facilities that have ceased operation prior to July 13, 1999, commencement of operations at a facility that has livestock shelters left intact and that has been operated as a livestock management facility or livestock waste handling facility for 4 consecutive months at any time with the previous 10 years shall not be considered a new or expanded livestock management or waste handling facility.

~~“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.

~~“Serviced” means, with reference to a livestock waste lagoon, that corrective action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances, including but not limited to removal or repair of burrow holes, trees and woody vegetation, freeboard level, erosion, settling of berm, berm top maintenance, leaks, and seepage.~~

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

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)]~~

Section 506.204 Lagoon Design Standards

- 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.~~

~~Section 506.209 Lagoon Closure and Ownership Transfer~~

- ~~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 removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met. The owner or operator shall notify the Department in writing when a lagoon is removed from service. Within 60 days after removal of the lagoon from service, the owner or operator shall submit a lagoon closure plan to the Department for review and approval. If no lagoon closure plan is received by the Department within 60 days, the Department shall send the lagoon owner a notice of default.~~
- ~~2) The lagoon closure 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 no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.~~
- 3) The Department shall review and approve, reject, 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)]~~
- ~~_____ 4) Upon completion of the lagoon closure activities as prescribed by the Department approved closure plan, the owner or operator shall notify the Department. 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) A lagoon is considered removed from service when:
- 1) The Department has ordered the lagoon removed from service under Section 506.620 of this Part;
 - 2) A tribunal of competent jurisdiction has ordered the lagoon closed or ordered the owner or operator to cease operations;
 - 3) The lagoon no longer receives livestock waste and the lagoon is not being serviced or maintained;
 - 4) The owner fails to extend the term for which evidence of financial responsibility is shown as required in Section 506.602(b) of this Part; or
 - 5) The owner or operator informs the Department in accordance with subsection (a)(1) of this Section that the lagoon has been removed from service.

- e) ~~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)]~~

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

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 (e) [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 — ~~Scope, Applicability, and Definitions~~

- a) ~~This Subpart provides procedures by which the owner of a new or modified livestock waste lagoon registered under the Livestock Management Facilities Act provides evidence of financial responsibility satisfying the requirements of Section 17 of the Livestock Management Facilities Act.~~
- b) ~~Owners of lagoons must comply with the financial responsibility requirements of this Part either:~~
- 1) ~~on or before June 1, 1999; or~~
 - 2) ~~before the lagoon is placed in service.~~
- c) ~~For the purposes of this Subpart, the following terms have the following meanings:~~
- 1) ~~“Financial institution” means:~~
 - A) ~~An insurer providing commercial or private insurance to evidence financial responsibility for lagoon closure in accordance with Section 506.610 of this Part;~~
 - B) ~~A guarantor providing a guarantee as evidence of financial responsibility for lagoon closure in accordance with Section 506.611 of this Part;~~
 - C) ~~The issuer of a surety bond as evidence of financial responsibility for lagoon closure in accordance with Section 506.612 of this Part;~~
 - D) ~~The issuer of a letter of credit as evidence of financial responsibility for lagoon closure in accordance with Section 506.613 of this Part; or~~
 - E) ~~The livestock waste lagoon closure fund managed by the Illinois Farm Development Authority that evidences financial responsibility for lagoon closure in accordance with Section 506.615 of this Part.~~
 - 2) ~~“Level of surety” means the level, calculated in accordance with Section 506.603 of this Part, at which evidence of financial responsibility must be provided.~~
 - 3) ~~“Surety instrument” means any of the devices listed in Section 506.602~~

of this Part by which a lagoon owner evidences financial responsibility for lagoon closure. Unless the context requires otherwise, "surety instrument" includes a combination of surety instruments.

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

Section 506.602 — Mechanisms for Providing 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;~~
 - ~~5) CERTIFICATE OF DEPOSIT OR DESIGNATED SAVINGS ACCOUNT; or~~
 - ~~6) PARTICIPATION IN A LIVESTOCK WASTE LAGOON CLOSURE FUND MANAGED BY THE ILLINOIS FARM DEVELOPMENT AUTHORITY. [510 ILCS 77/17]~~
- ~~b) The lagoon owner must provide continuous coverage from the time the lagoon is placed in service until such time as the owner is released from the financial responsibility requirements pursuant to Section 506.605(a) of this Part. The initial term of any surety instrument (other than a certificate of deposit or designated savings account) utilized to fulfill the requirements of this Part must be at least three years. At least two years prior to the expiration date of such instrument, the owner must provide the Department with proof that the term of coverage has been extended for at least one additional year.~~
- ~~c) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon that is subject to the financial responsibility requirements of this Subpart, the new owner must establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.~~
- ~~d) The lagoon owner must ensure that the terms and conditions of the surety instrument(s) listed in subsection (a) of this Section upon which the owner relies are legally valid, binding, and enforceable under state and federal law.~~

