

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

CONCENTRATED ANIMAL FEEDING  
OPERATIONS (CAFOs): PROPOSED  
AMENDMENTS TO 35 ILL. ADM. CODE  
PARTS 501, 502, AND 504

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R12-23

(Rulemaking- Water)

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STATE OF ILLINOIS  
Pollution Control Board

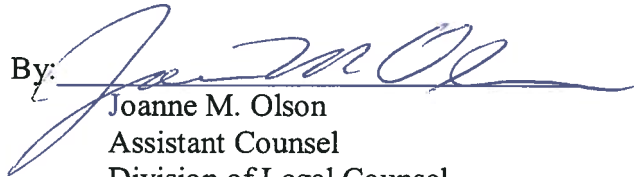
**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board  
ILLINOIS EPA'S MOTION TO CORRECT TRANSCRIPT, a copy of which is herewith served  
upon you.

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Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

DATED: September 12, 2012

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
IN THE MATTER OF:  
POLLUTION CONTROL BOARD

CONCENTRATED ANIMAL FEEDING	)	
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AMENDMENTS TO 35 ILL. ADM. CODE	)	(Rulemaking- Water)
PARTS 501, 502, AND 504	)	

**ILLINOIS EPA' MOTION TO CORRECT TRANSCRIPT**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by and through its counsel, and pursuant to 35 Ill. Adm. Code 101.604 hereby submits this motion to correct the hearing transcripts of August 21, 2012 as follows:

1. Hearing transcript page 30, line 21, "5.308" should be changed to "308."
2. Hearing transcript page 53, line 15, "stay us" should be changed to "stay with us"
3. Hearing transcript page 75, line 14, "of water of the state" should be changed to "to waters of the state."
4. Hearing transcript page 83, line 15, "have that" should be changed to "have what."
5. Hearing transcript page 84, line 19, "water CAFO case" should be changed to "Waterkeeper case."
6. Hearing transcript page 84, line 20, "NPDC" should be changed to "NPPC."
7. Hearing transcript page 106, line 13, "IDPH list on the LMFA" should be changed to "IDPH list or the LMFA."
8. Hearing transcript page 110, line 24, "you in" should be changed to "you and"
9. Hearing transcript page 112, line 1, "NBCC" should be changed to "NPPC."
10. Hearing transcript page 140, line 21, "a paper done by paper by" should be changed to "a paper done by."
11. Hearing transcript page 144, line 14, "Russell 2" should be changed to "RUSLE2."
12. Hearing transcript page 144, line 15, "diversion" should be changed to "erosion."

13. Hearing transcript page 144, line 18, "ejection appropriation" should be changed to "injection or incorporation."

WHEREFORE, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY respectfully requests that this honorable Hearing Officer grant its motion to correct the transcript.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

DATED: September 12, 2012

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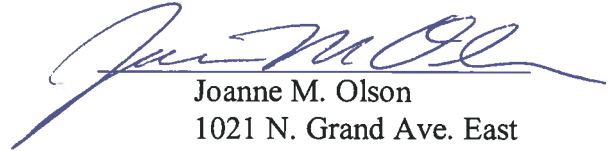
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Pollution Control Board  
**CERTIFICATE OF SERVICE**

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING and ILLINOIS EPA'S MOTION TO CORRECT TRANSCRIPT upon persons listed on the Service List by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on September 12, 2012.



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BEFORE THE  
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IN THE MATTER OF:

CONCENTRATED ANIMAL FEEDING  
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DOCKET R12-23

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AUG 28 2012

STATE OF ILLINOIS  
Pollution Control Board

Hearing held, pursuant to notice, on Tuesday,  
August 21, 2012 at the hour of 10:00 a.m. at 1021  
North Grand Avenue, Springfield, Illinois, before  
TIM FOX, duly appointed Hearing Officer.

L.A. REPORTING COMPANY, LLC  
(312) 419-9292

REPORTER: LAUREL A. PATKES, CSR #084-001340

1 BOARD MEMBERS:

2 TOM HOLBROOK, Chairman  
3 CARRIE ZALEWSKI  
4 JENNIFER BURKE  
5 DEANNE GLOSSER  
6 THOMAS JOHNSON

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15

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1 PROCEEDINGS

2 HEARING OFFICER FOX: Good morning,  
3 everyone. My name is Tim Fox, and I'm the hearing  
4 officer for this rulemaking proceeding which is  
5 entitled Concentrated Animal Feeding Operations, or  
6 CAFOs, Proposed Amendments to 35 Illinois  
7 Administrative Code Parts 501, 502 and 504. The  
8 Board docket number for this proceeding is R12-23.

9 I first want to note that  
10 present today from the Board is at my immediate left  
11 the Board's Chairman, Tom Holbrook, who is the lead  
12 board member on this proceeding.

13 At his left is Board Member  
14 Carrie Zalewski and at her left is Board Member Tom  
15 Johnson.

16 Starting at my far right we  
17 have Board Member Jennifer Burke and Board Member  
18 Deanna Glosser, and at my immediate right are the  
19 Board's Technical Unit, Mr. Anand Rao and Ms. Alisa  
20 Liu.

21 The Illinois Environmental  
22 Protection Agency, or IEPA, initiated this  
23 rulemaking by filing a proposal with the Board on  
24 March 1st of 2012, and in an order dated March 15th,

1 the Board accepted that proposal for hearing.

2 Today we are, of course,  
3 holding the first hearing on this rulemaking. We  
4 will be hearing testimony and questions today based  
5 upon the IEPA's proposal, and there will be also an  
6 opportunity to offer testimony on the Board's  
7 request that the Department of Commerce and Economic  
8 Opportunity, or DCEO, perform an economic impact  
9 study of it.

10 In an order dated March 23,  
11 2012, the hearing officer directed participants  
12 wishing to prefile testimony for the first hearing  
13 to do so on or before June 19th, and on June 18th,  
14 the Board received prefiled testimony from the IEPA  
15 by Mr. Bruce Yurdin, by Mr. Sanjay Sofat, and  
16 Mr. Dan Heacock.

17 On June 19th, the Board also  
18 received prefiled testimony from Mr. Jim Kaitschuk  
19 on behalf of the Illinois Agricultural Coalition  
20 which indicates that that coalition includes the  
21 Illinois Pork Producers Association, the Illinois  
22 Beef Association, the Illinois Milk Producers  
23 Association and the Illinois Farm Bureau as well.

24 The March 23rd hearing officer

1 order also directed participants to prefile written  
2 questions based on any of that prefiled testimony no  
3 later than July 17th, and on July 17th, the  
4 Agricultural Coalition prefiled written questions  
5 for the Agency.

6 Later that same day, the Board  
7 received prefiled questions from the environmental  
8 groups, and that text indicated that the group  
9 includes Prairie Rivers Network, Illinois citizens  
10 for Clean Air and Water, the Natural Resources  
11 Defense Council, and the Environmental Law and  
12 Policy Center.

13 Also on July 17, 2012, a Board  
14 hearing officer order included in an attachment  
15 questions on behalf of the Board based upon the  
16 Agency's testimony. That hearing officer order on  
17 March 23rd directed any participant whose testimony  
18 elicited questions to prefile written answers no  
19 later than August 14, 2012, and on that date, the  
20 Board did, of course, receive the Agency's written  
21 responses to the three sets of prefiled questions on  
22 behalf of the Agricultural Coalition, the  
23 Environmental Groups, and, of course, the Board  
24 itself. The Board has posted this prefiled

1 testimony and the questions and answers to its  
2 clerk's office online, or COOL.

3 Although the March hearing  
4 officer order had intended to begin today with the  
5 Agency's prefiled testimony, we have had appearing  
6 today a few persons who would like to offer a public  
7 comment, and in discussing procedural matters with  
8 the chief participants before the hearing, it was  
9 readily agreed that in the interest of their time,  
10 it would make sense to begin with those comments.

11 I have five persons who have  
12 indicated by signing in that they would like to  
13 offer written comments of three to five minutes, and  
14 we will begin in a few moments with those so that  
15 those folks are not required to wait until the end  
16 of the testimony and questions to offer those.

17 Then we will turn to the  
18 Agency's prefiled testimony, and, again, with the  
19 chief participants, we have worked out the  
20 procedural issue of this order. Under  
21 Section 104.424(f) of the Board's procedural rules,  
22 that prefiled testimony will be entered into the  
23 record as if read, but the agency that wishes to do  
24 so can certainly begin with a brief summary or

1 introduction before we turn to the questions that  
2 that testimony elicited.

3 Those questions will be  
4 directed to the agency's witnesses, and based on the  
5 order in which they were filed, we will turn first  
6 to the Agricultural Coalition to determine whether  
7 they have any follow-up questions based on the  
8 agency's prefiled answers. We'll attack those  
9 simply one by one to see whether the written answer  
10 is satisfactory or whether there is a follow-up  
11 question.

12 Next we would provide the same  
13 opportunity to the environmental groups, again,  
14 proceeding one-on-one to determine whether they had  
15 any follow-ups, and then the Board will pose its own  
16 follow-up questions after those two sets have been  
17 fully addressed.

18 After that, we can turn to  
19 Mr. Kaitschuk who, of course, did prefile testimony  
20 on behalf of the Agricultural Coalition. I do  
21 stress that his testimony did not elicit any  
22 prefiled questions, but we could give him the same  
23 opportunity to make a brief introduction or summary  
24 and respond to any questions based on that testimony

1       that he filed.

2                       After those questions, we can  
3       see whether there is anyone who did not prefile  
4       testimony but may like to testify here today. I did  
5       provide a sign-in sheet at which people could  
6       indicate that they wish to do so. Just before  
7       beginning hearing, I noticed no one had so  
8       indicated, so I do not expect to have testimony that  
9       was not prefiled to deal with in the course of this  
10      hearing today.

11                     As time allows, after we have  
12      completed all of that testimony, we can determine  
13      whether any additional person or persons have  
14      appeared and wish to offer a comment, and we can  
15      make every effort to accommodate them before we  
16      adjourn for the day.

17                     Before I move on, are there  
18      any questions about our order of proceeding or any  
19      other procedural issues?

20                     Neither seeing nor hearing  
21      any, I want to cover a couple of quick points, the  
22      first of which that this proceeding is governed by  
23      the Board's procedural rules. All information that  
24      is relevant and that is not repetitious or

1 privileged will be admitted into the record.

2 Second, I would also note that  
3 any questions posed today by Board members or the  
4 Board staff are intended only to assist in  
5 developing a clear and complete proposal and do not  
6 reflect any predetermination on it.

7 Finally, on behalf of our  
8 court reporter, please make every effort to speak as  
9 loudly and clearly as you can and avoid speaking at  
10 the same time as another person so that the record  
11 can be as clear as possible.

12 In the event that we need to,  
13 we do have a microphone and a public address system  
14 connected so that if anyone has a soft voice or  
15 would like to make sure that they are heard, we can  
16 certainly employ that as necessary.

17 Is there anything else before  
18 we begin?

19 I have, as I mentioned, a list  
20 of five persons who have indicated that they wish to  
21 begin by offering a brief public comment. Let me  
22 start by seeing if they are here.

23 Is there a Mr. Dunkirk in the  
24 room? He is here.

1                               And second, Mr. Hadden also  
2       present.

3                               Mr. Gegas -- am I pronouncing  
4       that correctly me -- also present.

5                               Is it Mr. Braun or Brown?  
6       B-r-a-u-n I believe.

7                               MR. BRAUN:   Either way.

8                               HEARING OFFICER FOX:   Very good.  
9       Thank you.

10                              And a Mr. Rice, am I correct  
11       that he is here as well?   Very good.

12                              If there are no questions at  
13       all before we begin, Mr. Dunkirk why don't we just  
14       have you step up to the microphone here that's  
15       available for you, and if you would offer a comment  
16       of three to five minutes, we would appreciate your  
17       doing so.

18                              MR. DUNKIRK:   Dereke Dunkirk;  
19       D-e-r-e-k-e D-u-n-k-i-r-k.

20                              Good morning.   My name is  
21       Dereke Dunkirk.   I'm the president of the Illinois  
22       Pork Producers Association.   I own and manage a  
23       diversified crop farm with 4500 contract  
24       wean-to-finish spaces with my wife, children, and

1 parents in Morrisonville, Illinois just south of  
2 here in Christian County.

3 First of all, I'd like to say  
4 that farmers are committed to protecting our natural  
5 resources. We support research programs that help  
6 us capture, treat, and recycle the viable nutrients  
7 found in the manure produced on our farms.

8 This manure is applied in ways  
9 with the utmost care to make sure that we properly  
10 balance the amount of nutrients in the manure with  
11 the amount the crops can take up.

12 I'd also like to say that the  
13 Pork Producers, the Farm Bureau, Illinois Beef, and  
14 Milk Associations have been working with the EPA for  
15 several years to clarify the requirements of the  
16 NPDES permit program and have been negotiating with  
17 the Agency to bring a common sense approach to the  
18 permit requirement and, ultimately, improving the  
19 environmental performance.

20 The coalition has a common  
21 interest in ensuring that the CAFO rules are easily  
22 understood so that compliance is achieved. At the  
23 end of the day, we wish to ensure that the Board's  
24 rules are economically reasonable and technically

1       sensible and feasible.

2                       The NPDES permit is not a  
3       permit that allows us to pollute. Illinois farms  
4       are held to a zero discharge standard, and that will  
5       remain the same even with NPDES permits.

6                       Based on federal court  
7       rulings, this rule and permit only applies to  
8       discharging CAFOs and does not mean that an  
9       accidental discharge will require a permit when the  
10      CAFOs design, construction, operation and  
11      maintenance are established to not discharge.

12                      And in closing, I'd just like  
13      to ensure that the Illinois rule parallels that of  
14      the federal rule since Illinois has delegated its  
15      authority for this rule from the federal government  
16      in addition to the already established Livestock  
17      Management Facilities Act established by the  
18      Illinois General Assembly.

19                      Thank you.

20                      HEARING OFFICER FOX: Thank you,  
21      Mr. Dunkirk.

22                      We're ready, Mr. Hadden, for  
23      your comment at this point.

24                      MR. HADDEN: My name is Dale Hadden

1 (D-a-l-e H-a-d-d-e-n. I operate a grain and  
2 livestock farm in Jacksonville, Illinois just west  
3 of here with my family, my parents and my two  
4 brothers.

5 In addition to raising corn,  
6 soybeans, wheat, and alfalfa hay, we also raise  
7 swine and cattle.

8 I also sit on the Illinois  
9 State Farm Bureau Board of which there are 20  
10 directors from around the state.

11 I would like to start by  
12 saying that no one is more dedicated to preserving  
13 the importance of our natural resources and  
14 protecting the environment than farmers. As a  
15 member of our local communities, our families work  
16 and live in those communities. The quality of  
17 water, air and land are of great importance to all  
18 of us just as they are to all the Illinois citizens.

19 Farmers are committed to  
20 environmental responsibility on their farms. Not  
21 only do we implement best management practices, we  
22 work proactively to protect the soil, water, and  
23 work with regulatory officials to ensure that the  
24 goal is met.

1                   Livestock farmers drink the  
2     same water, breathe the same air that their  
3     neighbors do. Farmers want to protect and sustain  
4     the environment for their families, their  
5     communities, the future generations so their  
6     children may have things as good or better than they  
7     do today.

8                   There are strict standards in  
9     place to ensure nutrient management that we respect,  
10    support and abide by these standards. Although our  
11    farms look different than they did in the past, we  
12    are firmly committed to the values that have guided  
13    Illinois farmers for generations. Safe food,  
14    quality animal care and sound environmental  
15    practices are what we preach. Farmers are committed  
16    to protecting our viable resources supporting  
17    research programs that help us better capture, treat  
18    and recycle the valuable nutrients from manure  
19    produced on our farms.

20                  These methods in which these  
21    nutrients are applied are done with the utmost care  
22    so that we use the proper balance by what is removed  
23    by the crops that we are growing on the land.

24                  Livestock farmers are a very

1 important part of the Illinois economy. Livestock  
2 production in Illinois directly creates three and a  
3 half billion dollars of economic activity and  
4 employs over 25,000 Illinois citizens.

5 In addition to supporting  
6 livestock production, these livestock producers also  
7 allow grain farmers, feed mills, meat processors,  
8 dairy processors and other associated businesses in  
9 Illinois to thrive.

10 These combined economic  
11 impacts on livestock production and processing in  
12 Illinois is over \$27 billion or five percent of the  
13 state's economy. To maintain a vibrant agriculture  
14 industry in Illinois, these regulations must be  
15 economically reasonable and technically sensible and  
16 feasible.

17 The Illinois rule regarding  
18 NPDES permits for CAFOs should parallel the federal  
19 rule. Illinois has delegated the authority for this  
20 regulatory program from the federal government to  
21 provide clarity for farmers on rules that they must  
22 adhere to. The Illinois regulations should mirror  
23 the federal CAFO rule.

24 The Livestock Facilities Act,

1 or LMFA, must also be respected by the rule. The  
2 LMFA is a law prescribed by the General Assembly  
3 through these three different revisions of the act  
4 to govern the construction and pollution prevention  
5 standards for livestock farms in Illinois.

6 All farmers, including myself,  
7 have the responsibility to adapt best management  
8 practices that protect our natural resources and  
9 limit any environmental impact regardless of the  
10 size of the farm or the number of animals that we  
11 raise.

12 I thank you for the  
13 opportunity to offer these comments regarding the  
14 importance of these livestock rules to the State of  
15 Illinois producers.

16 Thank you.

17 HEARING OFFICER FOX: Mr. Hadden,  
18 thank you for your time.

19 We are ready for Mr. Gegas.  
20 Am I pronouncing your name correctly?

21 MR. GEGAS: No.

22 HEARING OFFICER FOX: My apologies.

23 MR. GEGAS: Christos Gegas;

24 C-h-r-i-s-t-o-s G-e-g-a-s.

1 Thank you for this opportunity  
2 to speak. I really appreciate it.

3 My name is Christos Gegas, and  
4 I'm representing Rural Residents For Responsible  
5 Agriculture, a nonprofit group based in west central  
6 Illinois. We're a group of grain farmers and cattle  
7 farmers as well as private citizens who live out in  
8 the country.

9 I live in Eldorado Township in  
10 McDonough County, Illinois. I live with my wife on  
11 a piece of her family's farm that dates back to the  
12 turn of the century.

13 I believe that we are  
14 representative of many people who love their home,  
15 who love their beautiful rural home, but are  
16 currently facing what seems to be a plague of  
17 pollution for concentrated animal feeding  
18 operations, better known as CAFOs, that are  
19 threatening our way of life.

20 Our home is downstream from  
21 multiple CAFOs including Eagle Point, LLC that  
22 confines tens of thousands of animals in a small  
23 area of land that cannot handle the waste produced.  
24 Many of these facilities are currently being sued by

1 the attorney general for extensive water pollution.

2 As a result, the beautiful  
3 creek that borders our property, Sugar Creek, is on  
4 the EPA 303D list as high priority for fecal  
5 coliform pollution. In the meantime, children in  
6 our area cannot play in the waters of Sugar Creek  
7 that were formerly pristine when my wife grew up on  
8 this land.

9 Examples of this water  
10 pollution taken from the Attorney General suit  
11 include...and I'm quoting here from the lawsuit...  
12 "a manure stream approximately two feet wide and 200  
13 yards long flowing into state waters, discolored  
14 lakes smelling like swine waste and 90,000 gallons  
15 of waste leaking into a local creek."

16 This pollution can be  
17 prevented in one easy step. Require responsible  
18 waste management practices and regulatory oversight  
19 for all large CAFOs before they construct or begin  
20 operations, not just those CAFOs that have  
21 documented discharges as is being proposed in the  
22 rulemaking.

