

ILLINOIS POLLUTION CONTROL BOARD  
September 4, 1997

IN THE MATTER OF: )  
)  
AMENDMENTS TO 35 ILL. ADM. CODE ) R98-11  
501 THROUGH 504: AGRICULTURAL - ) (Rulemaking - Water)  
RELATED POLLUTION (MANAGEMENT )  
OF LIVESTOCK WASTE) )

Request for Public Comments and/or Proposals.

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

The Board on its own motion today opens a docket to solicit public comments and/or proposals to assist the Board in identifying and reconciling any inconsistencies between Board regulations (35 Ill. Adm. Code 506) adopted pursuant to the Livestock Management Facilities Act (Livestock Act) (516 ILCS 77/1 *et seq.* (1996)) and previously existing regulations concerning agricultural-related pollution adopted by the Board (35 Ill. Adm. Code 501 through 504).

As background, the Livestock Act, effective May 21, 1996, set forth an outline for the proper design, construction, operation, and management of livestock management facilities and associated waste handling structures. It further provided for education and certification of livestock managers, research, proper disposal of livestock waste, and financial responsibility for closure of lagoons. While many provisions of the Livestock Act required no further regulatory implementation, the legislature recognized that some of the provisions would need regulatory implementation. To accomplish this, the Livestock Act directed the Department of Agriculture to seek input from the Livestock Management Facilities Advisory Committee (Advisory Committee)<sup>1</sup> and, based on the recommendations of the Advisory Committee, propose rules to the Board for the implementation of the Livestock Act.

On November 21, 1996, the Department of Agriculture timely submitted proposed rules to the Board. Pursuant to the Livestock Act, the Board was required to adopt rules for the implementation of the Livestock Act within six months after the Department of Agriculture filed proposed rules with the Board. On May 15, 1997, the Board adopted such rules for implementation by the Department of Agriculture. See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506 (May 15, 1997), R97-15(A).

In adopting the rules for second notice, the Board noted that it already had in place regulations specific to livestock waste management facilities. See In the Matter of: Livestock

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<sup>1</sup> The Advisory Committee was comprised of the Directors of the Department of Agriculture, Illinois Department of Natural Resources, Illinois Department of Public Health, and the Illinois Environmental Protection Agency (IEPA).

Waste Regulations 35 Ill. Adm. Code 506 (March 20, 1997), R97-15(A) & (B), slip op. at 4 n. 7. The Board acknowledged that the pre-existing regulations were promulgated long before the agriculture changes and trends noted by the legislature in adopting the Livestock Act. Accordingly, the Board and several participants observed that the adoption of rules pursuant to the Livestock Act may create inconsistencies with existing Board regulations. The Board agreed that any inconsistencies created should be reconciled and stated that a new rulemaking docket would be opened to address these inconsistencies at the appropriate time. See In the Matter of: Livestock Waste Regulations 35 Ill. Adm. Code 506 (March 20, 1997), R97-15(A) & (B), slip op. at 4 n. 7. The Board believes that such time has come and today opens a docket to solicit comments and/or proposals to reconcile the inconsistencies in the Board's pre-existing agricultural-related pollution rules (35 Ill. Adm. Code 501 through 504). In opening this docket, it is not the Board's intention to reopen the debate regarding the propriety of the provisions of the Livestock Act or Board regulations promulgated thereunder. The Board is simply opening the docket to reconcile any inconsistencies between the Board's pre-existing agricultural-related pollution regulations and regulations promulgated under the Livestock Act.

The Board also notes that not all the regulations contained in Subtitle E concerning agricultural-related pollution are Board rules. Rather, the regulations contained in Part 560 and 570 of Subtitle E are regulations adopted by the IEPA. The Board therefore requests that the IEPA, as well as any other interested party, file a comment with the Board specifically identifying any inconsistencies between the Part 560 and 570 rules and the Board rules adopted to implement the Livestock Act and addressing how these rules should be reconciled.

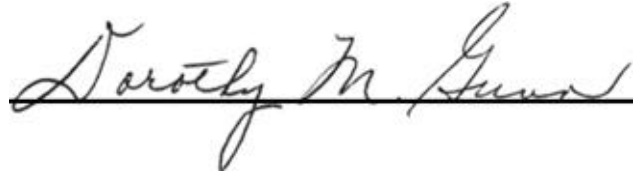
The Board anticipates adopting a proposal for first notice publication in the *Illinois Register* this year. Accordingly, interested parties may file comments and/or proposals with the Board until 4:30 p.m. on October 10, 1997. The mailbox rule as set forth in 35 Ill. Adm. Code 101.102(d) does not apply to these filings, and fax filings are not authorized (35 Ill. Adm. Code 101.102(c)). All comments and/or proposals should be directed to the Clerk of the Board, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. All comments should reference the docket number, R98-11, as well as the name, address, and affiliation, if any, of the commentor.

The Board will also assign a hearing officer to this matter. The Board will leave to its hearing officer the establishment of a rulemaking schedule, as well as the scheduling of additional written comments, a pre-hearing conference, and hearings, as necessary. Any questions concerning this order may be directed to the Board's Springfield office at (217) 524-8509.

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4<sup>th</sup> day of September 1997, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board