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

Section 506.603 — Level of Surety

a) — The level of surety is determined by the following formula:

$$\text{Level of Surety} = (V \times CF) + EC$$

where:

————— V = Volume of the lagoon as constructed or modified in cubic feet, including the freeboard volume;

CF = Cost factor determined pursuant to subsection (b) of this Section;
and

EC = Engineering contingency determined under subsection (c) of this Section.

b) — The cost factor is obtained from the following:

1) — Until December 31, 2002, the cost factor is 10¢ per cubic foot of lagoon volume.

2) — From January 1, 2003 through December 31, 2007, the cost factor is 12¢ per cubic foot of lagoon volume.

3) — After January 1, 2008, the cost factor is 15¢ per cubic foot of lagoon volume.

c) — The engineering contingency is equal to 10% of (V x CF).

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

Section 506.604 — Upgrading Surety Instrument

a) — The owner of a lagoon must increase the total amount of surety in place so as to equal the level of surety as calculated within 90 days after:

1) — a modification resulting in an increase in the volume of the lagoon; or

2) — an increase in the cost factor under Section 506.603(b) of this Part.

b) — If modification of a lagoon results in a decrease in volumetric capacity, the owner or operator may provide the Department with documentation of the

~~reduction in volumetric capacity and request a recalculation of the level of surety. Within 90 days after a request by the owner or operator under this subsection, the Department must either:~~

- ~~1) — release any surety amount above the level of surety as recalculated based upon the owner's documentation of reduction of volumetric capacity; or~~
 - ~~2) — conduct an inspection and determine the amount by which volumetric capacity has been decreased.~~
- ~~e) — If the Department conducts an inspection under subsection (b), then the Department must release any surety amount above the level of surety as recalculated based upon the results of the inspection.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.605 — Release of Lagoon Owner and Financial Institution~~

- ~~a) — The Department must release a lagoon owner from the requirements of this Subpart when:

 - ~~1) — The lagoon has been properly closed and a notification of closure completion pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department; or~~
 - ~~2) — A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose; or~~
 - ~~3) — Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part.~~~~
- ~~b) — The Department must release a financial institution when:

 - ~~1) — A lagoon owner offers an authorized alternative surety that meets the requirements of Section 506.607(c) of this Part; or~~
 - ~~2) — The Department releases the lagoon owner from the requirements of this Subpart under subsection (a) of this Section.~~~~
- ~~c) — The Department must notify the lagoon owner and financial institution in writing within 60 days after a release under this Section. If a release is based upon proper closure of a lagoon, notification under this subsection should occur at the same time as notice of proper closure under Section 506.209(a)(4).~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

Section 506.606 — Financial Responsibility Proceeds

- a) ~~A financial institution issuing a surety instrument evidencing financial responsibility for closure of a livestock waste lagoon becomes liable on the surety instrument when a lagoon is removed from service and:~~
- 1) ~~The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:~~
 - A) ~~cannot be found; or~~
 - B) ~~fails to cure such failure within 30 days after notice from the Department;~~
 - 2) ~~The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or~~
 - 3) ~~The owner fails to comply with an approved lagoon closure plan and:~~
 - A) ~~cannot be found; or~~
 - B) ~~fails to cure such noncompliance within 30 days after notice from the Department.~~
- b) ~~The Department must provide notice to the financial institution providing surety for a lagoon:~~
- 1) ~~when it determines that the lagoon has been removed from service; and~~
 - 2) ~~when it determines that one of the criteria for liability set forth in subsection (a) of this Section has been met.~~
- c) ~~Within 30 days after notice of liability from the Department, the financial institution must either assume liability for closure of the lagoon and notify the Department of its election to assume liability, or deposit the amount for which it is liable in connection with the lagoon into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon.~~
- 1) ~~If the financial institution assumes liability for closure of the lagoon, it must submit a lagoon closure plan that meets the requirements of Section 506.209 of this Part within 60 days after notifying the Department of its election. Notwithstanding the financial institution's assumption of liability for closure of the lagoon, the Department may require the~~