23 All large CAFOs should be held  
24 to the same standards and should be required to

1 produce and submit waste management plans to the  
2 Agency to ensure that they are adequate. This way,  
3 we residents and the public can be assured that they  
4 have the amount of land necessary to apply the  
5 manure. Otherwise, there will be a continued  
6 pattern of facilities producing more waste than they  
7 have land to apply it on.

8 Waiting until our rivers and  
9 streams are already damaged before having regulatory  
10 requirements kick in is untenable. It's like  
11 closing the barn door after the manure is already  
12 out.

13 Thank you.

14 HEARING OFFICER FOX: Thank you,  
15 sir, and we are ready, Mr. Braun, for you.

16 MR. BRAUN: Jim Braun; J-i-m  
17 B-r-a-u-n).

18 I want to thank the Board for  
19 the opportunity to speak today, and I have always  
20 said that I wasn't going to get back involved with  
21 this issue.

22 Since I've come to Illinois  
23 for the last seven years, I have been working to  
24 build a local food system here in Illinois for

1 economic development, job creation, rural/urban  
2 revitalization, public health and emergency  
3 preparedness reasons, and there's a growing, ever  
4 growing demand for locally, Illinois produced meat,  
5 dairy and poultry, and the current trench war that  
6 is taking place between the industry and the  
7 citizens needs to stop. We need to find a solution  
8 to this so that responsible producers can expand,  
9 and that's why I'm here today.

10 My history is very entrenched  
11 in CAFOs. In 1970, my family and I, with the  
12 innovators of confinement technology in north  
13 central Iowa, we built 104 sow farrowing houses, and  
14 within four years, all of our hogs were on slatted  
15 floors and under aluminum roofs.

16 By the mid '80s, we were the  
17 largest privately owned and operated hog confinement  
18 in the State of Iowa marketing over 12,000 head of  
19 finishing hogs a year.

20 The uniqueness of our  
21 operation was that we were located in my hometown  
22 city limits a quarter of a mile from downtown Main  
23 Street, an eighth of a mile from the ball  
24 diamond/city park, and an eighth of a mile from the

1 city's pride, its golf course, and I don't need to  
2 explain to anyone here today the negotiations that  
3 had to take place to keep that many hogs that close  
4 to neighbors and try to maintain peace. It was not  
5 an easy job.

6 In 1991, I had a fish kill  
7 created by one of my employees who made a mistake  
8 that killed 7,000 fish in a three-mile stretch of a  
9 little stream. It cost me \$8,000 that I paid the  
10 people of the State of Iowa very willingly because I  
11 had killed their fish.

12 I served with the rulemaking  
13 process of the USDA on the rule that you are working  
14 with now, and then Governor Tom Vilsack of Iowa  
15 appointed me as a commissioner on the EPC, the  
16 Environmental Protection Commission, which is the  
17 same as the board here in Illinois which you serve  
18 on, so I understand your dilemma in the midst of  
19 this problem.

20 My suggestion, my two cents  
21 worth, which probably isn't worth half that, comes  
22 from a quote from the Apostle Paul in First Timothy  
23 1:9. He said, "The law is not made for the  
24 righteous but for the lawless and the disobedient."

1                                   And in the midst of this  
2       struggle that is taking place not only in Illinois  
3       but all across the nation, I kind of felt like I've  
4       been in the middle of it having spent by life as a  
5       cable operator but also seeing the other sides and  
6       trying to balance the needs of neighbors, and it's I  
7       think essential that you as a board find the balance  
8       to put in today's language what the Apostle Paul  
9       I believe was saying.

10                               When I'm driving to Chicago or  
11       Carbondale on Interstate 55, if I'm doing 65 miles  
12       an hour, I don't mind if I see a patrolman with a  
13       radar gun. I can even being do 72 if I've got my  
14       speedometer set by my navigator. They don't bother  
15       me at all. In fact, I like seeing them there  
16       because there are some people who drive drunk and  
17       others who, if there was not a law, would drive 110  
18       miles an hour, and these folks will endanger the  
19       life of responsible people.

20                               As you are putting in place  
21       this law, keep in mind that there are those of us  
22       who would like to expand livestock and poultry  
23       production who are in the middle of the  
24       entrenchment, and there needs to be a balance that

1 is struck between the rights of neighbors to  
2 maintain their property values and quality of life  
3 and the ability for those who want to begin  
4 livestock, poultry and dairy production in the State  
5 of Illinois to do so without burdensome regulations,  
6 and that balance must be found in order to stop this  
7 trench war and peaceably expand livestock poultry  
8 and dairy across the State of Illinois.

9 Thank you.

10 HEARING OFFICER FOX: Thank you,  
11 sir.

12 And that brings us to Mr. Rice  
13 for his comment.

14 MR. RICE: Good morning. Paul Rice  
15 (R-i-c-e). I'll take a breath. I'm not a very good  
16 speaker so bear with me folks. I'm just a common  
17 farmer who has a handful of cows out west of town,  
18 Springfield. My wife calls it my hobby, and I have  
19 to agree with her at times.

20 It's a passion of mine. I've  
21 grown up on a small farm in central Illinois. I  
22 know a lot of farmers. I work in agriculture real  
23 estate appraisal work. I travel central Illinois  
24 managing grain operations.

1                   We see a lot of good folks out  
2     there in the country, a lot of folks who are trying  
3     to do the right job trying to make a profit in these  
4     difficult times.

5                   A friend of mine who has  
6     raised livestock, hogs, and what would be considered  
7     a CAFO takes a test every year for spreading his  
8     manure. He's only been audited, I guess that's the  
9     proper term, one time over the 15 years. He feels  
10    that it's overregulated, but yet at the same time he  
11    doesn't feel it's wrong.

12                  There's a lot of rules on the  
13    books if we just enforce what we have, and we need  
14    to have standards that will be equivalent throughout  
15    the area that work with the federal standards.

16                  There's dairymen that have  
17    been drawn to the southwest in past years because of  
18    economics, and they've traveled there. There's been  
19    issues where they've started to close because of  
20    economics, and there have been individuals who have  
21    come back through central Illinois to continue on to  
22    Indiana, Michigan, Wisconsin, to set up their  
23    livestock operations.

24                  We need standards that will

1 keep people here in our state so we can grow the  
2 agriculture as we would like for it to.

3 Thank you for your time.

4 HEARING OFFICER FOX: And,  
5 Mr. Rice, thank you for your comment as well. That  
6 brings us to the end of the folks who had signed in  
7 indicating that they wish to offer a comment.

8 Have we overlooked anyone or  
9 is there anyone who has not been able to sign in  
10 this sheet?

11 Neither seeing nor hearing  
12 anyone who wished to, it's my understanding that  
13 Senator McCann is en route, and we will certainly  
14 make every effort to accommodate him when he does  
15 arrive for a brief comment, but he is not present  
16 here yet, and we will move on with the course of the  
17 hearing.

18 I do want to make one quick  
19 note before we do go on.

20 The Agency has graciously made  
21 available through Kathy who is sitting there with  
22 the boxes in the second row of the tables some  
23 copies of the documents that were prefiled, the  
24 testimony and responses to questions. I know that's

1 not a limitless supply, but we do appreciate the  
2 Agency making those available so that if anyone is  
3 in attendance and would like to follow along with  
4 those documents, I believe Kathy would be the right  
5 person to check so that she can produce it from  
6 those large boxes that are in front of her.

7 And rather than wait for  
8 Senator McCann, why don't we go ahead and begin with  
9 the Agency. If it is time, Ms. Williams, to do so,  
10 we can swear in the three witnesses that you have  
11 prefiled testimony for and begin with any  
12 introduction or summary that the Agency would like  
13 to provide before beginning.

14 And if we could swear in the  
15 Agency's witnesses. There's three gentlemen who are  
16 here at the head table.

17 (Whereupon the witnesses were  
18 sworn by the reporter.)

19 MS. WILLIAMS: I think I'll do a  
20 brief opening statement if that's all right, and  
21 we'll proceed without summarizing the testimony.

22 Good morning. My name is  
23 Deborah Williams, and I represent Illinois EPA in  
24 this proceeding, R12-23, In the Matter of

1 Concentrated Animal Feeding Operations Proposed  
2 Amendments to 35 Illinois Administrative Code Parts  
3 501, 502 and 504.

4 Also representing the Agency  
5 in this proceeding and sitting to my immediate right  
6 is Joanne Olson.

7 The Agency filed this proposal  
8 to amend the existing agriculture-related pollution  
9 regulations in Subtitle E of the Board's Water  
10 Pollution Regulations on March 1st of this year.  
11 This proposal was developed in response to two  
12 federal rulemakings, the first being in 2003 and the  
13 second in 2008, establishing revised requirements  
14 for NPDES permits and effluent limitations for  
15 CAFOs.

16 Under the Clean Water Act and  
17 accompanying regulations, Illinois has an obligation  
18 to update its regulations within one year of the  
19 federal amendments to maintain consistency of its  
20 NPDES program with the federal program and to  
21 maintain delegation of that program. Due to the  
22 complexity of the regulatory requirements and the  
23 ongoing litigation in the federal courts, the Agency  
24 was not able to complete the obligation to develop a

1       proposal for consideration by the Board until this  
2       year.

3                       The proposed changes were  
4       developed to conform Subtitle E to the revised  
5       federal NPDES regulations and to adopt the required  
6       technical standards that were mandated in the 2003  
7       and 2008 CAFO rule but have been left to Illinois  
8       and the other states to develop and implement.

9                       In general, the Agency's  
10       proposal seeks to first adopt provisions from the  
11       federal rule; second, adopt technical standards  
12       required by the federal rule; and third, to amend  
13       those provisions of the existing regulations that  
14       may conflict with the federal CAFO rule and  
15       potentially cause the Illinois rules to be less  
16       stringent than the federal rule.

17                      A proposal that did not fit  
18       into any of these three categories would be proposed  
19       Section 501.505 addressing registration of CAFOs as  
20       would have been required by proposed USEPA  
21       regulations under 5.308 of the Clean Water Act.

22                      In support of its proposal,  
23       the Agency filed testimony in this proceeding from  
24       three technical witnesses. Those three witnesses

1       compose today the Agency witness panel, and they are  
2       to my far left Sanjay Sofat, manager of the Division  
3       of Water Pollution Control, to my immediate left,  
4       Dan Heacock, permit manager for the Facility  
5       Evaluation Unit, and to my far right Bruce Yurdin,  
6       the manager of the Facility Operations Section.

7                       The Agency's witness panel  
8       participated together in the development of the  
9       responses to the prefiled questions submitted by the  
10      parties and the Board, so while certain questions  
11      may have been directed at specific witnesses as a  
12      result of their testimony, the Agency directed  
13      responses to the most appropriate witness and will  
14      direct follow-up on the Agency's responses  
15      accordingly.

16                      That's all I have this  
17      morning. At this time, we can move to presenting  
18      the testimony as if read if that's okay with you.

19                      HEARING OFFICER FOX: Yes. It's  
20      certainly entered into the record as if read under  
21      the Board's procedural rules as I have mentioned.

22                      I have seen perhaps an  
23      indication from Ms. Olson that she may wish to  
24      introduce some of those documents as hearing

1 exhibits.

2 MS. WILLIAMS: I think that would  
3 be helpful.

4 HEARING OFFICER FOX: Very well  
5 then.

6 Ms. Olson, if you'd like to  
7 take those up, we can certainly entertain any motion  
8 or motions you want to file with regard to those.

9 MS. OLSON: At this time, the  
10 Agency would like to admit the testimony of Sanjay  
11 Sofat as Exhibit 1, the testimony of Bruce Yurdin as  
12 Exhibit 2, and testimony of Dan Heacock as  
13 Exhibit 3.

14 HEARING OFFICER FOX: Having heard  
15 that motion, is there any objection on the part of  
16 any of the participants to admit them as  
17 respectively Exhibit Nos. 1, 2 and 3?

18 Neither seeing nor hearing any  
19 objection, they will be admitted.

20 (Whereupon Exhibits 1 through 3  
21 were admitted into evidence at  
22 this time.)

23 HEARING OFFICER FOX: And I would  
24 further note that those have been posted to the

1 Board's website under the clerk's office online  
2 since shortly after their filing, and again, the  
3 Agency I believe has made copies of those available  
4 to those who might wish to take a look at them.

5 Let me clarify again for the  
6 record that it's the testimony of Mr. Sofat that is  
7 Exhibit No. 1. It is the exhibit of Mr. Yurdin that  
8 is Exhibit No. 2, and thank you for your patience  
9 while I mark these, and finally, of course, the  
10 testimony of Mr. Heacock as Exhibit No. 3 in this  
11 proceeding.

12 Any other motions or exhibits,  
13 Ms. Olson, Ms. Williams?

14 MS. OLSON: We also have exhibits  
15 for our prefiled answers if the Board would like to  
16 entertain that at this time.

17 HEARING OFFICER FOX: Considering  
18 that as a motion to admit them, do you have numbers  
19 corresponding to those, Ms. Olson?

20 MS. OLSON: I do.

21 In our prefiled answers, we  
22 have Attachment 1 which was Illinois EPA's answers  
23 to prefiled questions of the Illinois Pollution  
24 Control Board. We'd like to admit that as

1 Exhibit 4.

2 The Illinois EPA's answers to  
3 prefiled questions for the Illinois Agricultural  
4 Coalition we'd like to admit as Exhibit 5.

5 The Illinois EPA's answers to  
6 the prefiled questions of Environmental Groups  
7 directed to Sanjay Sofat we'd like to admit as  
8 Exhibit 6.

9 Illinois EPA's answers to  
10 prefiled questions of Environmental Groups directed  
11 to Bruce Yurdin we'd like to admit as Exhibit 7.

12 And the Illinois EPA's answers  
13 to prefiled questions of Environmental Groups  
14 directed to Daniel Heacock as Exhibit 8.

15 HEARING OFFICER FOX: Having heard  
16 the motion to admit those documents as those exhibit  
17 numbers, is there any participant who has an  
18 objection to their admission into the record at this  
19 hearing?

20 Neither seeing nor hearing  
21 any, Ms. Olson, the motion is granted, and they will  
22 be entered into the record according to the exhibit  
23 numbers that you have provided.

24

1 (Whereupon Exhibits 4 through 8  
2 were admitted into evidence at  
3 this time.)

4 HEARING OFFICER FOX: Is there any  
5 preliminary business on the part of the Agency  
6 having heard the introduction and the admission of  
7 the exhibits?

8 MS. WILLIAMS: I think we're ready  
9 to proceed.

10 HEARING OFFICER FOX: Very good.

11 We have come to the point  
12 where we are prepared for the Agricultural Coalition  
13 to go through the prefiled answers to its questions  
14 according to the order of proceeding that we  
15 discussed at the top of this hearing.

16 Ms. Manning, are you prepared  
17 to begin with your question No. 1(a)?

18 MS. MANNING: I am, Mr. Hearing  
19 Officer, and thank you very much for being here.

20 As you know, my name is Claire  
21 Manning. I represent the Illinois Agricultural  
22 Coalition this morning.

23

24

## 1 QUESTIONING OF EPA PANEL

2 BY MS. MANNING:

3 The first question I believe  
4 we raised to Mr. Bruce Yurdin, and it involved  
5 inspection of livestock facilities.

6 Bruce sitting right here on my  
7 left, this should be easy kind of questions and  
8 answers, but at any rate, Bruce, you indicate in  
9 question 1(b), Does the IEPA plan to inspect  
10 unpermitted facilities, and, if so, under what  
11 circumstances, you state that unpermitted facilities  
12 will remain a priority as will our response to  
13 citizen complaints.

14 And my only question there is  
15 how does the Agency evaluate a citizen complaint in  
16 terms of whether it ought to engage the Agency's  
17 resources to go and do an inspection? Is there any  
18 evaluation that's done when someone calls and makes  
19 a complaint?

20 Is it different whether the  
21 complaint is as to odor or whether the complaint is  
22 as to an allegation that there is a release in the  
23 waters of the United States for example?

24 MR. YURDIN: We try and gather as

1 much information as we can over the phone if  
2 possible or through e-mail if that's the way it came  
3 to us. It's somewhat more limited if it comes to us  
4 in writing since we can't naturally correspond  
5 quickly for that complaint.

6 The type of information we're  
7 looking for would depend on, of course, whether it  
8 was an odor complaint, a wastewater complaint or  
9 something else, and that can often happen too. It's  
10 often the case that there's more than one thing  
11 going on at one time at one site.

12 You asked about the different  
13 types of information we'd be looking for other than  
14 just the normal name, location, that type of thing,  
15 whether there was a fish kill involved if there was  
16 a water pollution complaint. Those are the basic  
17 types of information we'd be looking for.

18 You also I believe were asking  
19 about what criteria the Agency would use, and I  
20 think that some of that basic information is  
21 relative to odor, relative to a wastewater discharge  
22 that we'd be looking for. Also the size, nature and  
23 type of operation that we'd be looking at once we  
24 got into the field.

1 MS. MANNING: Thank you.

2 As a sort of follow-up to that  
3 question, and in light of your answer to No. 1(c),  
4 we asked about notification of the producer when the  
5 Agency does an inspection, and you indicated that  
6 the Agency's protocol is to notify the producer  
7 except in emergency situations. It reads, "The  
8 Agency's biosecurity procedures specify that Agency  
9 staff must contact the producer prior to the  
10 inspection (except for emergency situations) to  
11 discuss the producer's biosecurity requirements."

12 Two parts to the follow-up.  
13 One is, does the Agency have written protocols in  
14 terms of the inspection notification procedures,  
15 and, if so, would you be willing to put those into  
16 the record?

17 And secondarily, how does the  
18 Agency determine whether it's an emergency procedure  
19 that requires that the producer not be notified and  
20 you just go on the producer's territory without  
21 notification?

22 MR. YURDIN: Yes, we do have  
23 written biosecurity procedures that are part of our  
24 standard operating procedures for inspection.

1 I don't know about the  
2 willingness of the Agency to submit those so I'll  
3 turn to the legal counsel at this point.

4 MS. WILLIAMS: I think if the Board  
5 found it useful for the entire standard operating  
6 procedure to be put into the record for this limited  
7 purpose, we certainly would be willing to do that if  
8 that's the board's request.

9 MR. RAO: I had the same question,  
10 that we'd like to see what those procedures are.

11 MR. YURDIN: Very well.

12 MS. WILLIAMS: Okay. We will  
13 follow up with that after the hearing.

14 HEARING OFFICER FOX: And,  
15 Ms. Manning, if I may interrupt just for a second.

16 We will set a deadline in  
17 consultation with the parties for the filing of  
18 post-hearing comments and filing of responses to  
19 requests of that nature, but we can leave that open  
20 for the time being.

21 And, Ms. Manning, thank you  
22 for that interruption.

23 I believe actually,  
24 Mr. Yurdin, you were in the middle of a response.

1 We can return to you.

2 MR. YURDIN: Yes, I was.

3 I believe the remainder of the  
4 question had to do with what constitutes an  
5 emergency situation and why we'd be providing prior  
6 notification in one set of circumstances and not  
7 provide prior notification in say an emergency  
8 situation.

9 The prior notification has a  
10 lot to do with the biosecurity arrangements that we  
11 feel we need to make prior to stepping onto a  
12 livestock property, and so making the contact with  
13 the producer or the owner or the operator, someone  
14 who is in charge and who has working knowledge of  
15 the operation just to give us information that we  
16 need just to get onto the property is I think  
17 critical, and that's what's covered in part with our  
18 biosecurity protocol.