~~financial institution to deposit funds up to the amount for which the financial institution is liable under the surety instrument into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon if:~~

- ~~A) — The financial institution does not submit the lagoon closure plan as required and fails to cure such omission within 30 days after notice from the Department;~~
 - ~~B) — The financial institution fails to obtain Department approval of a lagoon closure plan within eight months after the date that it elects to assume liability for closure of the lagoon, unless the lagoon is maintained or serviced; or~~
 - ~~C) — The financial institution fails to comply with an approved lagoon closure plan and fails to cure such noncompliance within 30 days after notice from the Department.~~
- ~~2) — A financial institution which assumes liability for closure of a lagoon under this Section remains liable for the full amount of the surety instrument until the Department issues written notification of completion of closure in accordance with Section 506.209, notwithstanding the expiration of the instrument utilized to evidence financial responsibility by the owner.~~
 - ~~3) — Any amounts that a financial institution may expend for service or maintenance of the lagoon pending closure or for partial closure of the lagoon do not reduce the amount of the financial institution's obligation under this subsection(c).~~
 - ~~4) — If the financial institution elects, or is required under subsection(c)(1) of this Section, to deposit the funds required by the Department into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon, then the Department shall close the lagoon within the time frame established under Section 15(e) of the LMFA or as soon as practicable, to the extent possible utilizing the funds deposited by the financial institution. The Department may use any interest earned on deposited funds to close the lagoon. The Department must release any funds remaining in the account, including any remaining interest earned on funds in the account, to the financial institution upon completion of closure.~~
- ~~d) — The Department may sue in any court of competent jurisdiction to enforce its rights under any surety instrument.~~

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

~~Section 506.607 — Use of Multiple Surety Instruments~~

- ~~a) — The lagoon owner may use any combination of the surety instruments listed in Section 17 of the Livestock Management Facilities Act [510 ILCS 77/17] and this Subpart to evidence the required level of financial responsibility.~~
- ~~b) — A lagoon owner is not limited to maintaining financial responsibility with the original surety instrument or combination of instruments. The owner must notify the Department before making any change in surety instruments.~~
- ~~c) — If a lagoon owner makes any change in surety instruments, the lagoon owner must maintain the total financial responsibility for the lagoon at a level not less (without counting the amounts to be released) than the level of surety.~~
- ~~d) — A replacement surety instrument or instruments must provide evidence of financial responsibility for a period at least equal to the existing instrument or instruments. This provision does not relieve an owner of the obligation under Section 506.602(b) to provide proof at least two years prior to expiration of a surety instrument that the term for which financial responsibility has been demonstrated has been extended for at least an additional year.~~

(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)

~~Section 506.608 — Use of a Single Surety Instrument for Multiple Lagoons~~

- ~~a) — An owner may use a surety instrument specified in this Subpart to provide evidence of financial responsibility for more than one lagoon.~~
- ~~b) — Whenever a single surety instrument is used for multiple lagoons, the owner must submit an itemization to the Department identifying all lagoons covered by the surety instrument and the amount allocated to each lagoon.~~
- ~~c) — The amount of funds available through the surety instrument must be no less than the sum of funds that would be available if a separate surety instrument had been established and maintained for each lagoon.~~
- ~~d) — In directing funds available through a single surety instrument for the closure of any single lagoon covered by that surety instrument, the Department shall direct only the amount of funds designated for that lagoon, unless the owner agrees to allow the Department to use additional funds available under that surety instrument. Such an agreement does not affect the owner's obligation to provide evidence of financial responsibility up to the level of surety for all other lagoons.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.610 — Commercial or Private Insurance~~

- ~~a) — A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining closure insurance that conforms to the requirements of this Subpart and submitting an executed duplicate original of such insurance policy to the Department.~~
- ~~b) — The insurer must be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5].~~
- ~~c) — The policy must be on forms approved by the Illinois Department of Insurance.~~
- ~~d) — The closure insurance policy must guarantee that funds will be available to close the lagoon. The policy must also guarantee that, upon a notice of liability from the Department, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, in accordance with Section 506.606(c) of this Part.~~
- ~~e) — The policy must provide that the insurer may not cancel or terminate the policy.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.611 — Guarantee~~

- ~~a) — A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a guarantee that conforms to the requirements of this Subpart.~~
- ~~b) — A guarantor must submit a financial statement to the Department from the guarantor's most recent fiscal year.~~
- ~~c) — The Department will review the financial statement, determine if adequate resources exist to guarantee the closure costs, and notify the lagoon owner of acceptance or denial within 30 days after receipt of the financial statement by the Department.~~
- ~~d) — The guarantor shall guarantee to pay the amount specified in the guarantee upon notice from the Department as provided in Section 506.606(c) of this Part.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.612 — Surety Bond~~

- a) ~~A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a surety bond that conforms to the requirements of this Subpart and submitting the bond to the Department.~~
- b) ~~The surety company issuing the bond must be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5] and approved by the U.S. Department of the Treasury as an acceptable surety. Acceptable sureties are listed in Circular 570 from the U.S. Department of the Treasury.~~
- c) ~~The bond must guarantee that the lagoon owner will provide lagoon closure and content removal in accordance with Section 506.209 of this Part.~~
- d) ~~The surety bond must be in substantially the form specified in Appendix A, Illustration A of this Part.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.613 — Letter of Credit~~

- a) ~~A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subpart and submitting the letter to the Department.~~
- b) ~~The issuing institution must be an entity that has the authority to issue letters of credit and:~~
 - 1) ~~whose letter of credit operations are regulated by the Illinois Commissioner of Banks and Real Estate; or~~
 - 2) ~~whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.~~
- e) ~~The letter of credit made out to the Department must be accompanied by a letter from the lagoon owner referring to the letter of credit by number, issuing institution, and date and providing the following information: name and address of the lagoon site and the amount of funds assured for closure of the lagoon by the letter of credit.~~
- d) ~~The letter of credit must be substantially in the form specified in Appendix A, Illustration B of this Part.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

Section 506.614 — ~~Certificate of Deposit or Designated Savings Account~~

- a) ~~A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by designating certificate(s) of deposit or savings account(s) for use as financial responsibility.~~
- b) ~~The issuing or depository financial institution must be an entity whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.~~
- c) ~~The Department may draw on the certificate(s) of deposit or savings account(s) to pay the costs of closing a lagoon in accordance with this subsection. The Department shall close a lagoon when the lagoon is removed from service and:~~
- 1) ~~The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:~~
 - A) ~~cannot be found; or~~
 - B) ~~fails to cure such failure within 30 days after notice from the Department;~~
 - 2) ~~The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or~~
 - 3) ~~The owner fails to comply with an approved lagoon closure plan and:~~
 - A) ~~cannot be found; or~~
 - B) ~~fails to cure such noncompliance within 30 days after notice from the Department.~~
- d) ~~The Director of the Department shall be listed as trustee of the certificate(s) of deposit or savings account(s) for the lagoon owner.~~
- e) ~~At maturity of any certificate of deposit designated as financial responsibility for lagoon closure, the certificate shall be renewed or the proceeds deposited into a designated savings account that meets the requirements of this Section.~~
- f) ~~The Department shall relinquish trusteeship of the certificate(s) of deposit or savings account(s) when:~~
- 1) ~~The lagoon has been properly closed and a notification of closure completeness pursuant to Section 506.209 of this Part has been issued to~~

the lagoon owner by the Department;

- 2) ~~A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose pursuant to Section 506.209 of this Part;~~
- 3) ~~Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part; or~~
- 4) ~~A lagoon owner offers an authorized alternative surety which meets the requirements of Section 506.607(c) of this Part.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.615 — Participation in a Livestock Waste Lagoon Closure Fund~~

- a) ~~A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by participating in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. An owner electing to provide evidence of financial responsibility under this Section must submit a certificate of participation in such a lagoon closure fund to the Department.~~
- b) ~~The certificate of participation submitted pursuant to subsection (a) of this Section must include:~~
 - 1) ~~the level of surety for the lagoon;~~
 - 2) ~~the dollar amount of coverage provided by the lagoon closure fund;~~
 - 3) ~~the dates for which coverage is provided; and~~
 - 4) ~~a financial statement of the lagoon closure fund establishing the lagoon closure fund's compliance with the requirements of this Section.~~
- e) ~~The lagoon closure fund must maintain minimum reserves equal to the greater of:~~
 - 1) ~~the level of surety of the largest lagoon covered by the lagoon closure fund; or~~
 - 2) ~~twice the average level of surety of lagoons covered by the fund.~~
- d) ~~The lagoon closure fund must guarantee that funds will be available to close the lagoon. Upon a notice of liability from the Department, the lagoon closure fund~~