19 The emergency situations are a  
20 little bit different. Obviously, we may have reason  
21 to get there and get there rather quickly, to get  
22 onto the site rather quickly, to take samples if  
23 necessary, to take photographs, to gather evidence.  
24 Sometimes that does not allow us to make contact

1 with people who may or may not be at the same  
2 location that we need to be.

3 So I would say that's  
4 primarily the difference between a routine  
5 inspection and making contact in an emergency  
6 situation and attempting to make contact but perhaps  
7 not being able to do so.

8 MS. MANNING: Thank you.

9 MR. RAO: May I ask a follow-up  
10 question?

11 MS. MANNING: Sure.

12 MR. RAO: Mr. Yurdin, you mentioned  
13 how the Agency responds to complaints that you  
14 receive.

15 Are most of the inspections  
16 always done in response to the complaints or does  
17 the Agency have routine inspections based on a  
18 certain schedule?

19 MR. YURDIN: All of the above. We  
20 do respond to complaints as I just indicated to  
21 Ms. Manning's questions. We also have routine  
22 inspections, so it's a combination of both.

23 MR. RAO: And would these routine  
24 inspections be mostly for permitted facilities?

1 THE WITNESS: No. Most of the  
2 facilities we visit are not permitted, so most of  
3 the inspections we make at this stage are for  
4 nonpermitted facilities.

5 MR. RAO: Thank you.

6 HEARING OFFICER FOX: Ms. Manning,  
7 did that exhaust your follow-up questions?

8 MS. MANNING: It did. I'm ready to  
9 move to question 2.

10 HEARING OFFICER FOX: I did not  
11 mean to rush you.

12 MS. MANNING: That's all right.

13 HEARING OFFICER FOX: If you're  
14 ready, please do.

15 MS. MANNING: Thank you for your  
16 answers, Mr. Yurdin.

17 THE WITNESS: You're welcome.

18 MS. MANNING: In paragraph 2(d), we  
19 asked the Agency to identify what part of the  
20 proposed rules are derived from the existing  
21 livestock management regulations that are  
22 regulations of the Illinois Department of  
23 Agriculture pursuant to the Livestock Management  
24 Facilities Act, and the answer is that proposed

1 Section 502.505 and 502.510, and 502.515 are not  
2 derived from existing livestock management  
3 regulations.

4 So I guess my question is, are  
5 any of these regulations derived directly from the  
6 Livestock Management Facilities Act, and, if so,  
7 which of those regulations.

8 And secondarily, how did the  
9 Agency review and what did the Agency consider when  
10 it reviewed the Livestock Management Facilities Act  
11 regulations in conjunction with the development of  
12 these rules?

13 MS. WILLIAMS: So these questions,  
14 I don't know if they were directed at anyone in  
15 particular...

16 MS. MANNING: No, they weren't.

17 MS. WILLIAMS: ...but we were going  
18 to direct follow-up on these questions to  
19 Mr. Heacock.

20 MS. MANNING: That's fine.

21 MR. HEACOCK: Can you repeat the  
22 last part of that question?

23 MS. MANNING: The last part of the  
24 question, and perhaps Ms. Williams wants to answer

1       it as well, the question is when the Agency  
2       developed these packages of rules, what kind of  
3       consideration did it give to the existing rules of  
4       the Livestock Management Facilities Act?

MR. HEACOCK: Well, we were aware of the LMFA when we adopted these rules, and we used it as guidance for part of the requirements, but the main emphasis was the federal regulation as to what we needed to include in NMP.

10 MS. MANNING: Then a follow-up to  
11 that question is, can the Agency testify that these  
12 rules are completely consistent with the rules of  
13 the Livestock Management Facilities Act or are there  
14 any inconsistencies that the Agency is aware of?

15 MS. WILLIAMS: I think that  
16 question calls for a legal conclusion that I'm not  
17 sure the witnesses are in a position to answer. I  
18 mean, generally I think, from the legal side, I  
19 think the Agency can say that the two acts have  
20 separate statutory mandates and both must be  
21 followed.

22 MS. MANNING: All right. I'll  
23 leave that for now. Thank you.

24 We can move on to question 3,

1 and on question 3, you were asked based on a  
2 statement you made on page 4 where you discuss the  
3 terms of the NMP as provided in the approach used by  
4 the livestock producer can be reviewed by the  
5 Illinois EPA during an on-site visit. You then  
6 state, "The diversion of clean water, to use the  
7 same example, would be an important factor if our  
8 field review of discharges or a potential to  
9 discharge were observed." And we asked a question  
10 related to the potential to discharge, and I just  
11 want to clarify that on the basis of the statement  
12 of reasons presented by the Agency and, Mr. Yurdin,  
13 I believe in your testimony or perhaps in  
14 Mr. Sofat's testimony as well, the Agency has an  
15 understanding that a potential to discharge pursuant  
16 to federal case law is not a triggering event that  
17 then would require an NPDES permit; that there has  
18 to be an actual discharge.

19 So I just want to confirm that  
20 that is the Agency's position despite the fact that  
21 there was testimony in your testimony as to a  
22 potential for discharge.

23 MR. YURDIN: Yes, we understand  
24 that case law, and I think we tried, we've attempted

1 in the answer to 3(b) primarily in this case to  
2 address that question.

3 MS. MANNING: Okay. Thank you.

4 The next question then goes to  
5 3(c) and involves the Agency's proposal that allows  
6 the Agency to develop a designation in Section  
7 502.106 that the facility needs an NPDES permit, and  
8 my question is to ask you to clarify what happens  
9 when the producer disagrees with the Agency's  
10 determination that a permit is needed.

11 MS. WILLIAMS: Are you asking him  
12 about No. 7 now? Where are you asking about 3(c)?

13 MS. MANNING: It actually,  
14 Ms. Williams, is in 3(c). It might also be in No.  
15 7.

16 You answer in 7(c) that the  
17 producer may appeal the Agency's determination to  
18 the Board once the permit has been issued, and I  
19 guess I don't quite understand that.

20 If the question is that a  
21 permit is needed, is that not a final determination  
22 of the Agency that makes the producer act that then  
23 is appealable to the Board, or does the producer  
24 have to go through the entire permit process, get a

1 permit, and then what is it that he would be  
2 appealing.

3 I guess those are my  
4 questions.

5 MS. WILLIAMS: We may direct this  
6 to Sanjay to respond.

7 MR. SOFAT: This is Sanjay  
8 (S-a-n-j-a-y).

9 I think that designation is  
10 not the final -- this is just the first step in the  
11 process because you can still show that we have  
12 fixed the problem that caused the Agency to  
13 designate in the first place.

14 So I think the Agency's final  
15 action is more consistent when we have issued or  
16 denied the permit, and that's why we are taking the  
17 position that only when the Agency has gone through  
18 all the steps, designation requiring them to fix the  
19 problem, and if the problem still exists and then  
20 requiring them to seek a permit, it makes sense to  
21 appeal the Agency's decision. Otherwise, it's an  
22 intermittent step that may or may not be final.

23 MS. MANNING: I understand that in  
24 the context of an enforcement action, and you

1       indicate in your answers, in some of your answers  
2       that that's how it would work in an enforcement  
3       action.

4                               I don't understand it if the  
5       inspector goes to an unpermitted facility and says  
6       we believe that you need a permit and makes a  
7       designation and there's no enforcement action  
8       pending.

9                               Am I to assume that maybe that  
10      would not be the case because the only reason the  
11      Agency would make a designation would be if there is  
12      a discharge, and if there is a discharge, there  
13      would also then be an enforcement action.

14                              So is the Agency's line of  
15      thinking the only time it would make a designation  
16      is with a producer who is in enforcement?

17                              MR. YURDIN: Yes, that would most  
18      likely be the case. That would be the circumstances  
19      under which that would happen, and I think following  
20      the sort of legal rational stepwise fashion which  
21      the Agency would use to both correct and follow  
22      through its enforcement procedure, the appeal of  
23      that decision would logically come at the end of  
24      that process, not somewhere in the middle of that

1 process.

2 HEARING OFFICER FOX: Ms. Manning,  
3 I understand that Senator McCann has just arrived.  
4 If it would benefit you to take a moment or two.

5 MS. MANNING: Thank you. Perfect.

6 HEARING OFFICER FOX: We could have  
7 Senator McCann offer his comment if he's prepared to  
8 do so.

9 Senator, we'll give you a  
10 chance to catch your breath.

11 We've got a microphone set up.  
12 If you're prepared to begin offering your comments,  
13 we are ready for you to do so.

14 SENATOR McCANN: My apologies for  
15 my tardiness this morning. I apologize.

16 Well, good morning, and I'm  
17 glad I can make a statement.

18 My name is Sam McCann, and I'm  
19 the State Senator from the 49th State Senate  
20 District, and I do appreciate you having me here  
21 this morning.

22 The Concentrated Animal  
23 Feeding Operations rule changes being proposed are  
24 the result of several years of discussion and hard

1 work between a coalition of agricultural  
2 organizations and the Illinois Environmental  
3 Protection Agency.

4 The Illinois Pork Producers  
5 Association, the Illinois Farm Bureau, the Illinois  
6 Beef Association, the Illinois Milk Producers  
7 Association are in large part supportive of the work  
8 product yielded from these discussions. It is quite  
9 obvious to all of us that any rules or regulations  
10 pertaining to our environment must allow for the  
11 sustainability of our environment in perpetuity, but  
12 it is also equally important to ensure that the  
13 rules we are working for work for us as well. We  
14 should always seek to work together to ensure that  
15 governmental rules are economically and technically  
16 feasible.

17 Livestock farmers are  
18 committed to being good stewards of the land, air  
19 and water we are blessed to have. Their goal is to  
20 provide financially today for their family's  
21 well-being while safeguarding the environment that  
22 will continue to provide untold resources for coming  
23 generations.

24 The agricultural industry has

1 a long and successful history of working with  
2 regulatory officials while implementing their own  
3 best practices management principles and techniques  
4 to ensure their natural resources are protected,  
5 preserved and improved.

6 I want to thank the senior  
7 management team at IEPA for working with the  
8 stakeholders of the proposed rule changes. Whether  
9 one is a member of the legislative branch such as me  
10 or representative of the executive or the  
11 enforcement branch, we should never lose sight of  
12 the fact that we work for the people, all the  
13 people, not the other way around. We should always  
14 strive to provide the most excellent service  
15 possible.

16 And from the reports that I  
17 have been given by representatives of the  
18 stakeholders, IEPA is to be commended for working  
19 with the agricultural industry to provide for a  
20 common sense approach to permitting and regulating  
21 livestock farms.

22 Livestock and grain farming  
23 have a long storied and successful past in Illinois.  
24 Agriculture has long been a driver of our great

1 state's and nation's economic successes, but the  
2 overall importance of its economic impact has never  
3 been so obvious as it is today.

4 In a state economy that is  
5 lethargic at best, agriculture has continued to  
6 shine. Livestock production in Illinois directly  
7 creates three and a half billion dollars of economic  
8 activity and employs over 25,000 Illinoisans, but  
9 the indirect impact livestock farming has on grain  
10 farmers, feed mills, meat processors, dairy  
11 processors and other associated businesses is even  
12 more impressive. The combined economic impact of  
13 livestock production and processing is over  
14 \$27 billion.

15 At a time when our economy is  
16 in the condition it is in, we could not sustain as a  
17 society a situation that would not only threaten the  
18 food supply but also weaken an already jittery  
19 economy. The result could be a deadly one-two punch  
20 that prudent leaders should not and would seek to  
21 avoid at all costs. That is why it's so important  
22 for these proposed changes to be economically  
23 reasonable and technically sensible and feasible.

24 I sincerely thank and commend

1 all those who sat at the negotiation table to derive  
2 a set of standards that work best for all of us.  
3 When we all work together we win. When we respect  
4 one another's viewpoints and work towards reaching a  
5 common goal as the industry and the regulators have  
6 done with these proposed changes, we achieve a  
7 society in which we have a greater opportunity to  
8 excel and succeed in the process, provide the  
9 shoulders upon which the next generation will stand  
10 even taller.

11 Thank you again and thank you  
12 for all of your hard work.

13 HEARING OFFICER FOX: Senator  
14 McCann, thank you for your comment. Please feel  
15 free to stay us for as long as your schedule would  
16 allow.

17 SENATOR McCANN: Thank you.

18 HEARING OFFICER FOX: And,  
19 Ms. Manning, thank you for that break. I believe  
20 you were in follow-up questions generally on 4(c)  
21 and 4(d) but please feel free to go ahead whenever  
22 you're ready.

23 MS. MANNING: Thank you,  
24 Mr. Hearing Officer.

1 I do have general follow-up  
2 questions related to the last line of questioning,  
3 and they have to do with the NPDES permit in the  
4 context of a CAFO.

5 QUESTIONING OF EPA PANEL

6 BY MS. MANNING: (Cont'd.)

7 In a typical NPDES permit that  
8 is with the wastewater treatment plant or a POTW,  
9 there are allowable effluent kind of standard  
10 limitations, so in other words, when you have an  
11 NPDES permit in your general industrial context, a  
12 discharge is allowed.

13 Would the Agency explain for  
14 purposes of the record and purposes of the Board  
15 what kind of discharge is anticipated or regulated  
16 by an NPDES permit for a CAFO?

17 MR. HEACOCK: This is Dan Heacock.

18 There's really two main areas.  
19 The overflows from storage facilities are allowed to  
20 have discharges under certain conditions of the  
21 permit generally due to large precipitation events  
22 provided they meet certain conditions of the permit  
23 for maintenance and operation.

24 The other opportunity or

1 discharge that may occur would actually be in the  
2 sense the discharge had run off from land  
3 application fields. In that case, if they call it  
4 conditions of the permit, that discharge so to speak  
5 is allowed as runoff from the site as an  
6 agricultural stormwater discharge under the permit  
7 as long as they follow the best management practices  
8 of the permit.

9 So that's the primary two  
10 allowances for some type of discharge from the  
11 facility.

12 MS. MANNING: As a follow-up to  
13 that question, a facility however that is following  
14 a CNMP that has been developed at a livestock manure  
15 management plant pursuant to the LMFA and  
16 appropriately applying livestock waste on a field,  
17 that is not a discharge in and of itself to begin  
18 with that requires an NPDES permit, is that correct?

19 If the application is  
20 consistent with the regulations pursuant to LMFA and  
21 if it's consistent with the facility's nutrient  
22 management plan, it is not a discharge.

23 MR. HEACOCK: In this case, they're  
24 subject to essentially what the federal rules

1       require for agricultural stormwater discharge, and  
2       if their nutrient management plan is adequate under  
3       those rules or under the rules that we're proposing,  
4       then they could have that discharge without needing  
5       to get a permit. It may or may not be compliant  
6       with the LMFA exactly in that sense.

7                   MS. MANNING: I'm not sure I  
8       understand that, may or may not be compliant with  
9       the LMFA.

10                  MR. HEACOCK: LMFA isn't the  
11       federal regulations. So because we have to adopt  
12       those requirements, we have to look at that. So it  
13       may be that the LMFA approach will take care of that  
14       but it's not a guarantee.

15                  MS. MANNING: This goes then -- I'm  
16       going to follow up directly to No. 6(c) which is on  
17       the bottom of page 7, and that is, if a large CAFO  
18       does not have an NMP, or in its NMP does not meet  
19       one or more the provisions in proposed Section  
20       502.510(b), will the IEPA cite the large CAFO with a  
21       violation even if there has been no discharge, and  
22       what violation would that be?

23                         And the answer is: An  
24       unpermitted large CAFO is not required to have an

1 NMP to meet the provisions of the proposed section.  
2 However, an unpermitted large CAFO that cannot  
3 demonstrate that livestock waste has been land  
4 applied in accordance with site specific nutrient  
5 management practices that ensure appropriate  
6 agricultural utilization of the nutrients in the  
7 livestock waste in compliance with 502.510(b) will  
8 not be able to claim that a precipitation related  
9 discharge of livestock waste from the land  
10 application area is an agricultural stormwater  
11 discharge.

12 Is that not going beyond the  
13 federal rule in that it is requiring an order for a  
14 producer to utilize the agricultural stormwater  
15 exemption under the Federal rules? These rules only  
16 require that exemption to be utilized if the large  
17 CAFO is following that particular rule as opposed to  
18 a large CAFO that is following exactly the  
19 provisions of the Livestock Management Facility Act  
20 regulations?

21 In other words, is there  
22 another way for the large CAFO to demonstrate that  
23 its land application practices are consistent with  
24 the law?

1 MS. WILLIAMS: In a way other than  
2 what? Can you rephrase?

3 MS. MANNING: Is the only way to  
4 allow for -- in the Agency's proposed rules, is the  
5 only way a producer of a large CAFO can claim an  
6 agricultural stormwater exemption is to establish  
7 that he has applied consistent with your proposed  
8 Section 502.510(b)?

9 MR. SOFAT: The short answer is  
10 yes, I believe so. In 510(b), what we are proposing  
11 is in order to avail the ag stormwater exemption,  
12 one must comply with the elements we have identified  
13 in 510(b).

14 MS. MANNING: That's it for now on  
15 that page.

16 On page 8 and 9, question  
17 7(b), we simply asked in that, there was a  
18 notification requirement in 502.106 related to the  
19 agency's determination of a designation that a  
20 permit was necessary, and we discussed that earlier,  
21 Mr. Yurdin, where you indicated that in most cases,  
22 that would occur during the context of an  
23 enforcement action.

24 Our question was simply why

1 was the original proposal eliminated, and the  
2 original proposal actually required that designation  
3 to be in writing to the producer, and the answer is:  
4 Well, because the USEPA asked us to do it that way.

5 And I was wondering if you  
6 could give us more information related to that.

7 Was it USEPA Region 5 and what  
8 was their concern and consideration?

9 MR. YURDIN: Yes, it was Region 5,  
10 and I believe their consideration was that this  
11 placed our proposal more in line with the federal  
12 rule.

13 It certainly wasn't our  
14 intention to not notify the producer, and I think  
15 we'll continue to do that.

16 MS. MANNING: You will continue to  
17 notify the producer?

18 MR. YURDIN: Yes.

19 MS. MANNING: On page 10 and 11,  
20 particularly question 9(d), this is more of a  
21 reminder than anything I think. We asked questions  
22 about the general NPDES permit and whether the  
23 Agency was willing to put the general NPDES permit  
24 that is currently being used into evidence, and you

1       said that you would.

2                       Has that been done yet?

3                       MS. WILLIAMS:  No.  We'll do that  
4       now.

5                       MS. MANNING:  Thank you.

6                       And while you're doing that,  
7       questions related to the Agency's thoughts regarding  
8       individual NPDES permits and when a producer might  
9       be expected to file for an individual NPDES permit  
10      as opposed to a general NPDES CAFO permit.

11                      MS. WILLIAMS:  Is that a question?

12                      MS. MANNING:  Yes.

13                      MS. WILLIAMS:  Could you read it  
14      again?  I didn't hear a question.

15                      MS. MANNING:  The question is -- we  
16      generally ask these in question 9.

17                      MS. WILLIAMS:  9(b), is that what  
18      you're looking at, or 9(a)?

19                      MS. MANNING:  Well, in 9(a), we  
20      asked how you distinguish between the general permit  
21      and the individual permit, and you explained that.

22                      In 9(b) we generally ask what  
23      circumstances you would allow an individual permit,  
24      and I am asking that you expand on that discussion.

1 MS. WILLIAMS: Would you like us to  
2 enter it as an exhibit maybe first?

3 MS. MANNING: That's fine.

4 MS. OLSON: We'd like to move to  
5 enter Exhibit 9, the Illinois Environmental  
6 Protection Agency NPDES Permit for Concentrated  
7 Animal Feed Operations.