~~must comply with the requirements of Section 506.606(e) of this Part.~~

- e) ~~If the reserves of the lagoon closure fund are reduced to less than the minimum amount required under subsection (b) due to expenditures of funds in order to comply with Section 506.606(e), then within 120 days of such reduction the lagoon closure fund must demonstrate to the Department that the minimum reserve level has been restored.~~
- f) ~~The lagoon closure fund may not cancel or terminate coverage prior to the date set forth in the certification pursuant to subsection (b)(3) of this Section.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

~~Section 506.620 — Penalties~~

~~The Department may order a lagoon removed from service if the owner fails to provide evidence of financial responsibility to the Department or fails to maintain financial responsibility in the amount required pursuant to Section 506.603 of this Subpart.~~

~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

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)]~~
- ~~e) 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].~~~~

~~Section 506.Appendix A Surety Instruments~~

~~Section 506.Illustration A Surety Bond~~

~~SURETY BOND~~

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name: _____

Address: _____

City: _____

Amount guaranteed by this bond: \$ _____

Name: _____

Address: _____

City: _____

Amount guaranteed by this bond: \$ _____

Please attach a separate page if more space is needed for all sites.

Total penal sum of bond: \$ _____

Surety's bond number: _____

~~The Principal and the Surety promise to pay the Illinois Department of Agriculture ("Department") the above penal sum unless the Principal provides closure for each site in accordance with 510 ILCS 77/15(e) and 35 Ill. Adm. Code 506.209. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.~~

~~Whereas the Principal is required, under Section 15(b) of the Livestock Management Facilities Act ("LMFA") to register at least one livestock waste lagoon with the Department; and~~

~~Whereas the Principal is required, under Section 17 of the LMFA to evidence financial responsibility for closure of each registered lagoon; and~~

~~Whereas the Surety is licensed by the Illinois Department of Insurance; and~~

~~Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;~~

~~The Surety shall pay the penal sum to the Department if, during the term of the bond, the Department issues a notice of liability to the Surety.~~

~~The Surety shall pay the penal sum of the bond to the Department within 30 days after the Department mails the notice of liability to the Surety unless the Surety assumes responsibility to provide closure and so notifies the Department. Payment shall be made by deposit of funds into a designated account upon which the Department is authorized to draw.~~

~~The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum. If the Surety assumes responsibility to provide closure, expenditures made by the Surety for that purpose may exceed the amount of the penal sum, but the amount of the Surety's obligation under this bond is not affected.~~

~~This bond shall expire on the _____ day of _____, _____.~~

~~The Principal may terminate this bond by sending written notice to the surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the Department.~~

~~In Witness Whereof, the Principal and Surety have executed this Surety Bond and have affixed their seals on the date set forth above.~~

~~The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.~~

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

Section 506.Illustration B Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Department of Agriculture
P.O. Box 19281
Springfield IL 62794 9281

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter of credit operations are regulated by the Illinois Commissioner of Banks and Real Estate or our deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. (Omit language that does not apply.)

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of _____ up to the aggregate amount of _____ U.S. dollars (\$ _____), available upon presentation of:

1. _____ your sight draft, bearing reference to this letter of credit No. _____; and
2. _____ your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Livestock Management Facilities Act [510 ILCS 77] and 35 Ill. Adm. Code 506.606(a) or 506.606(c)."

This letter of credit is effective as of _____ and shall expire on _____.

~~Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of draft directly into a designated account in accordance with your instructions.~~

~~This letter of credit is governed by the Uniform Commercial Code [810 ILCS 5].~~

Signature _____

Typed Name _____

Title _____

Date _____

Name and address of issuing institution _____

This credit is subject to _____

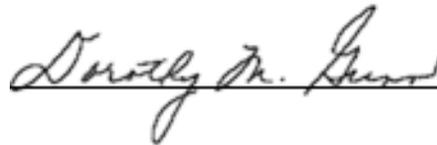
~~(Source: Amended at 22 Ill. Reg. 20605, effective November 12, 1998)~~

CONCLUSION

The Board proposes these rules to eliminate Board rules now implemented by the Department's Part 900 rules. The Board directs the Clerk to file the proposed rules with the Secretary of State for publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of December 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board