8 HEARING OFFICER FOX: Having heard  
9 the motion to admit that general permit as  
10 Exhibit 9, is there any participant who has an  
11 objection?

12 Neither seeing nor hearing  
13 any, Ms. Olson, it will be admitted and marked as  
14 Exhibit No. 9 in this proceeding.

15 Thank you very much for the  
16 copy.

17 (Whereupon Exhibit 9 was admitted  
18 into evidence at this time.)

19 MS. MANNING: I guess to make this  
20 easy in terms of...

21 HEARING OFFICER FOX: Ms. Manning,  
22 just one moment while we distribute copies.

23 MS. OLSON: I have copies for the  
24 Board members.

1                   (Whereupon copies are being  
2                   distributed to the Board  
3                   members.)

4                   HEARING OFFICER FOX: Ms. Manning,  
5                   before you resume I just wanted to thank Ms. Olson  
6                   for the copies which were helpful, and, Ms. Manning,  
7                   when you're ready to resume, I think we're prepared  
8                   for you to do so.

9                   MS. MANNING: Okay.

10                  The general permit that was  
11                  just put in evidence, are there any provisions of  
12                  the general permit currently as they exist which  
13                  might be inconsistent with the proposed rules?

14                  MR. HEACOCK: Yeah, there are some  
15                  changes in the proposed rules that would possibly  
16                  result in changes in the general permit if we were  
17                  to reissue the permit.

18                  MS. MANNING: And my question on  
19                  the individual permit, just to simplify, how I  
20                  understand the Agency's responses to the general  
21                  questions we did in Section No. 9 there is that you  
22                  really don't expect individual permits to be filed  
23                  with any degree of regularity at all for a regular  
24                  CAFO; that your expectation really is that people

1 will seek coverage, people that need coverage should  
2 seek coverage under the general permit.

3 Is that accurate?

4 MR. HEACOCK: Yes.

5 MS. MANNING: I think I'll move  
6 straight to No. 14 on page 13.

7 Could I just have a moment,  
8 please?

9 HEARING OFFICER FOX: Yes, that's  
10 fine, Ms. Manning.

11 (Pause)

12 MS. MANNING: You provided a very  
13 long answer there, and I appreciate it, but the  
14 question I think we had asked and still seek an  
15 answer to is, number one, is it correct that the  
16 Agency used Wisconsin's regulatory model as to what  
17 constitutes frozen ground as the model for what the  
18 Illinois rules should be instead of the proposal  
19 that is more like the proposal, the rules in Iowa,  
20 and if so, why did the Agency choose the Wisconsin  
21 regulatory definition of frozen ground over that of  
22 Iowa?

23 MR. YURDIN: I think the most  
24 straightforward answer I can give you is that we

1       looked at several states to begin with, Iowa,  
2       Wisconsin, several others in the Midwest, and the  
3       model that most closely resembled what we're  
4       proposing today is the one from Wisconsin. It  
5       resembles it. It does not word for word begin to  
6       approach the complexity with which Wisconsin tried  
7       to deal with the same issue in its entirety, the  
8       whole issue of winter application, but the  
9       definition of frozen ground is very similar to what  
10      Wisconsin is, yes.

11                   MS. MANNING: And why again  
12      Wisconsin as opposed to Iowa? Iowa is more similar  
13      to Illinois than Wisconsin in terms of weather,  
14      climate, agricultural sources.

15                   MR. YURDIN: I don't think we  
16      looked at those factors necessarily. I think we  
17      assumed that Iowa agriculture and Wisconsin in  
18      general in the Midwest was essentially the same as  
19      far as we could tell. There was no great  
20      distinction although there are differences in the  
21      regulations.

22                                So the rationale, I think we  
23      discussed the one-half to eight inch depth  
24      measurement for frozen soil and frozen ground. We

1 thought it was reasonable and a very practical  
2 application of that term, that term being frozen  
3 ground.

4 MS. MANNING: Thank you. We'll  
5 present more on this later.

6 On page 15, No. 16, we asked  
7 how the IEPA's proposed definition of livestock  
8 waste differs from the federal definition, and you  
9 answered that question. The federal CAFO rule does  
10 not define or use the term livestock waste. The  
11 federal rule refers to manure, litter and processed  
12 wastewater which, of course, is livestock waste.  
13 But let me ask, why is it different?

14 The Agency has attempted to  
15 combine federal terminology into the existing term  
16 livestock waste.

17 Does the Agency then not agree  
18 that the state definition of livestock waste  
19 regulated pursuant to these rules is much broader  
20 than that of the federal government's definition of  
21 livestock waste under the Clean Water Act?

22 MR. SOFAT: That is not our intent.  
23 The definition of livestock waste, we did not want  
24 to have three different terms that we have to follow

1 and understand, so why did we do this? Purely for  
2 the ease so that people who read it can understand  
3 and people who are implementing it can understand.

4 But there's no intent to  
5 broaden or narrowing it down from what the federal  
6 definition of manure, litter or process wastewater  
7 is.

8 MS. MANNING: So when the Agency  
9 uses terms like contaminated soil in the definition  
10 of livestock waste pursuant to the Clean Water Act,  
11 it's not the Agency's intention to bring these  
12 producers under the regulatory authority of the  
13 Bureau of Land, the Agency, pursuant to any  
14 authority as it relates to land pollution or  
15 contaminated soils or anything like that?

16 MR. SOFAT: No.

17 MS. MANNING: Then why did the  
18 Agency use the terminology contaminated soil in its  
19 definition of livestock waste?

20 And I think, correct me if I'm  
21 wrong, this is something new. I don't believe that  
22 the definition of livestock waste either in the  
23 Livestock Management Facilities Act or currently  
24 anywhere in the Environmental Protection Act or

1 regulations pursuant to either acts uses that kind  
2 of terminology that's definition of livestock waste.

3 MR. SOFAT: If you look at our  
4 definition, this was just our attempt to give an  
5 example.

6 MS. MANNING: Okay. Thank you.

7 I'm going to leave that for  
8 now, and we'll come back to that.

9 I guess I would ask then,  
10 Mr. Sofat, before I leave that, would the Agency be  
11 willing to accept a more standard definition of  
12 livestock waste that mirrors the Livestock  
13 Management Facilities Act and that is understood  
14 currently under the regulatory regime of the federal  
15 CAFO rules?

16 MR. SOFAT: We would like to take a  
17 look at it before we respond yes or no.

18 MS. MANNING: Thank you.

19 I think that's all I have at  
20 this point. The Agency was very comprehensive in  
21 its answers to questions, and we just had follow-up  
22 on select questions, not all of them.

23 HEARING OFFICER FOX: So for the  
24 time being, to the extent...

1 MS. MANNING: For the time being,  
2 we're done asking the Agency follow-up questions to  
3 our questions.

4 HEARING OFFICER FOX: Very good.

5 Having come to that point, we  
6 have been under way without interruption for at  
7 least 90 minutes at this point. If I don't see or  
8 hear any strenuous objection, it seems like it would  
9 be an appropriate place to break for 60 minutes for  
10 lunch.

11 I don't see or hear any  
12 objection. Let's plan to resume here at 12:30 after  
13 folks have had a chance to eat lunch.

14 And based on what Ms. Manning  
15 just described, that they, for the time being, have  
16 completed the follow-up questions based on the  
17 Agency's written answers, Ms. Dexter, I think we'll  
18 be prepared very quickly after we resume to turn to  
19 the follow-up questions you have.

20 I do want to note just as a  
21 matter of housekeeping, I have the list for folks to  
22 sign indicating that they wish to comment. If there  
23 are people who appear over the course of the break  
24 or at the beginning of the afternoon that wish to

1 comment, please have them add their name to this so  
2 that we can accommodate them, and other than that,  
3 we will intend to see you back here in 60 minutes at  
4 12:30.

5 (Whereupon the lunch recess was  
6 taken from 11:30 a.m. to 12:30  
7 p.m.)

8 HEARING OFFICER FOX: We've gotten  
9 to 12:30, and I appreciate your promptness returning  
10 from lunch. We have a couple of our board members,  
11 and that will allow us to resume.

12 Thanks again, everyone, for  
13 your promptness in returning from the lunch break.

14 Before we resume with any  
15 questions, Ms. Olson had indicated that on behalf of  
16 the Agency she had a housekeeping detail to begin  
17 with, and, Ms. Olson, if you want to take that up  
18 it's a good time to do that I think.

19 MS. OLSON: If it's okay with you,  
20 I'd like to ask Bruce a few questions to lay a  
21 little bit of foundation to get this in; very  
22 briefly.

23 HEARING OFFICER FOX: Please go  
24 ahead.

1 MS. OLSON: Mr. Yurdin, I'm going  
2 to hand you what's been marked as Exhibit 10. Can  
3 you tell me what that is?

4 MR. YURDIN: This is a copy of the  
5 Illinois EPA Bureau of Water Field Operations  
6 Section CAFO Field Procedures Manual dated  
7 April 2012.

8 MS. OLSON: And does that manual  
9 contain the Agency's biosecurity protocols?

10 MR. YURDIN: Yes, it does.

11 MS. OLSON: And can you tell us  
12 what pages?

13 MR. YURDIN: Beginning on page 16  
14 of this document and concluding on or about page 18.

15 MS. OLSON: The Agency would like  
16 to move Exhibit 10 into the record.

17 HEARING OFFICER FOX: Having heard  
18 the motion, is there any participant who wishes to  
19 lodge an objection to its admission as Exhibit  
20 No. 10?

21 Neither seeing nor hearing  
22 any, Ms. Olson, it will be so marked and admitted as  
23 Exhibit No. 10, and you've supplied some extra  
24 copies, which I appreciate, for our Board members

1 and technical staff. Thank you very much.

2 (Whereupon Exhibit 10 was  
3 admitted into evidence at this  
4 time.)

5 HEARING OFFICER FOX: And before we  
6 begin, I do just want quickly to note that the  
7 sign-up sheets both for people who did not prefile  
8 but wished to testify and the sign-in sheet for  
9 persons who wished to offer comment do not have any  
10 additions from our beginning at 10 o'clock this  
11 morning, so at this point, we have no additional  
12 commenters or witnesses to accommodate other than  
13 those that were present at the beginning of the day.

14 When we concluded before our  
15 lunch break, Ms. Manning had indicated that she had  
16 exhausted the follow-up questions that she had on  
17 the basis of the Agency's written answers to the  
18 Agricultural Coalition's questions.

19 That was a mouthful,  
20 Ms. Manning. Is that correct?

21 MS. MANNING: That is correct.

22 HEARING OFFICER FOX: Very good.

23 And we had left it at that  
24 point, Ms. Dexter, that we would be prepared to turn

1 to the follow-up questions that the Environmental  
2 Groups had on the basis of the Agency's written  
3 responses to the Group's questions, and unless there  
4 are any questions or other details to take care of,  
5 Ms. Dexter, we can turn to that.

6 The Agency had labeled its  
7 separate responses Attachments Nos. 3, 4 and 5  
8 corresponding to witnesses Sofat, Yurdin and  
9 Heacock. It might perhaps make most sense to go in  
10 numerical order according to the attachment numbers  
11 they have used, but if you have a different order in  
12 mind, we can cover them in that order.

13 MS. DEXTER: That's fine.

14 HEARING OFFICER FOX: Okay. That  
15 sounds good, Ms. Dexter, and I understand that  
16 Ms. Knowles may be posing some follow-up questions  
17 as well. We are ready to turn it over to you to  
18 pose those follow-up questions to the Agency  
19 witnesses.

20 MS. DEXTER: Great.

21 Good afternoon. My name is  
22 Jessica Dexter (D-e-x-t-e-r). I am at the,  
23 Environmental Law and Policy Center, and I'm  
24 speaking for the Environmental Groups today.

## 1 QUESTIONING OF EPA PANEL

2 BY MS. DEXTER:

3 I'm going to start with just a  
4 few questions following up to Mr. Sofat's testimony.

5 The first one is a follow-up  
6 to question 1 where we talked about whether or not  
7 Mr. Sofat had reviewed USEPA's final action on the  
8 2011 proposed NPDES CAFO reporting rule that was  
9 published on July 16, 2012, and my question, having  
10 reviewed this and considered what EPA's authority  
11 is, do you think that EPA's decision not to  
12 promulgate a national reporting rule precludes  
13 Illinois from developing its own reporting rule?

14 MR. SOFAT: I think the issue is  
15 whether or not Illinois needs a similar reporting  
16 rule, and we believe that the inventory that we are  
17 developing with the help of Region 5 will actually  
18 satisfy what EPA was trying to do through this rule.

19 MS. DEXTER: Okay. But to answer  
20 my more specific question, does Illinois have  
21 authority to adopt a reporting rule if it is  
22 necessary?

23 MR. SOFAT: I think it will require  
24 some sort of investigation on our part for me to say

1       whether or not we have the authority outside USEPA's  
2       rule.

3                       MS. DEXTER: My follow-up question  
4       is related to my second prefiled question. Thank  
5       you for providing the correspondence between USEPA  
6       and Illinois EPA on the rules that have been  
7       developed, and I just wanted to ask a question.

8                       Has USEPA seen the version of  
9       the rule that's been presented to the Board or is  
10      that still one draft behind?

11                      MR. YURDIN: I'm not clear on which  
12      version of the rule you're -- if you're asking has  
13      Region 5 USEPA seen the rule we proposed to the  
14      Board, I believe they have, yes.

15                      MS. DEXTER: All right. And my  
16      next follow-up question is related to basically the  
17      rest of my follow-up questions.

18                      I'd like to just clarify  
19      Illinois EPA's position on whether or not this rule  
20      applies to waters of the state or waters of the  
21      United States.

22                      Does the draft rule allow  
23      livestock waste to be discharged to waters of the  
24      state that are not waters of the U.S.?

1 MR. SOFAT: Can you repeat that  
2 question, please?

3 MS. DEXTER: Does the draft rule  
4 allow livestock waste to be discharged to waters of  
5 the state that are not also waters of the U.S.?

6 MR. SOFAT: You mean the proposed  
7 rule?

8 MS. DEXTER: Yes.

9 MR. SOFAT: The proposed rule says  
10 only those waters that are waters of the U.S. and  
11 that discharge into those waters would require NPDES  
12 permit.

13 MS. DEXTER: So if it was discharge  
14 of waters of the state that is also not a water of  
15 the U.S., it would not be covered by this rule?

16 MR. SOFAT: True.

17 MS. DEXTER: Okay. So how will  
18 waters of the state that are not waters of the U.S.  
19 be protected by this rule from livestock waste?

20 MR. SOFAT: Can I go back to the  
21 previous response?

22 There is Part 501 in Subtitle  
23 E that would apply to livestock waste handling  
24 facilities and storage facilities, so when I'm

1       responding, I'm responding in context of NPDES  
2       permit.

3                   MS. DEXTER:   So I will ask my  
4       follow-up question again in the context that you  
5       answered.

6                   How will waters of the state  
7       that are not waters of the U.S. be protected by this  
8       rule for livestock waste?

9                   MR. SOFAT:   We do have authority  
10      under 12(a) of the Act to look at site-specific  
11      pollution cases and determine a suitable course how  
12      to address water pollution and then see what else  
13      needs to be done, so we'll be using 12(a) authority  
14      to address those pollution cases that are not  
15      addressed under Part 502.

16                  MS. DEXTER:   But the rules  
17      themselves or the proposed rules are not speaking to  
18      that issue directly?

19                  MR. SOFAT:   Part 502, no.

20                  MS. DEXTER:   Okay.   That is all I  
21      have for Mr. Sofat, and I will move on to  
22      Mr. Yurdin.

23                               So my first follow-up question  
24      is related to prefiled question 3, and you

1       referenced IEPA's 305(b) reports in your response to  
2       question 3.

3                       MS. MANNING: Excuse me. We can't  
4       hear you. Is there an extra microphone?

5                       MS. KNOWLES: There's that one.

6                       MS. MANNING: Thank you. I'm  
7       sorry.

8                       MS. DEXTER: All right. I will  
9       just start again.

10                      So you referenced IEPA's  
11       305(b) reports in your response to question 3, and  
12       I'd like to, if we can, enter an example of that  
13       into the record. I apologize. I only have one copy  
14       of this. This is something that in the prefiled  
15       answers the citation to this document on IEPA's  
16       website is included here, so I have just one copy  
17       here. If we need to produce more, I'm happy to.

18                      (Discussion held off the record.)

19                      MS. DEXTER: Mr. Hearing Officer,  
20       what I was indicating to counsel for the  
21       Environmental Groups is one of the Board's questions  
22       to the Agency was could we enter an example of the  
23       305(b) 303D reports, and I'm showing her what we had  
24       planned to enter to see if that's acceptable for

1       what she was going to do.

2                   MS. KNOWLES:  Yes, it will be.

3                   HEARING OFFICER FOX:  And just for  
4       the record, Ms. Williams, I believe that's in  
5       response to the Board's question No. 2.

6                   MS. WILLIAMS:  Correct.

7                   I'm handing both parties and  
8       the Board a copy of the Agency's draft 2010 305(b)  
9       report 303d list.  It is dated December 2011 but it  
10      is officially the 2010 report.

11                   At this time, I move to have  
12      it entered as Exhibit 11.

13                   HEARING OFFICER FOX:  It is  
14      number -- I'm certain you're right, Ms. Williams.  I  
15      will check, it is Exhibit No. 11.

16                   Ms. Dexter, if you don't mind,  
17      we'll take up the motion to admit this as Exhibit  
18      No. 11.  I do note that copies have been  
19      distributed.

20                   Is there any participant who  
21      objects to the admission of this document as Exhibit  
22      No. 11 in this proceeding?

23                   Neither seeing nor hearing  
24      any, it will be so marked and admitted.

1 Ms. Williams, thank you for  
2 the distribution of these. If Ms. Dexter will give  
3 me one moment to mark these and we can resume.

4 (Whereupon Exhibit 11 was  
5 admitted into evidence at this  
6 time.)

7 MS. DEXTER: Are you ready?

8 HEARING OFFICER FOX: Please  
9 resume, yes.

10 MS. DEXTER: So I am looking at  
11 what is labeled Table C-32 on page 104 of what was  
12 just entered as Exhibit 11, and the name of the  
13 table is the Statewide Summary of Potential  
14 Sources...

15 MR. YURDIN: Could I ask you again  
16 what table you're on? We had to borrow a copy.  
17 Table --

18 MS. DEXTER: It's Table C-32.

19 MR. YURDIN: On page...

20 MS. DEXTER: On page 104.

21 MR. YURDIN: Thank you.

22 MS. DEXTER: And I'm not sure if I  
23 got the whole title out. It's the Statewide Summary  
24 of Potential Sources of All Use Impairments and

1 Streams, and looking at this table, would it be fair  
2 to say that pollution from animal feeding operations  
3 is the leading cause of impairments of Illinois  
4 streams?

5 MR. YURDIN: Without getting into a  
6 debate over what leading cause means, it does  
7 indicate rather specifically in this column that  
8 animal feeding operations identified as nonpoint  
9 source, or NPS, have impaired stream miles to the  
10 extent of 657 miles.

11 Now, whether or not that's  
12 significant or what have you, whatever adjective you  
13 chose, I'll let you describe that.

14 MS. DEXTER: And can you explain  
15 whether -- is there a distinction between  
16 discharges -- are the kinds of discharges that we're  
17 talking about in this proceeding sort of a larger  
18 set than that NPS set that's listed in the table?  
19 Because it's a nonpoint source, I just wondered if  
20 there's not a more direct discharge. Like would it  
21 fall under agriculture? Are there other discharges  
22 related to this?

23 MR. YURDIN: I think if you look  
24 down the column, there are several categories.

1       There's a livestock category further down that  
2       column. There's an agriculture description. These  
3       are, for the most part, these descriptions I think  
4       are suitably broad to enable the Agency to describe  
5       what it believes the source of the impairment are  
6       without getting into the rather nitty gritty detail  
7       when we're doing stream assessments.

8                       MS. DEXTER: Thank you.

9                       All right. My next follow-up  
10       is to question 11, prefiled question 11.

11                      In response to the question  
12       how many livestock operations there are in the State  
13       of Illinois, you stated that IEPA has no information  
14       on which to base an estimate.

15                      So I'm wondering, if we're  
16       talking about the universe of livestock operations  
17       in Illinois, I'm wondering if you think that a  
18       number around 24,500 might be in the ballpark of  
19       livestock operations?

20                      And I can enter an exhibit and  
21       you can decide whether or not you find this a  
22       believable number.

23                      I have this report called,  
24       it's a report called "Illinois Agriculture" just to

1 give a sense of the scale here that I would like to  
2 enter as an exhibit, and the number 24,500 came from  
3 a table on page 3 titled "Number of Illinois Farms  
4 with Livestock and Dairy," and I added up the  
5 cattle, milk cows, hog, and sheep to come up with  
6 24,500.

7 MS. WILLIAMS: We have no  
8 objections.

9 MS. DEXTER: May we enter this as  
10 Exhibit 12?

11 HEARING OFFICER FOX: Ms. Dexter  
12 has moved to admit the document entitled "Illinois  
13 Agriculture" into the record of this hearing as  
14 Exhibit No. 12.

15 Does any participant have any  
16 objection to its admission as Exhibit No. 12?

17 Neither hearing or seeing any,  
18 Ms. Dexter, it will be so marked and admitted as  
19 Exhibit No. 12 in this proceeding.

20 (Whereupon Exhibit 12 was  
21 admitted into evidence at this  
22 time.)

23 MS. DEXTER: So, Mr. Yurdin, do you  
24 have any reason to believe that this wouldn't be an

1 accurate estimate of the number of livestock  
2 operations in Illinois?

3 MR. YURDIN: No, I don't have any  
4 reason to believe that although I do note that there  
5 are different dates. I'd have to study this in a  
6 little more detail than just the last 30 seconds  
7 I've had here, but there are different dates. I'd  
8 be a little cautious about how I'd add some of the  
9 tables.

10 MS. DEXTER: Right. Oh, yes. I  
11 was going to give the caveat that it was kind of a  
12 ballpark, maybe an order of magnitude estimate  
13 because I recognize some might have overlapped where  
14 they have more than one type of livestock.

15 I also have that I'd like to  
16 present as an exhibit a press release from April 23,  
17 2004 from the Agency. This is in response to the  
18 2003 CAFO rule proposal.

19 I'll ask to have that entered  
20 as an exhibit. Mr. Hearing Officer, I'd move that  
21 we enter this exhibit as Exhibit 13.

22 HEARING OFFICER FOX: Noting that  
23 it has been distributed, Ms Dexter, and noting the  
24 motion to admit it as Exhibit No. 13, is there any

1 objection to its admission?

2 Neither seeing nor hearing  
3 any, Ms. Dexter, it will be marked as Exhibit No. 13  
4 and entered into the record.

5 (Whereupon Exhibit 13 was  
6 admitted into evidence at this  
7 time.)

8 MS. DEXTER: So, Mr. Yurdin, how  
9 many livestock operations did IEPA report were  
10 eligible to comply with the Federal Clean Water Act  
11 requirements to protect the state's waterways from  
12 manure and wastewater under this version of the  
13 rule?

14 MR. YURDIN: Which version of the  
15 rule?

16 MS. DEXTER: This press release in  
17 the first paragraph.

18 MR. YURDIN: Oh, okay. This goes  
19 back to 2004 preceding the water CAFOs case and then  
20 also the NPDC case of 2011, so at that time, I think  
21 we were taking a best shot and saying, as you can  
22 read here, 3200 livestock operation.

23 MS. DEXTER: Thank you.

24 One more thing I would like to

1 interpret right now. This is a document, it has a  
2 cover letter on it, but it's a report titled Initial  
3 Results of an Informal Investigation of the National  
4 Pollutant Discharge Elimination System Program for  
5 Concentrated Animal Feeding Operations in the State  
6 of Illinois, and it's produced by Region 5 dated  
7 September 2010.

8 I move that we enter this as  
9 Exhibit 14.

10 HEARING OFFICER FOX: And  
11 Ms. Dexter has moved the admission of the report  
12 that she just described into the record of this  
13 proceeding as Exhibit No. 14.

14 Does any participant have any  
15 objection to its admission?

16 MS. WILLIAMS: If you can give me  
17 just one second. I don't think so but...

18 (Pause)

19 MS. WILLIAMS: No objections.

20 HEARING OFFICER FOX: Hearing no  
21 objection from the Agency and not seeing or hearing  
22 any other objection, Ms. Dexter, it will be so  
23 marked as Exhibit No. 14 and admitted.

24

1 (Whereupon Exhibit 14 was  
2 admitted into evidence at this  
3 time.)

4 MS. DEXTER: Mr. Yurdin, can you  
5 look at the bottom of page 13 of Exhibit 14?

6 MR. YURDIN: Yes.

7 MS. DEXTER: And in that last  
8 paragraph, there's an estimate from USEPA of how  
9 many large CAFOs are present in Illinois.

10 What is the number of the  
11 estimate there?

12 MR. YURDIN: They're estimating 500  
13 large CAFOs if I'm reading where you're reading.

14 MS. DEXTER: Yes. That's what I'm  
15 reading.

16 MR. YURDIN: Okay.

17 MS. DEXTER: Thank you.

18 All right. So I'm changing  
19 speed a little bit.

20 In response to several of the  
21 prefiled questions, you referred us to annual  
22 reports from the Illinois EPA Livestock Program. I  
23 would like to enter two of these into the record as  
24 examples.

1 I've got here the Illinois EPA  
2 Livestock Program 2011 Livestock Facility  
3 Investigation Annual Report, and I also have the  
4 Illinois EPA Livestock Program 2008 Livestock  
5 Facility Investigation Annual Report.

6 I ask that these be entered  
7 into the record but I've lost track of which exhibit  
8 we're on.

9 HEARING OFFICER FOX: What I heard  
10 you say, Ms. Dexter, please correct me if I'm  
11 mistaken, it was a motion to admit the 2011 report  
12 as Exhibit No. 14 and the 2008 report as Exhibit  
13 No. 15. Does that sound correct?

14 MS. DEXTER: I think it's 15.

15 MS. WILLIAMS: 15 and 16.

16 HEARING OFFICER FOX: Thank you.  
17 That's absolutely correct.

18 The 2011 report, to be clear,  
19 is Exhibit No. 15 and the 2008 report is Exhibit  
20 No. 16.

21 Thank you for the correction  
22 from many corners.

23 Having heard Ms. Dexter's  
24 motion to admit those two reports as those two

1 exhibit numbers, does any participant have any  
2 objection?

3 Neither hearing or seeing any,  
4 Ms. Dexter, they will be admitted as those numbers.

5 (Whereupon Exhibits 15 and 16  
6 were admitted into evidence at  
7 this time.)

8 MS. DEXTER: All right. So looking  
9 at the exhibit that was just entered, No. 15, last  
10 year's report, how many livestock facilities were  
11 inspected by the Illinois EPA?

12 MR. YURDIN: If you look on page 2  
13 under general information, the total number of  
14 facilities surveyed during 2011 was 189.

15 Total number of on-site visits  
16 conducted during that same period was 297.

17 MS. DEXTER: Thank you.

18 And how many of those  
19 facilities, of the facilities that you inspected,  
20 I'm assuming that's the right universe, how many of  
21 the facilities were found to have one or more  
22 regulatory violations in 2011?

23 MR. YURDIN: The Board may want to  
24 turn to page 4 that's labeled in Section 2

1 Regulatory Violations, No. 15. There's a list  
2 there. The list includes water quality standards  
3 violations, and there are 21 for that period of  
4 time.

5 MS. DEXTER: And if you look at 16,  
6 right below that, the number and percent of the  
7 livestock facilities contacted or visited having one  
8 or more regulatory violations in 2011, how many  
9 facilities was that?

10 MR. YURDIN: That was 109.

11 I'm not sure I answered your  
12 first question entirely correctly but I was looking  
13 at that one as being a water quality violation.  
14 There may have been other regulatory violations that  
15 should have been included so, yes, 16 does indicate  
16 that in that period of time, there were 109  
17 regulatory violations.

18 MS. DEXTER: Would you say that is  
19 a pretty typical level, that 58 percent of the  
20 facilities that were contacted or visited were found  
21 to have one or more violations? Is that a pretty  
22 typical number for a year of inspections?

23 MR. YURDIN: I'd have to go -- I  
24 don't know how far back you want me to use my memory

1 here, but we do tabulate these year to year, and I  
2 think it would be relatively simple for the Agency  
3 to go back, review however many years we need to,  
4 and get a suitable answer for you on that.

5 MS. DEXTER: All right.

6 MS. MANNING: Excuse me,  
7 Mr. Hearing Officer. May I ask a follow-up  
8 question? Is that appropriate?

9 HEARING OFFICER FOX: Ms. Manning,  
10 please go ahead.

11 MS. MANNING: Thank you.

12 Mr. Yurdin, just for purposes  
13 of the record, the answers in No. 15 and the answers  
14 in No. 16 are based on a charge of a violation,  
15 correct, and not necessarily an adjudication of a  
16 violation, but they're just after an Agency  
17 inspection, the Agency believes something to be in  
18 violation.

19 Whether it was, in fact, in  
20 violation pursuant to an adjudicatory procedure, we  
21 don't really know that based on these documents,  
22 correct?

23 MR. YURDIN: These numbers would be  
24 based on Agency actions. If there was a subsequent

1 action by a court or the Pollution Control Board,  
2 that is not shown here.

3 MS. MANNING: Okay. So these  
4 basically resulted in notice of violation that the  
5 Agency files that is just the initiation of an  
6 enforcement action, and it may or may not have gone  
7 to formal enforcement to the Office of Attorney  
8 General, right?

9 MR. YURDIN: That's actually listed  
10 in a separate part of these same documents so that's  
11 shown separately.

12 MS. MANNING: Okay. Thank you.

13 And to clarify as well in No.  
14 17, 42 percent of the livestock facilities  
15 investigated and contacted by the Agency showed no  
16 violations whatsoever, correct?

17 MR. YURDIN: That's correct.

18 MS. MANNING: Okay. Thank you.

19 MR. YURDIN: 58 percent plus 42  
20 percent, 16 and 17, that's a hundred percent.  
21 That's where that came from.

22 MS. MANNING: Thank you.

23 HEARING OFFICER FOX: Ms. Manning,  
24 anything further?

1 MS. MANNING: No, not right now.

2 HEARING OFFICER FOX: Okay. Thank  
3 you.

4 MS. DEXTER: All right. So do I  
5 understand correctly that it is IEPA's position that  
6 inspections are the primary means of determining  
7 whether a facility needs an NPDES permit under the  
8 draft rule?

9 MR. YURDIN: I think it's a  
10 required element, yes.

11 MS. DEXTER: In the last ten years,  
12 you report in the prefiled answers that 248  
13 facilities were found to be in violation because  
14 they did not have an NPDES permit.

15 Do you expect that if the  
16 draft rules are passed, you would find a greater  
17 rate of compliance than you have in past  
18 inspections?

19 MR. YURDIN: I'm sorry. I lost the  
20 last part.

21 MS. DEXTER: Sorry. I kind of  
22 stumbled over my tongue.

23 Do you expect that if the  
24 draft rules are passed, you would find a greater

1 rate of compliance than you have in past  
2 inspections?

3 MR. YURDIN: In past years, is that  
4 what you mean?

5 MS. DEXTER: Yes.

6 MR. YURDIN: Honestly, I think I'd  
7 be speculating a bit to say what the increase in  
8 compliance would be based on the proposal.

9 I would suggest that with a  
10 certain amount of education and involvement with the  
11 Agency that the producers would have a greater  
12 chance of coming into compliance with these  
13 regulations, but again, I think this is kind of  
14 speculative on my part.

15 MS. DEXTER: Do you expect that  
16 IEPA will conduct significantly more inspections  
17 annually after this rulemaking is completed?

18 MR. YURDIN: No.

19 MS. DEXTER: Do you expect that  
20 more than 35 CAFOs will need permits under the draft  
21 rules?

22 MR. YURDIN: Yes.

23 MS. DEXTER: 35, just for context,  
24 was the number reported for the number of current

1 NPDES permit holders.

2 MR. YURDIN: Yes, we have 35 permit  
3 holders.

4 I believe the question was  
5 will there be an increase or increasing number. I  
6 think the answer is yes, that's probably going to be  
7 the case, but I think it'll be...

8 MS. DEXTER: Can you explain why  
9 that will be the case?

10 MR. YURDIN: I think if you look at  
11 the trend over the last several years, the number of  
12 permits that we've issued has increased, and I think  
13 with the adoption of these rules or some form of  
14 these rules that there will be a continued trend in  
15 that same direction.

16 MS. WILLIAMS: Mr. Hearing Officer,  
17 would it be okay for me to ask a short follow-up?

18 HEARING OFFICER FOX: Ms. Williams,  
19 please go ahead.

20 MS. WILLIAMS: And I'd like to  
21 direct it to Mr. Heacock briefly.

22 Mr. Heacock, I know  
23 Mr. Yurdin's question from the perspective of the  
24 field side of it were referring a little bit to who

1 needs a permit and how that's determined.

2 Can you just expand for the  
3 Board on how the proposed rules set up how a  
4 determination is to be made and who needs a permit?

5 MR. HEACOCK: The regulations do  
6 outline the requirements for who needs a permit, and  
7 that determination can be made by the livestock  
8 facility. It doesn't have to result from an  
9 inspection.

10 If they are a large CAFO that  
11 has some kind of discharge or will have some kind of  
12 discharge, they can be required or they are required  
13 to obtain a permit for that.

14 A medium CAFO if they have  
15 certain types of discharges are defined also as  
16 needing to have a permit.

17 So those two categories can  
18 self-determine in a sense that, for whatever reason,  
19 they may have a discharge, and they would need to  
20 apply for the permit.

21 MS. WILLIAMS: Thank you. I don't  
22 have anything further.

23 MS. DEXTER: Did any of the 35  
24 CAFOs that have NPDES permits come to have those

1 permits without being prompted to apply by the  
2 Illinois EPA, self-determining as you were just  
3 saying?

4 MR. YURDIN: Let me...I'll take  
5 that.

6 MR. HEACOCK: Why don't you go.

7 MR. YURDIN: There were a small  
8 number of those 35, just a very few, that  
9 voluntarily applied.

10 MS. DEXTER: Okay. Are you  
11 familiar with the fish kill that was suspected to be  
12 caused by swine manure in Beaver Creek in Iroquois  
13 County in late July?

14 MS. OLSON: The EPA is going to  
15 object to this. This is an ongoing enforcement  
16 matter. It's not relevant to the proceedings today,  
17 and we prefer not to get into it.

18 MS. MANNING: I would also object  
19 to the entrance of any press release talking about  
20 an issue --

21 MS. DEXTER: I have here...we could  
22 not have testimony on it. I have two, they're  
23 public news articles that are describing what  
24 happened with the fish kill.

1 MS. OLSON: Again, same objection.

2 I don't know what the news source is. I don't know  
3 who wrote it.

4 If you want to bring -- you  
5 know, I mean, this is all venturing in speculation.

6 MS. DEXTER: You haven't even seen  
7 it. You can look at it.

8 MS. MANNING: I've seen it.

9 MS. DEXTER: I would argue that the  
10 Board may -- I can let you see these things too.  
11 The story of a fish kill could be something that the  
12 Board should consider because of the relationship  
13 between discharges from a livestock operation that  
14 may be subject to this rule and the impact that it  
15 has had on the local area where the spill occurred.

16 HEARING OFFICER FOX: Ms. Manning,  
17 did I hear you wishing to be heard?

18 MS. MANNING: Yes. I would object  
19 to any entrance of this press release into evidence.  
20 It is an ongoing case, ongoing investigation, and  
21 there's no determination of anything at all, no  
22 enforcement action pending, so I don't think it's  
23 relevant to the Board's inquiry whatsoever.

24 There is a lot of issues

1 related to cause and effect, whether there's a  
2 drought that caused the fish kill, whether there is  
3 any source that was a livestock facility, and those  
4 issues are all right now being investigated, and no  
5 notice of violation is issued, and besides, if one  
6 is issued, the Board may see it in an enforcement  
7 context, and that's the better role of the Board  
8 examining this as opposed to looking at any press  
9 releases and drawing any conclusions therefrom in a  
10 regulatory proceeding where we're talking about  
11 regulatory parameters on an industry.

12 I just don't think it's  
13 appropriate for the Board to take any kind of weight  
14 whatsoever as a result of a news article, and I  
15 believe the Agency made the same point.

16 MS. DEXTER: And all of that being  
17 noted in the record, the Board can interpret these  
18 articles knowing it hasn't been adjudicated yet.  
19 It's just the media reporting on what happened.

20 HEARING OFFICER FOX: Noting the  
21 objections both by the Agency and by the  
22 Agricultural Coalition, I believe this is relevant  
23 to the potential consequences of a release. The  
24 release by its own terms, based if only on my very

1 quick review, makes clear many of the factors that  
 2 were raised in the objections, but I will overrule  
 3 those and grant the motion to admit the first  
 4 release as Exhibit No. 17 that is entitled "Illinois  
 5 AG Asked to Take Action." That again is Exhibit  
 6 No. 17.

7 (Whereupon Exhibit 17 was  
 8 admitted into evidence at this  
 9 time.)

10 HEARING OFFICER FOX: The second is  
 11 an article entitled "It's Devastating" that is  
 12 Exhibit No. 18 in this proceeding, and it will also  
 13 be admitted.

14 (Whereupon Exhibit 18 was  
 15 admitted into evidence at this  
 16 time.)

17 HEARING OFFICER FOX: Ms. Dexter,  
 18 please proceed.

19 MS. DEXTER: Thank you.

20 Did any of the parties that  
 21 were alleged to have discharged swine manure in this  
 22 instance have an NPDES permit?

23 MS. WILLIAMS: Objection. I  
 24 understand entering the exhibits into the record.

1       That is fine, but I just don't think it is  
2       acceptable to ask our field section manager to  
3       comment on the fact of a pending enforcement in  
4       which he may be called as a witness.

5                   MS. DEXTER: Does IEPA have a list  
6       of the facilities that have permits that we could  
7       deduce that from since there are 35 of them?

8                   MR. YURDIN: All of our permits are  
9       listed on our website.

10                   I should add that the permits  
11       are listed, and those pending before the Agency are  
12       also listed.

13                   MS. DEXTER: And where is that on  
14       the website?

15                   MR. YURDIN: On the Agency's  
16       website. I don't have a computer in front of me or  
17       I'd get you that.

18                   MS. WILLIAMS: But there's a link  
19       to the case on general permit.

20                   MS. DEXTER: I'm just trying to get  
21       it in the record.

22                   MR. HEACOCK: It's on the NPDES  
23       public notice page.

24                   MS. DEXTER: All right. We can

1       move on.

2                               All right. So let's say that  
3       Illinois EPA is made aware of a pollution problem in  
4       an Illinois stream where there are livestock  
5       facilities in a watershed.

6                               How does IEPA go about  
7       investigating the source of the violation?

8                               MR. YURDIN: What was the reported  
9       nature of the violation? That would be the first  
10      step.

11                              MS. DEXTER: Assuming that it is a  
12      discharge. There's evidence of livestock waste in  
13      the stream.

14                              The question is, basically,  
15      how do you track down who's responsible for the  
16      water quality permit?

17                              MR. YURDIN: There are any number  
18      of ways that can happen including calls from the  
19      facility itself. A discharge from a livestock  
20      facility does not always operate or look or smell  
21      the same. Tracking and backtracking a discharge  
22      upstream is not a difficult task, but it takes a  
23      little bit of expertise, a little bit of knowledge,  
24      a little bit of experience, and some specialized

1 equipment in some cases, and sampling would be first  
2 and foremost among them.

3 MS. DEXTER: Is it ever difficult  
4 to approve in an enforcement case context that the  
5 violation occurred at a particular facility and not  
6 at another source?

7 MR. YURDIN: And not at --

8 MS. DEXTER: And not at another  
9 source. Say there are multiple discharges in a  
10 watershed.

11 MR. YURDIN: That can be a little  
12 tricky, yes, but it's not impossible. I think we've  
13 had a pretty good success rate on that.

14 MS. DEXTER: So what assurance can  
15 IEPA provide that operations that are not inspected  
16 are complying with the current law that's on the  
17 books?

18 MR. YURDIN: Could you repeat that  
19 for me, please?

20 MS. DEXTER: What assurance can  
21 IEPA provide that operations that are not inspected  
22 are complying with the current law?

23 Perhaps I should rephrase.

24 Can the Agency provide any

1 assurance that facilities are not inspected?

2 MR. YURDIN: Certainly, yeah.

3 There are probably...and I was trying to tick off a  
4 number of different ways we can do this. One would  
5 be just routine, say nonscheduled inspections of  
6 facilities. We also do ambient monitoring.

7 We have Agency staff who are  
8 dedicated to sampling both on a routine basis and on  
9 sort of a non-routine basis where they're going to  
10 different facilities at different times. Some of  
11 those are permitted. Most of those I would say are  
12 permitted.

13 There are any number of ways  
14 to get good, up front, time sensitive water quality  
15 information in addition to simply relying on  
16 citizens observations of the streams that pass  
17 through their property.

18 (Discussion held off the record  
19 between Ms. Dexter and  
20 Ms. Knowles.)

21 MS. DEXTER: We were just trying to  
22 make sure we understood what you had said there.

23 I think you had said you were  
24 doing ambient monitoring downstream from permitted

1 facilities? Is that your testimony?

2 MR. YURDIN: At discharge points  
3 from permitted facilities, I think that's what I was  
4 referring to there.

5 MS. DEXTER: Do you do ambient  
6 monitoring downstream from unpermitted facilities?

7 MR. YURDIN: Yes.

8 MS. DEXTER: How comprehensive is  
9 that?

10 MR. YURDIN: That is covered in the  
11 305(b) report that we spoke about earlier, and  
12 there's a listing of where those sites are around  
13 the state.

14 MR. RAO: May I ask a follow-up  
15 question?

16 MS. DEXTER: Yes. Please.

17 MR. RAO: Do you select these  
18 locations for ambient monitoring based on what kind  
19 of facilities are around a particular stream or is  
20 it based on some other criteria?

21 MR. YURDIN: It's based on a number  
22 of different criteria, some of which involve the  
23 history of that location or co-location with other  
24 agencies who may be doing sampling along with us and

1 have a history of doing that sampling like U.S.  
2 Geological Survey for example or DNR.

3 They're not specific to  
4 livestock facilities or what might be considered a  
5 nonpoint source facility. Those ambient stations  
6 have been set up in the past to capture more of a  
7 broad brush basin-wide quality issue, and they're  
8 not specifically targeted at NPDES dischargers or  
9 anything of that type. It's to capture what's going  
10 on within that basin over a long period of time.

11 MR. RAO: Thank you.

12 MS. DEXTER: I'm going to now ask a  
13 follow-up to the response to question 17 of my  
14 prefilled questions where you discuss the effort to  
15 merge data sets from the Illinois Department of  
16 Public Health's dairy data set and the Livestock  
17 Management Facilities Act's data set.

18 How confident are you that the  
19 combined LMFA and IDPH data sets have captured all  
20 of the livestock operations in Illinois that would  
21 be subject to the draft rule on the discharge?

22 MR. YURDIN: I don't know that  
23 they'd be subject, that this data set would capture  
24 every facility in Illinois or every facility that

1 would be subject to the proposed rule, but I think  
2 it's a very good way of going about getting an  
3 extensive listing of livestock facilities in the  
4 state that may be subject to these regulations, and  
5 we've already talked about the fact that there has  
6 to be a discharge for there to be a permit, etc.,  
7 etc.

8 MS. DEXTER: Right.

9 Does IEPA have a process for  
10 inspecting facilities that are not included in your  
11 list of what's out there?

12 MR. YURDIN: You're talking about  
13 the IDPH list on the LMFA?

14 MS. DEXTER: Assuming that's the  
15 universe of the facilities you know about.

16 MR. YURDIN: That's not the  
17 universe of everything we know about. The Agency  
18 also has an extensive record within its regional  
19 offices and here in the headquarter office of  
20 facilities we've inspected over the last 35 or 40  
21 years, so I would include those as well.

22 And on top of that is a rather  
23 extensive knowledge housed within the staff that  
24 works here, and that has worked in the Agency in the

1       livestock arena for decades.

2                   MS. DEXTER:   Has IEPA made an  
3       effort to merge that information so that it's all in  
4       one place?

5                   MR. YURDIN:   That's what we're  
6       trying to get at with the response to 17(b) or (a)  
7       and (b) together.   That's essentially what we're  
8       trying to do.

9                   MS. DEXTER:   So that's also  
10      incorporating information from the field offices?

11                  MR. YURDIN:   The two pieces of  
12      information that I referred to in response to 17(a)  
13      and (b) are two data sets, two electronic data sets.

14                               Merging those together  
15      obviously is much, much simpler than trying to merge  
16      paper data sets that may or may not be relevant to  
17      an ongoing database inquiry or database compilation.

18                               I think eventually we may get  
19      around to that point, but the most up-to-date  
20      relevant information appears to be these two data  
21      sets.

22                  MS. DEXTER:   And can you describe a  
23      little bit the information that's available in these  
24      data sets?

1 MR. YURDIN: Yeah, I think I can.

2 The LMFA data set is based on  
3 information that we are given from the Illinois  
4 Department of Agriculture. It's, as I said, it's  
5 electronic information, or it actually comes to us  
6 in paper form but we put it into an electronic data  
7 set, and it's based on actions that the Illinois  
8 Department of Agriculture takes under the LMFA.

9 The second of those data sets  
10 is from the Illinois Department of Public Health,  
11 and that's based on their dairy inspection.

12 MS. DEXTER: So what level of  
13 detail do you know about the operations at these  
14 particular facilities, and do those data sets  
15 overlap, and what have you needed to do to make it  
16 useful for your purposes?

17 MR. YURDIN: The information  
18 contained within those data sets more often than not  
19 includes location information, size of the facility,  
20 type of the facility.

21 There's often, at least in  
22 terms of the LMFA data set, there may be some  
23 information there concerning waste management units,  
24 size, type, location.

1                   The IDPH data set contains  
2     basic information about the location.

3                   And so it's a question of  
4     merging some of that information.

5                   Yes, there may be some  
6     overlap, but again, I think it's a relatively easy  
7     thing to purge duplicates and make that a very  
8     usable data set, single data set.

9                   MS. WILLIAMS: Just for the record  
10    or maybe for the Board's clarification, Attachments  
11    K and L to the Agency's proposal have examples of  
12    these two things.

13                  HEARING OFFICER FOX: And just for  
14    the record, Ms. Williams, they were the attachments  
15    to the original proposal filed with the Board on  
16    March 1st, am I correct?

17                  MS. WILLIAMS: Correct.

18                  HEARING OFFICER FOX: Thank you.

19                  MS. DEXTER: All right. So one  
20    more question, maybe two more questions on this  
21    topic.

22                  You describe in your answer to  
23    the prefiled questions that this effort is a  
24    starting point.

1                   What is the goal and what is  
2           it going to take to get there?

3                   MR. YURDIN: I think the goal would  
4           be to have a usable, workable, day-to-day updatable  
5           list that the Agency can rely on in putting together  
6           inspection prioritization.

7                   There may be a few other uses  
8           for it that correspond to something like the 305(b)  
9           report that we were talking about earlier, but I  
10          think primarily it would give us a way of  
11          prioritizing what can be a resource demanding effort  
12          to inspect livestock facilities around the state.

13                  MS. DEXTER: And does IEPA have a  
14          plan for how to get from this starting point to that  
15          goal?

16                  MR. YURDIN: We are working with  
17          Region 5 right now to further develop that inventory  
18          or that list I should call it. I don't know how we  
19          referred to it in response to 17. Did we call it an  
20          inventory?

21                  A comprehensive inventory was  
22          part of your question, so let's go with that.

23                  MS. DEXTER: Do you have any -- can  
24          you describe any more specifically what you in

1       Region 5 are working out in terms of completing the  
2       data set?

3                   MR. YURDIN: I think just as I  
4       described a moment ago, we're trying to put this  
5       together in a usable form purging duplicates and  
6       that type of thing.

7                   MS. DEXTER: Has Illinois EPA  
8       compared the administrative burden and cost of  
9       developing a comprehensive inventory of CAFOs under  
10      this multiple agency approach that you've just  
11      described compared to requiring livestock operations  
12      to submit complete information?

13                  MR. YURDIN: No.

14                  MS. DEXTER: Thank you.

15                         All right. In your response  
16      to question 28, you explain what it means for an  
17      owner or operator to, quote, "take steps to provide  
18      120 days of storage capacity."

19                  MR. SOFAT: Can I go back to the  
20      previous line of questioning?

21                  MS. DEXTER: Sure.

22                  MR. SOFAT: Our objective is not to  
23      identify each and every livestock facility out  
24      there. Our objective is to have enough information

1       because it is a starting point because of the NBCC  
2       case that we have information on sources that we  
3       could use to prioritize our inspections and  
4       therefore assess whether or not an NPDES permit is  
5       required.

6                       And to have a registry type  
7       requirement is also very labor intensive. It will  
8       require staff time to just have information, but  
9       that information would be so burdensome that it may  
10      not be that productive.

11                      So at this point, we believe  
12      what we have is more than adequate for us to run  
13      this program, and, as Bruce has indicated, over  
14      time, more data and information will be added to it  
15      through inspections and Public Health, and at that  
16      point in the future, we'll discuss whether or not  
17      there is any other step we need to take.

18                      MS. DEXTER: So just to follow up  
19      on that, I'm referring back to Exhibit 14 that we  
20      entered that's the USEPA national...it's the report  
21      on the NPDES CAFO program in Illinois, and I'm  
22      looking at page 3.

23                      In the executive summary,  
24      there's a couple of bullets. It's the very last

1       bullet on the page. It says the actions Illinois  
2       EPA must take to comply with Clean Water Act  
3       requirements for authorized state NPDES programs.  
4       In particular, Illinois EPA must... What is that  
5       second bullet?

6               MR. SOFAT: Develop and maintain a  
7       comprehensive inventory of CAFOs and evaluate their  
8       regulatory status.

9               MS. DEXTER: Thank you.

10              All right. And I will get  
11     back to the question that I started.

12              In response to question 28,  
13     you explain what it means for an owner or operator  
14     to take steps to provide 120 days of storage  
15     capacity, and you explained that fairly clearly in  
16     your response to the prefilled answer.

17              How will the owners or  
18     operators know that that's what those steps will be,  
19     and did you consider including a definition of this  
20     in the rule?

21              MR. YURDIN: A definition of --

22              MS. DEXTER: Of the further  
23     explaining or clarifying what it means to take steps  
24     towards the 120 days.

1 MR. YURDIN: I think as we  
2 explained in our response to question 28, we mean  
3 that -- I'm reading it here -- we mean that the  
4 producer must have conducted livestock waste removal  
5 by means of land application or transfer of the  
6 removal. So I think those are the steps we're  
7 trying to sort through.

8 MS. DEXTER: And I don't disagree  
9 that those could or should be the steps.

10 My question is if I'm an owner  
11 or operator, how do I know that those are the steps?  
12 How do I know that that's what the regulation is  
13 asking me for?

14 MR. YURDIN: I think we were  
15 thinking in relatively general terms there in using  
16 the statement "has taken steps to provide 120 days  
17 of available storage."

18 There are some possibilities  
19 there, and we did not want to limit or specify what  
20 those possibilities were going to be.

21 MS. DEXTER: Would you be willing  
22 to consider giving at least some examples in the  
23 rule to make it clearer?

24 MR. YURDIN: Oh, examples would be

1 fine. I'm sure there's plenty of that in here.  
2 It's just not at that particular location of  
3 502.630(a)(1)(c).

4 MS. DEXTER: And I have a similar  
5 question in follow-up to question 26 where we asked  
6 about what do, quote, "practical alternative  
7 measures" mean, and, again, you explained what those  
8 are, and I'm wondering if the Agency would be open  
9 to adding more clarification about what's expected,  
10 not necessarily defining these are the only  
11 practices but...

12 MR. YURDIN: If you'd like to  
13 suggest something, we'd certainly be willing to  
14 consider it.

15 MS. DEXTER: Did your response just  
16 now, was that for both defining what it means to  
17 take steps and what those practical alternative  
18 measures are?

19 MR. YURDIN: Yes.

20 MS. DEXTER: All right. How does  
21 IEPA plan to approach permitting for large CAFOs  
22 that have discharged in the past?

23 MS. OLSON: Could you be more  
24 specific?

1 MS. DEXTER: I'm really talking in  
2 the general of what's the process of, I mean...I'll  
3 ask a preliminary question.

4 Does IEPA know the universe of  
5 facilities that have discharged in the past?

6 MR. YURDIN: I would say no, we do  
7 not know the entire universe of facilities that have  
8 had discharges in the past.

9 MS. DEXTER: Of those that you do  
10 know, how do you plan to implement this rule as it's  
11 been -- once a rule is adopted, how are you going to  
12 deal with facilities that you know have discharged  
13 in the past?

14 MR. YURDIN: I think it boils  
15 down -- there are a couple of different ways that  
16 the information or that information about the  
17 discharge could come to the Agency.

18 One, we've talked about  
19 inspections and citizen complaints, that type of  
20 information coming into the Agency and how an  
21 investigation goes forward from there and whether or  
22 not corrective actions, further enforcement is  
23 necessary beyond the initial investigation.

24 As we mentioned before as

1 well, we have had cases where voluntarily submitted  
2 applications have come into the Agency and permits  
3 have been issued.

4 I think for the most part, the  
5 most likely scenario is that a discharge would be  
6 reported to the Agency or discovered by the Agency  
7 and that subsequent enforcement and compliance  
8 measures would be taken, and one of those steps,  
9 just one, would be that a permit would be required.

10 MS. DEXTER: So I guess to maybe  
11 clarify my question, or not clarify it but just make  
12 sure I have the right answer, IEPA doesn't have a  
13 specific process of, isn't planning any special  
14 outreach, for instance, to facilities that IEPA  
15 knows have discharged in the past compared to the  
16 rest that they are not aware of discharges in terms  
17 of implementing the rule?

18 MR. YURDIN: We have in the past,  
19 unrelated to this rulemaking, taken certain steps  
20 both in terms of setting up a work group that lead  
21 to the development of these rules and, by other  
22 means, going out and trying to get the message out  
23 to the livestock producers. That could happen in a  
24 number of different ways, in a number of different

1 forums.

2 I think that will continue,  
3 and certainly, once we have an established rule here  
4 or a new rule to work under, then I would think the  
5 Agency would go out and certainly make an effort to  
6 make it well-known to the regulated community.

7 MS. DEXTER: Can a legitimately  
8 unpermitted CAFO later come to need a permit?

9 MR. YURDIN: Yes.

10 MS. DEXTER: When do discharges  
11 from an unpermitted CAFO cross into the threshold of  
12 needing a permit?

13 MR. YURDIN: There's probably not  
14 one clear-cut answer here, so it would involve the  
15 establishment on our part that there is an ongoing  
16 discharge;

17 That the correction of that  
18 discharge would, in all likelihood, based upon our  
19 investigation and our judgment, our inspection, that  
20 that would take a considerable amount of time to  
21 clear up, to change, to cease;

22 That based on the design, the  
23 construction, the operation and the maintenance of  
24 that facility that that discharge is likely to

1 continue for some time into the foreseeable future,  
2 and therefore, that a permit, again, as one step in  
3 that whole process, the permit would be required.

4 MS. DEXTER: Okay. So basically,  
5 how this permitting scheme that's being proposed  
6 works is that IEPA learns of discharges after the  
7 fact and then may or may not require a permit,  
8 depending on whether or not the facility is willing  
9 to take additional steps.

10 MR. YURDIN: I don't think it's  
11 entirely up to the facility to make that  
12 determination. I think we make that determination.

13 MS. DEXTER: Right.

14 MR. YURDIN: But to a certain  
15 extent, we rely on information gathered from the  
16 facility itself to make the decision as to whether  
17 or not a permit is necessary in that case, but it's  
18 case by case.

19 MS. DEXTER: Thank you. I don't  
20 have anything further.

21 MS. OLSON: Can I ask a follow-up  
22 question here?

23 HEARING OFFICER FOX: Please go  
24 ahead, Ms. Olson.

1 MS. OLSON: Mr. Yurdin, is it our  
2 proposal that a facility that has a discharge must  
3 show that it's been corrected before the Agency will  
4 say it doesn't need a permit?

5 MR. YURDIN: Absolutely, yes.

6 HEARING OFFICER FOX: Anything  
7 further, Ms. Olson?

8 MS. OLSON: That's all.

9 HEARING OFFICER FOX: Thank you.

10 MS. DEXTER: I'm done, and my  
11 co-counsel here will continue with questions for  
12 Mr. Heacock.

13 HEARING OFFICER FOX: You're  
14 referring to Ms. Knowles, is that correct?

15 MS. DEXTER: Yes.

16 QUESTIONING OF IEPA PANEL

17 BY MS. KNOWLES:

18 Okay. My questions are  
19 organized around topic area, and the first topic I  
20 would like to address questions to Mr. Heacock.  
21 First topic is regarding setbacks.

22 Within the setbacks, there are  
23 various kinds of setbacks in the rule pertaining to  
24 different areas, and one of those is the production

1 area.

2 So my first question, Dan, is  
3 could you describe for us and the Board what kinds  
4 of activities actually occur in the production area?

5 MR. HEACOCK: The production area  
6 includes the areas where the animals are held. It  
7 includes the livestock waste storage facilities. It  
8 may include other areas where they handle raw  
9 materials like feed, and those are the primary  
10 areas.

11 MS. KNOWLES: Did you mention the  
12 handling of mortalities? Is that in the production  
13 area as well?

14 MR. HEACOCK: Yes.

15 MS. KNOWLES: Thank you.

16 Could you also describe some  
17 of the specific problems that might occur in a  
18 production area that could pose a risk of discharge  
19 to surface waters?

20 MR. HEACOCK: Inadequate storage  
21 either by operation or maintenance not being  
22 adequate may result in a condition where there could  
23 be a discharge or an overflow. There may be other  
24 situations where an accident might occur or

1 something would fail.

2 Those would be the kinds of  
3 things that might cause issues of water quality.

4 MS. KNOWLES: Just to clarify, you  
5 said something might fail. Would that include, for  
6 instance, damaged pipes or maybe runoff from areas  
7 that best management practices aren't being  
8 practiced?

9 MR. HEACOCK: Yes, it could include  
10 those things.

11 MS. KNOWLES: And is a lagoon an  
12 example of a waste management facility that would be  
13 in the production area?

14 MR. HEACOCK: Yes.

15 MS. KNOWLES: So a lagoon overflow,  
16 is that a potential problem as well?

17 MR. HEACOCK: Yes.

18 MS. KNOWLES: And are you able to  
19 provide an estimate of how much waste a livestock  
20 lagoon can hold by volume, a ballpark or a maximum?

21 MR. HEACOCK: I don't know if I can  
22 provide a ballpark or a maximum. It's going to  
23 depend on the constructed size of the facility and  
24 what that facility needs for storage.

1 MS. KNOWLES: Well, it's my  
2 understanding that a livestock lagoon can actually  
3 hold millions of gallons of waste.

4 Is that accurate?

5 MR. HEACOCK: Yes.

6 MS. KNOWLES: Thank you.

7 And is it true that there is  
8 no buffer or setback requirement such that any of  
9 the activities that you described that occur in a  
10 production area or structures, that those activities  
11 and those structures can actually occur or be  
12 located adjacent to surface waters?

13 MR. HEACOCK: Under these rules, I  
14 don't believe there's anything with regard to  
15 surface water specifically. There is, however, a  
16 prohibition with regard to floodplains.

17 MS. KNOWLES: Thank you.

18 So the question I ask is, for  
19 instance, could a lagoon holding up to two million  
20 gallons of waste be located adjacent to the surface  
21 water? And, just for clarity, how close could it  
22 be?

23 MR. HEACOCK: Well, it could be  
24 next to or just outside the ten-year floodplain.

1 MS. KNOWLES: And could you  
2 describe what that means, the ten-year floodplain?

3 MR. HEACOCK: That is an area where  
4 it would flood on a frequency of once in ten years  
5 on average calculated through State Water Survey or  
6 U.S.G.S.

7 MS. KNOWLES: And are there rivers  
8 and streams in Illinois where the bank of the river  
9 would not actually be in that area so that you could  
10 actually have a lagoon very close to the edge of a  
11 river or stream?

12 MR. HEACOCK: It's conceivable that  
13 there could be a high bank, yes.

14 MS. KNOWLES: The next set of  
15 questions pertain to setbacks from potable wells.  
16 Specifically, these questions relate to the distance  
17 between the production area and the potable well.

18 According to the Environmental  
19 Protection Act, livestock handling facilities cannot  
20 be located within 200 feet of a potable water supply  
21 well.

22 Am I correct in that?

23 MR. HEACOCK: No, not exactly.

24 MS. KNOWLES: Can you tell me how

1 I'm not correct?

2 MR. HEACOCK: The prohibitions or  
3 the applicability of the Section 14.2 of the  
4 Illinois Environmental Protection Act has to do a  
5 with livestock waste handling facilities.

6 MR. KNOWLES: So if I rephrase that  
7 and say that the Environmental Protection Act has a  
8 setback of 200 feet between livestock waste handling  
9 facilities and potable water suppliers, is that  
10 correct?

11 I'm not trying to give you a  
12 hard time. I really don't --

13 MR. HEACOCK: Yes, there is a  
14 setback of 200 feet for potable wells.

15 MS. KNOWLES: Okay. And this  
16 refers specifically to your answer to our question  
17 number 3 where you state that potable wells have  
18 been contaminated by livestock production areas  
19 located more than 200 feet from a potable well.

20 Given this, how is 200 feet a  
21 sufficient setback?

22 MS. WILLIAMS: This might be --  
23 this answer was redirected to Bruce initially, this  
24 particular question, so if Bruce wants to follow up,

1       he can.

2                   MR. YURDIN:  We could think of only  
3       one instance in which that occurred, and that  
4       instance involved a discharge from a livestock  
5       facility into a surface water that we believe then  
6       contaminated shallow groundwater and lead to the  
7       contamination of a residential well.

8                   That's the only instance we  
9       know of where that has occurred in Illinois over the  
10      last, over anyone's memory.

11                   We consulted our field staff,  
12      and that's the only one we could come up with.

13                   MS. KNOWLES:  You also stated in  
14      your answers that none of the permitted facilities  
15      are actually required to monitor groundwater around  
16      the production area.

17                   What is your basis for  
18      claiming that?  In your original answer, you said  
19      instances are few, and now you're saying you only  
20      know of one.

21                   So if there's no monitoring  
22      going around the production area, you don't really  
23      know, do you?

24                   MR. YURDIN:  We don't have any --

1 we have not established through permit or any other  
2 means that wells need to be installed to monitor  
3 discharges into groundwater.

4 Keeping in mind, of course,  
5 that we're talking about NPDES permits and  
6 groundwater is a whole separate category of waters,  
7 that may explain why that's the case. That and the  
8 fact that the LMFA has a provision in it that calls  
9 for wells to be installed under certain  
10 circumstances.

11 MS. KNOWLES: So, I mean, but you  
12 have adopted a setback from potable wells in your  
13 regs, so it's obviously a concern of the Agency,  
14 protection of those wells, right?

15 MR. YURDIN: Correct.

16 MS. KNOWLES: Do you have a  
17 scientific basis for the 200-foot setback?

18 MS. WILLIAMS: Wait. Hang on. I  
19 just want to make sure we're clear.

20 Which setback are you  
21 referring to?

22 MS. KNOWLES: I'm sorry. We're  
23 still in the setback of the production area from a  
24 potable water supply well.

1 MS. OLSON: Are you talking about a  
2 specific section of the proposed regulations of the  
3 proposal?

4 MS. KNOWLES: Yeah. I don't know  
5 which one though. Give us a second to look, please.

6 (Pause)

7 MS. KNOWLES: You're right. It's  
8 not a section of the act. It was in our questions,  
9 and you responded, and this was just a follow-up to  
10 clarify.

11 MS. OLSON: Can I pose one  
12 question?

13 MS. KNOWLES: Sure.

14 MS. OLSON: Mr. Heacock, what is  
15 the basis for our response to these questions that  
16 there's a setback of 200 feet from the production  
17 area?

18 MR. HEACOCK: The primary basis was  
19 the Illinois Environmental Protection Act.

20 MS. OLSON: Thank you.

21 MS. KNOWLES: All right. So if I  
22 understand, the basis for the setback is in the  
23 Environmental Protection Act which the Agency is  
24 bound by.

1                   So do you know the scientific  
2       basis for the setback in that section?

3                   MR. SOFAT: I think the Agency has  
4       no authority questioning what that Act says. The  
5       purpose here was to make our rule consistent with  
6       the Groundwater Protection Act, and that is the step  
7       we are taking.

8                   We are not claiming whether or  
9       not it is protected -- well, we are not claiming  
10      that it's not protected, and we have only one  
11      example as Bruce described which gives us no reason  
12      to question what the Act says.

13                  MS. KNOWLES: Thank you.

14                  The next set of questions are  
15      about setbacks from temporary manure stacks and  
16      wells.

17                  Section 501.404(b) places  
18      certain restrictions on the location and maintenance  
19      of temporary -- I quote -- temporary manure stacks.

20                  Could you explain or define  
21      for us what temporary is in that context in that  
22      section?

23                  MR. HEACOCK: Well, that's actually  
24      in the regulations. It's livestock waste stored in

1 an area for less than six months.

2 MS. KNOWLES: Less than six months.

3 And I believe I'm correct in  
4 that there is a 200-foot setback for the temporary  
5 manure stack to the potable water supply wells. Is  
6 that right?

7 MR. HEACOCK: There can be. There  
8 are exceptions to that.

9 MS. KNOWLES: And what is your  
10 basis for the 200-foot setback? Given the  
11 understanding that there are exceptions, what is the  
12 basis for the 200 feet?

13 MR. HEACOCK: In potable wells,  
14 it's primarily, well, it is the Illinois  
15 Environmental Protection Act.

16 MS. KNOWLES: Thank you.

17 And I understand there is also  
18 a 75-foot setback for manure stacks, temporary  
19 manure stacks from other wells non-potable, is that  
20 correct?

21 MR. HEACOCK: Yes.

22 MS. KNOWLES: And do you have a  
23 scientific basis for the 75-foot setback?

24 MR. HEACOCK: I don't think we

1 necessarily have a specific scientific basis. The  
2 75 feet setback was based on existing Department of  
3 Public Health rules and in certain cases established  
4 a 75-foot setback for certain wells and certain  
5 facilities including manure piles.

6 So to be consistent with that  
7 and the provisions that allow that under the  
8 Environmental Protection Act, that's why we used the  
9 75 feet.

10 MS. KNOWLES: And finally on  
11 setbacks, there are certain setbacks that apply to  
12 livestock waste land application and the distance  
13 from that to, again, potable water supply wells.

14 In your answer to question 7,  
15 you state that the basis for the 200-foot setback  
16 from potable water wells is actually in RCS Standard  
17 633. Is that correct?

18 MR. HEACOCK: Yes.

19 MS. KNOWLES: Do you have evidence  
20 that this 200-foot setback for land application is  
21 protective of potable water supplies?

22 MR. HEACOCK: I don't have any  
23 specific evidence on that.

24 MS. KNOWLES: Did the Agency

1       consider requiring livestock handling facilities to  
2       monitor groundwater if the facility is located or  
3       land applying within a certain distance of potable  
4       water supply wells?

5                   MR. YURDIN:  No, we did not.  We're  
6       relying on the setback distance to provide that  
7       function.

8                   MS. KNOWLES:  Thank you.

9                   I'm moving on to a new issue  
10       which is the technical standards for land  
11       application.  This is Subpart (f) of the proposed  
12       rule which is Section 502.600, et seq. regarding  
13       soil sampling.

14                   In your answer to question 11,  
15       you state that the Illinois Agronomy Handbook  
16       requires the soil sampling depth of seven inches  
17       when sampling for phosphorus.

18                   It is our understanding that  
19       seven inches is the appropriate depth when sampling  
20       for agronomic purposes and that the Agronomy  
21       Handbook in Chapter 8, page 110, actually represents  
22       sampling for phosphorus at a depth of one to  
23       two inches for water quality purposes, and it is  
24       because it is at this depth of one to two inches

1       that it will influence the phosphorus runoff from  
2       that soil.

3                       We understand that this  
4       sampling depth is recommended because phosphorus  
5       builds up in the upper layer of the soil when  
6       surface land application is practiced and in areas  
7       where there's no till.

8                       So given that one of the  
9       concerns addressed in subpart (f) is the prevention  
10      of nutrient discharges to surface waters, why  
11      doesn't IEPA require sampling closer to the surface  
12      in accordance with the Illinois Agronomy Handbook?

13                      And I'd move to, if I can find  
14      it, admit Chapter 8 of the Illinois Agronomy  
15      Handbook into evidence.

16                      We only have one copy.

17                      MS. OLSON:  It's Attachment R.

18                      HEARING OFFICER FOX:  Thank you,  
19      Ms. Olson.

20                      I'm going to interrupt you  
21      only to make this clarification.

22                      The original proposal by the  
23      Agency filed on March 1st includes the entire  
24      Illinois Agronomy Handbook, so if that is

1       satisfactory, in the interest of avoiding  
2       duplication, we can certainly rely upon that in  
3       reviewing your question and the response to it.

4                       Did I anticipate what you  
5       might say, Ms. Olson?

6                       MS. OLSON:   Yes.

7                       HEARING OFFICER FOX:   I thought so.

8                       However, if you have page  
9       numbers, section numbers, or other references within  
10      that handbook, which is fairly lengthy, that would  
11      be helpful, Ms. Olson.

12                      MS. KNOWLES:   To just state them?

13                      HEARING OFFICER FOX:   Yes.   That  
14      would be great.   Thank you.

15                      In phrasing your question with  
16      regard to that handbook, if you have page numbers or  
17      section numbers, that would be helpful for us in  
18      reviewing the transcript.

19                      MS. KNOWLES:   Okay.   I don't know  
20      if I should sort of summarize what my question was  
21      since it was kind of lengthy.

22                      Do you want me to do that,  
23      Dan?

24                      MR. HEACOCK:   Yeah, that would be

1       okay.

2                   MS. KNOWLES:   Okay.   So you  
3       responded to our question about soil sampling, and  
4       you said according to the Illinois Agronomy Handbook  
5       for phosphorus sampling, it should be conducted at  
6       seven inches, and according to the Agronomy  
7       Handbook, they recommend seven inches when your goal  
8       is sampling for agronomic purposes, but the Agronomy  
9       Handbook also addresses what levels you should  
10      sample at if your concerns are water quality,  
11      specifically phosphorus runoff, and that  
12      recommendation is actually one to two inches, and  
13      that recommendation is on page 110 of Chapter 8.

14                   So my question is, you know,  
15      given that this is in subpart (f) and one of the  
16      goals of subpart (f) is to prevent nutrient  
17      discharges like phosphorus from discharges of  
18      surface water, why doesn't the EPA require sampling  
19      closer to the surface in accordance with this  
20      recommendation in the Agronomy Handbook?

21                   MR. HEACOCK:   In developing this  
22      criteria, we're basing it on the soil test  
23      phosphorus level that's determined for agronomic  
24      purposes which is used as the seven-inch sampling

1 depth to determine that. It's a typical test used  
2 by producers or crop growers to determine soil  
3 phosphorus levels.

4 So we considered the fact that  
5 it is a seven-inch depth in determining the  
6 appropriate levels needed for the criteria that we  
7 developed. That's the basis of what we did.

8 So we determined the criteria  
9 based on the sample depth, not another sample depth  
10 as suggested in the Agronomy Handbook.

11 MS. KNOWLES: Right, but there are  
12 multiple purposes for sampling, and the Agronomy  
13 Handbook addresses both of those, one of those being  
14 to determine agronomic rates. Another is to  
15 determine what phosphorus runoff may occur, is that  
16 correct?

17 MR. HEACOCK: Could you repeat  
18 that, please?

19 MS. KNOWLES: You're claiming that  
20 the seven-inch sampling depth is recommended by the  
21 Agronomy Handbook for agronomic purposes, and my  
22 question is, are there not multiple purposes for  
23 sampling and the Agronomy Handbook addresses both of  
24 those. One of those is to determine agronomic

1 rates. Another is to determine potential phosphorus  
2 runoff.

3 MR. HEACOCK: In looking at the  
4 resources and literature that we looked at, many of  
5 the studies were conducted based on typical sampling  
6 depths for phosphorus for the purposes of  
7 determining agronomic rates.

8 And so when we're using the  
9 soil test phosphorus level approach, which is what  
10 we chose here, we use that rather than some  
11 alternative depth that is not as well studied or  
12 established, and it's certainly the case that there  
13 have been alternative depths proposed.

14 MS. KNOWLES: One last question on  
15 this and I'll leave it.

16 Did you actually -- are you  
17 familiar with the page and the paragraph I'm  
18 referring to in the Agronomy Handbook, 110, upper  
19 left-hand corner.

20 MR. HEACOCK: Yeah, I'm aware of  
21 it.

22 MS. KNOWLES: Did the Agency  
23 consider that?

24 MR. HEACOCK: Yes, we did.

1 HEARING OFFICER FOX: Ms. Knowles,  
2 I'm going to interrupt. We have been under way for  
3 approximately 90 minutes and, although she has not  
4 asked, I suspect our court reporter would appreciate  
5 a break. It is very nearly exactly 2 o'clock. Why  
6 don't we take a break of 15 minutes and resume at  
7 2:15 with the questions that you apparently have to  
8 ask yet.

9 Thank you.

10 (Recess taken.)

11 HEARING OFFICER FOX: We have  
12 reached 2:15, and it looks like virtually everyone  
13 has returned. If we could resume, I think our court  
14 reporter is ready for that.

15 The time of 2:15 having come,  
16 we are prepared to resume after taking a break.

17 As a matter of housekeeping, I  
18 did again check to see if any additional people had  
19 signed in who had not prefiled testimony but wished  
20 to do so today. That remains blank, and on the  
21 sign-in sheet to offer a comment, there is no  
22 additional name beyond the five persons who offered  
23 their comment earlier today, so we do not need to  
24 address that at all.

1                   If there's no other issue or  
2       matter to take up, Ms. Knowles, we were dealing with  
3       the questions, follow-up questions you had raised,  
4       and we can resume with those right away.

5                   MS. KNOWLES: Thank you.

6                   Again, these questions are  
7       related to the technical standards for land  
8       application that are contained in subpart (f) of the  
9       proposed rule. I have some questions about there's  
10      a threshold in the rule for when you can use, up to  
11      which you can use N-based application of livestock  
12      waste.

13                  In order to use nitrogen-based  
14      application, a facility must show, among other  
15      things, that the available soil P is less than or  
16      equal to 300 pounds per acre.

17                  What evidence does the Agency  
18      have that a 300-pound threshold for available soil P  
19      is protective of surface water quality?

20                  MR. HEACOCK: I think in the  
21      technical support document, we explained our basis  
22      for that determination.

23                  In looking at some literature  
24      regarding phosphorus and phosphorus runoff or

1       phosphorus N runoff from sites, we made a  
2       determination or confirmed basically that in certain  
3       instances under certain conditions that that could  
4       be protective.

5                       If it's less than 300 pounds  
6       per acre available Bray P1 or Mehlich 3, in those  
7       cases where it meets the criteria that we have in  
8       615, we believe it can meet a targeted phosphorus  
9       content in the runoff of approximately actually .9  
10      grams per liter, but that's what we -- or not grams,  
11      I'm sorry, milligrams per liter.

12                      So based on the literature, we  
13      determined that could be a criteria used for that.

14                      MS. KNOWLES: And you're claiming  
15      that a phosphorus concentration of .9 milligrams per  
16      liter in runoff is protective of water quality and  
17      that there's literature that supports that.

18                      What is that literature?

19                      MR. HEACOCK: We cited just a  
20      couple of papers, but one specific to this point I  
21      think was a paper done by paper by Sharpley that  
22      talked about that as a target of one milligram per  
23      liter being a target for discharge for instance from  
24      sewage treatment plants as an option to be

1 protective of water quality.

2 So in an equivalent manner, we  
3 were thinking of using that approach or that idea to  
4 say the basis for the 300 pounds per acre could be  
5 that same target for these fields.

6 MS. KNOWLES: And how does that  
7 study propose that one milligram per liter of  
8 phosphorus is protective of water quality? What is  
9 the water quality that's being protected by that  
10 concentration in Illinois?

11 It might help if I rephrase  
12 that.

13 MR. HEACOCK: That's fine.

14 MS. KNOWLES: As you know, we don't  
15 have a phosphorus water quality standard in Illinois  
16 at the moment but we do have some other standards  
17 that we apply when phosphorus solution is a  
18 potential problem. One of those is our narrative  
19 standard which you may be familiar with. The  
20 narrative standard prohibits the unnatural algal  
21 blooms in waters of Illinois, and we have a  
22 dissolved oxygen standard which says dissolved  
23 oxygen in water should not fall below a certain  
24 number.

1                               So can you tell me what  
2       literature supports your claim that 1.9 milligrams  
3       per liter or one milligram per liter of phosphorus  
4       is actually protective of the standards that we have  
5       in Illinois.

6                               MR. HEACOCK: I don't know that  
7       I've cited literature or found literature specific  
8       to Illinois' water quality standards. This was in  
9       reference to some USEPA suggested standards for  
10      discharges from sewage treatment plants and what the  
11      content of those discharges would be. I don't know  
12      that I have any other information right now on that.

13                              MS. KNOWLES: And, I'm sorry, are  
14      those studies part of the record now?

15                              MR. HEACOCK: The paper that cites  
16      that USEPA suggested number is I think part of the  
17      record.

18                              MS. KNOWLES: If I could just have  
19      a moment.

20                              (Pause)

21                              MS. KNOWLES: Thank you.

22                              MR. HEACOCK: The paper that I was  
23      talking about, and I think we cited this in the TSD,  
24      was the Phosphorus Movement in the Landscape. It's

1 Attachment GG I guess on the list of documents, and  
2 it's from the Journal of Production Agriculture, and  
3 it's written by Sharpley, Daniel, and Edwards, 1993.

4 MS. KNOWLES: What was the year?

5 MR. HEACOCK: 1993.

6 MS. KNOWLES: Okay. My final  
7 question about nitrogen-based application.

8 If a facility is using  
9 nitrogen-based application of livestock waste and  
10 the available soil phosphorus on that land is more  
11 than 50 pounds, why is there no requirement that  
12 phosphorus application be neutral as there is in the  
13 phosphorus-based application section which is  
14 502.615(d)(3).

15 If that's not clear, I can  
16 rephrase.

17 If I may, there are two kinds  
18 of land application. One is nitrogen-based and the  
19 second is phosphorus-based, and if you want to use  
20 nitrogen-based application, you can do so up to a  
21 certain point, and that is determined by the amount  
22 of phosphorus in the soil, and so the threshold in  
23 the proposed rule is 300 pounds.

24 Under the phosphorus-based

1 application, the rule now states that if you measure  
2 soil P and you've got more than 50 pounds, then you  
3 have to apply the waste at a neutral rate, but we  
4 notice that under the nitrogen-based application  
5 section, there is no requirement. Phosphorus can be  
6 up to 300 pounds, and there's still no requirement  
7 to apply it at a neutral rate.

8 So the question is why the  
9 discrepancy there?

10 MR. HEACOCK: There are several  
11 factors under nitrogen-based application that will  
12 be more restrictive to the amount of phosphorus  
13 runoff, and those factors include that the soil  
14 erosion calculated under what's called Russell 2 has  
15 to be less than the diversion factor T.

16 There's larger setbacks  
17 required under that nitrogen-based application.  
18 There's also either ejection appropriation required  
19 if there's certain conditions with the location of  
20 surface waters near the site and/or implementing  
21 some alternative and equivalent practices to control  
22 and reduce runoff.

23 Those are things specific to  
24 nitrogen-based applications that are not specific to

1 the phosphorus-based application which has the  
2 neutral phosphorus requirement in it.

3 MS. KNOWLES: So you're saying that  
4 there are other limitations within that section that  
5 are different from the phosphorus-based, but again,  
6 why is there not also the requirement that it be  
7 applied at a neutral rate?

8 MR. HEACOCK: Well, in that case,  
9 with those additional controls, we don't think that  
10 it's necessary to impose that additional requirement  
11 of the neutral phosphorus application rate; that  
12 with these controls, that's sufficient.

13 MS. KNOWLES: Okay. My next area  
14 of questioning has to do with unpermitted CAFOs,  
15 specifically the nutrient management plan and  
16 subpart (f) of the regulations.

17 Earlier we had some questions  
18 and answers about the number of -- let me just ask  
19 the question, and you can say if it's already been  
20 asked because I don't think it has.

21 How many -- can you please  
22 estimate the number of large CAFOs in Illinois  
23 today?

24 MS. WILLIAMS: Yes. I think it has

1       been asked and answered, but if you want Bruce to  
2       answer it, he can.

3                   MS. KNOWLES: I'd love Bruce to  
4       answer.

5                   MR. YURDIN: I don't have any new  
6       information.

7                   MS. KNOWLES: What is it? Do you  
8       still say you don't know or...

9                   MR. YURDIN: Well, I think you  
10      folks submitted some information. It's not my  
11      information. It's your information. So I haven't  
12      had a chance to really go through this at this  
13      point. I have no new information.

14                  MS. KNOWLES: The specific question  
15      I'm asking now though is about a smaller universe  
16      which is large CAFOs, and we submitted an exhibit  
17      wherein the Agency itself estimated that there were  
18      500 CAFOs, and I believe that was in the year 2011.

19                   I'm not asking for an exact  
20      number. Does that sound like a good ballpark, 500  
21      large CAFOs in Illinois?

22                  MR. YURDIN: No, it does not sound  
23      like a good number to me.

24                  MS. KNOWLES: Okay. And you have

1 no ballpark number to throw out?

2 MR. YURDIN: No.

3 MS. KNOWLES: Any idea why the  
4 Agency would say there are 500?

5 MR. YURDIN: That was based on  
6 information that we had going back eight or nine  
7 years ago preceding or about the same time as the  
8 2003 Federal Livestock Rule, and it preceded two  
9 federal court cases and the subsequent 2008 federal  
10 rule. The world has changed a lot since then.

11 MS. KNOWLES: That's what I'm  
12 trying to -- I'm not asking you how many facilities  
13 might be subject to the regulations or might require  
14 a permit. I'm just asking you based on size alone,  
15 number of units.

16 No idea?

17 MR. YURDIN: We have information --  
18 we talked about our inventory. There's information  
19 there that we could maybe base an estimate on, but I  
20 haven't made such an estimate.

21 MS. KNOWLES: Is that something  
22 that the Agency could do in this rulemaking that you  
23 could provide?

24 MR. YURDIN: Yes.

1 MS. KNOWLES: Thank you.

2 Would you agree that  
3 unpermitted -- let me get this right -- unpermitted  
4 livestock facilities and livestock waste handling  
5 facilities compromise the vast majority of such  
6 facilities in Illinois, for most of these facilities  
7 unpermitted?

8 MR. YURDIN: Yes.

9 MS. KNOWLES: Would you agree that  
10 the vast majority of -- that doesn't make sense.  
11 I'll pass on that.

12 Okay. In your answer to our  
13 question No. 10...this is for Mr. Heacock now...you  
14 stated that IEPA can verify that waste is being  
15 applied at agronomic rates and consistent with  
16 setback requirements by reviewing the annual reports  
17 that are required by 502.325(9), and also you could  
18 verify that they're applying at the agronomic rate  
19 by referring to the reporting requirements in  
20 502.320(w), is that correct?

21 MR. YURDIN: Actually, there's a  
22 typo in that first reference. It should be  
23 Section 502.325(b)(9) through (13).

24 MS. KNOWLES: So to back up a

1       little bit, we posed a question that said how do you  
2       know that there's a requirement that livestock waste  
3       be applied at an agronomic rate. How does the  
4       Agency know that's actually happening?

5                       And your answer said, well,  
6       there are other reporting requirements contained in  
7       the two sections that I've cited.

8                       Isn't it true that these  
9       sections do not apply to large unpermitted CAFOs?

10                      MR. YURDIN: Correct.

11                      MS. KNOWLES: So how will the  
12       Agency ensure that large unpermitted CAFOs, which I  
13       think are the vast majority of large CAFOs in the  
14       state -- let me ask that question first, okay,  
15       before I make assumptions for you.

16                      Would you agree that the vast  
17       majority of large CAFOs in the state are unpermitted  
18       at this time?

19                      MR. YURDIN: Yes.

20                      MS. KNOWLES: Thank you.

21                      So how would the Agency ensure  
22       that large unpermitted CAFOs are applying waste at  
23       agronomic rates as they are required to do by  
24       502.510(10)?

1 MR. HEACOCK: Unpermitted CAFOs,  
2 we're probably not going to be able to assure them  
3 individually unless we do an inspection site and  
4 look at the records. That's required under  
5 510(b)(15).

6 MS. KNOWLES: Thank you.

7 Now this question is a bit of  
8 a doozy. It's a long one, and I will try to be  
9 really clear, and if anybody doesn't understand, I  
10 can rephrase or go back.

11 So we're looking at subpart  
12 (f) which contains the livestock waste discharge  
13 limits and technical standards, and your answer to  
14 our question No. 16. You state that only sections  
15 502.630 and 502.645(a) and the setbacks in subpart  
16 (f), only those sections apply to unpermitted CAFOs.

17 You also stated that  
18 502.510(b) applies to unpermitted CAFOs.

19 So we have 502.630,  
20 502.645(a), and additional setbacks in subpart (f)  
21 plus 502.510(b) that apply to unpermitted CAFOs.

22 Now, 502.615 which is also  
23 part of subpart (f) requires a field assessment be  
24 conducted by permitted CAFOs for each field in order

1 to determine the N, nitrogen, and phosphorus  
2 transfer potential.

3 This field assessment  
4 identifies, among other things, slope, on field  
5 conservation practices, soil erodability, soil test  
6 phosphorus, tile inlet locations, distance to  
7 surface waters, proximity to wells, and the location  
8 of conduits to surface water.

9 Am I correct in concluding  
10 that the field assessment I just described, that  
11 requirement does not apply to unpermitted large  
12 CAFOs?

13 MR. HEACOCK: Yes.

14 MS. KNOWLES: Now, back to Section  
15 502.510(b), that section does apply to large  
16 unpermitted CAFOs, and it places a number of  
17 requirements on them that include but are not  
18 limited to: 1) the need to land apply livestock  
19 waste at agronomic rates; 2) the need to possess  
20 adequate land area for waste application; 3)  
21 appropriate site specific conservation practices;  
22 and 4) various setback requirements.

23 So now my question is, how is  
24 it possible for the unpermitted CAFO to comply with

1 the requirements in 502.510(b) that I've just listed  
2 if no field assessment is required?

3 Specifically, how can one  
4 determine the agronomic rate of application without  
5 the information that's required by the field  
6 assessment?

7 MR. HEACOCK: The unpermitted large  
8 CAFO can follow this assessment procedure under 615  
9 if they so choose. However, we didn't propose to  
10 require them to meet the specific requirements in  
11 615 to make the determinations.

12 But in order to make whatever  
13 determinations they make to fulfill 510(b), they may  
14 wish to follow that or they may wish to use some  
15 alternative approach to fulfill the 510(b).

16 MS. KNOWLES: Right. And my  
17 question is how is it possible for them to do that  
18 without doing what I've described? How do they do  
19 it?

20 In other words, can you  
21 actually determine agronomic rate if you don't know  
22 what your soil erodability is, what your soil test P  
23 is on field conservation practices, slope?

24 MR. HEACOCK: It may be true that

1       some of those factors are going to be needed to make  
2       the determination, but, again, it may be that  
3       alternative ways of making a determination might be  
4       available, and so we didn't specify that in 510(b).

5                   MS. KNOWLES:   But do you know what  
6       those alternatives are?

7                   MR. HEACOCK:   I don't have anything  
8       in mind on that.

9                   MS. KNOWLES:   Thank you.

10                               Again, a further question to  
11       clarify this issue. I asked about how do you  
12       determine agronomic rates if you don't have a field  
13       assessment. Again, another requirement is that the  
14       unpermitted CAFO has to show that there's adequate  
15       land area for waste application.

16                               And again, how does the  
17       unpermitted CAFO do that if it doesn't do a field  
18       assessment?

19                   MR. HEACOCK:   Well, they may not do  
20       this assessment, but maybe they do an alternative  
21       assessment, and their criteria is slightly different  
22       as to what they look at to make that determination,  
23       so we haven't specified this specific approach, but  
24       there may be other things that could be done to make

1 the assessment.

2 MS. KNOWLES: And you're not able  
3 to state what those are, correct?

4 MR. HEACOCK: That's right.

5 MS. KNOWLES: And is there any  
6 alternative guidance regarding that the Agency has  
7 provided or reviewed?

8 MR. HEACOCK: I don't know of any  
9 right now.

10 MR. RAO: May I ask a follow-up  
11 question?

12 MS. KNOWLES: Of course.

13 MR. RAO: We had a question on the  
14 same area, question No. 40 under 502.600, and in  
15 response to our question, you stated, if an  
16 unpermitted large CAFO seeking to claim the  
17 agricultural stormwater exemption choose to comply  
18 with the provisions of 502.615 through 502.645, then  
19 it will also have met the requirements of Section  
20 502.510(b)(10).

21 My question is what is the  
22 downside of specifying these requirements as a way  
23 to comply with 510(b)(10) for unpermitted large  
24 facilities?

1 MR. SOFAT: I think the Agency's  
2 proposal wanted to keep the flexibility that the  
3 federal rule has. We did not want to take away the  
4 technology or other developments that could happen  
5 in the future and therefore bind them to the  
6 requirements that we do have for the permitted rule.  
7 So it was more flexibility; give them room.

8 Again, 510(b) needs to be  
9 complied with. How you comply, all that is being  
10 left on unpermitted large CAFOs to decide. They  
11 know their site. They could be involved in groups,  
12 with the universities, that they're looking into  
13 technologies, and we do not want to, just like the  
14 federal rule talks about, we did not want to limit  
15 that flexibility so that they can effectively and  
16 efficiently comply with the ag stormwater exemption  
17 requirement and not be just tied to, oh, you must  
18 comply with (b)(10) or (b)(9), the requirements that  
19 we have today in the rule.

20 So it was the flexibility  
21 component that we wanted to keep and, thus, not  
22 subject them to each and every requirement that we  
23 have for the permitted CAFOs.

24 MR. RAO: Could you have provided

1       that flexibility by providing these requirements as  
2       a way to comply and also allow them to comply with  
3       alternative means?

4                   MR. SOFAT:   And I think Dan  
5       responded to that.  If they choose to follow 510(b),  
6       they can and therefore show compliance with the ag  
7       stormwater exemption requirement.

8                   However, imposing that  
9       requirement through (b)(10) or some other section  
10      that unpermitted large CAFOs must comply with each  
11      and every specific requirement I believe we are  
12      taking away the flexibility in that case.

13                  MR. RAO:   Thank you.

14                  MS. KNOWLES:   Thank you.

15                         Another question.

16                         Section 502.620 also of  
17      subpart (f) prohibits land application during  
18      certain precipitation events or the forecast  
19      thereof.

20                         For instance, 502.620(d)  
21      prohibits land application within 24 hours of a  
22      forecast of one-half inch of rain or more in a  
23      24-hour period.  Section 502.620 does not apply to  
24      unpermitted CAFOs.

1 Does this mean that an  
2 unpermitted CAFO could land apply livestock waste  
3 the day before a major storm event is forecast?

4 MS. WILLIAMS: Kim, I apologize. I  
5 split pages and now I've lost...

6 MS. KNOWLES: Shall I start over?

7 MS. WILLIAMS: Which one are we  
8 following up on? Is there a specific one that we're  
9 following up on? I missed it if you identified it.

10 MS. KNOWLES: I haven't framed my  
11 questions in that way.

12 MS. WILLIAMS: Oh, okay. Thank  
13 you.

14 MS. KNOWLES: Do you want me to  
15 repeat the question though?

16 MS. WILLIAMS: No. That's fine.  
17 If Dan heard it, it's fine.

18 MR. HEACOCK: I think I do need you  
19 to restate it or rephrase it.

20 MS. KNOWLES: Okay. So there's  
21 502.620 of subpart (f), and this prohibits land  
22 application during certain precipitation events, or  
23 the forecast thereof.

24 For instance, 502.620(d)

1 prohibits land application within 24 hours of a  
2 forecast of one-half inch rain or more in a 24-hour  
3 period, so if there's a forecast of a half inch of  
4 rain, you can't land apply. However, this section  
5 only applies to permitted CAFOs.

6 Does this mean an unpermitted  
7 CAFO could land apply livestock waste the day before  
8 a major storm event is forecast?

9 MR. HEACOCK: This rule, as you  
10 stated, doesn't apply to an unpermitted CAFO, so  
11 conceivably, they wouldn't be violating that rule.

12 If they did do that, however,  
13 obviously, there's a possibility of runoff, so that  
14 may not be a good practice for them to follow, and  
15 if that is the practice they're following, it could  
16 be that they're not really meeting 510(b)(2) -- I  
17 got the numbers wrong -- 510(b) of 502, and their  
18 practice is not sufficient.

19 MS. KNOWLES: Right. But the  
20 practice I described is specifically prohibited for  
21 permitted large CAFOs, is not prohibited for  
22 unpermitted, and we've established that a vast  
23 majority of the large CAFOs are unpermitted in  
24 Illinois, correct?

1 MR. HEACOCK: Right.

2 MS. KNOWLES: Again, similarly,  
3 Section 502.620 of subpart (f) also prohibits line  
4 application on slopes greater than 15 percent.

5 Can you explain what the  
6 purpose of this prohibition is?

7 MR. HEACOCK: It was to provide a  
8 best management practice for the permitted CAFOs to  
9 follow to avoid steeply sloping land that might most  
10 likely have runoff of livestock waste.

11 MS. KNOWLES: So livestock waste  
12 runoff is more likely on that greater slope,  
13 correct?

14 MR. HEACOCK: Yes.

15 MS. KNOWLES: Is it true that large  
16 unpermitted CAFOs can land apply on slopes greater  
17 than 15 percent?

18 MR. HEACOCK: Yes.

19 MS. KNOWLES: Thank you.

20 502.620 prohibits land  
21 application in sensitive geological areas such as  
22 bedrock outcrops and others that I don't describe  
23 here.

24 Can waste be applied to the

1 sensitive geological areas described in 502.620(h)  
2 through (k) by an unpermitted CAFO?

3 MR. HEACOCK: It's possible for  
4 some of those items. I think (i) is troubling for  
5 the unpermitted because there may be an issue of  
6 whether that would be agriculture utilization, and  
7 that won't meet the other provisions of 510(b).

8 MS. KNOWLES: So are you saying  
9 it's possible but less likely because those areas  
10 aren't used for crops?

11 MR. HEACOCK: Correct.

12 MS. KNOWLES: Thank you.

13 MR. HEACOCK: I guess to add, I  
14 mean, that CAFO has an opportunity to develop  
15 practices to deal with these particular issues on  
16 their own as an unpermitted large CAFO including  
17 adopting these.

18 MS. KNOWLES: Right, but that's  
19 strictly voluntary, correct?

20 MR. HEACOCK: Yes.

21 MS. OLSON: Can I ask a follow-up  
22 question?

23 HEARING OFFICER FOX: Go ahead,  
24 Ms. Olson.

1 MS. OLSON: The line of questioning  
2 that you have been answering has been targeting  
3 unpermitted large CAFOs and what's required of them,  
4 but the question that I want to focus on, just  
5 because something is not specifically prohibited in  
6 Section 502.620 for unpermitted large CAFOs does not  
7 mean that the Agency is advocating for unpermitted  
8 large CAFOs to do these things. Would you say  
9 that's correct?

10 MR. HEACOCK: Yes.

11 MS. OLSON: And would you also say  
12 that if an unpermitted large CAFO were to land apply  
13 manure in contravention with what is stated in 620,  
14 it is a possibility they may not be able to claim  
15 the agricultural stormwater exemption, is that  
16 correct?

17 MR. HEACOCK: Yes.

18 MS. OLSON: That's all I have.

19 HEARING OFFICER FOX: Thank you.

20 Ms. Olson.

21 Ms. Knowles, please feel free  
22 to go ahead.

23 MS. KNOWLES: Section 502.625 of  
24 subpart (f) addresses livestock waste application

1 rates and applies only to permitted CAFOs.

2 For example, subsection (b)  
3 requires an estimate of annual livestock waste  
4 volumes.

5 Subsection (c) requires a  
6 determination of the nutrient value of the livestock  
7 waste.

8 (e), a determination of  
9 realistic crop yield goals;

10 And (g), the phosphorus  
11 content of waste. I'm sorry. (g) has three  
12 requirements: the phosphorus content of waste, the  
13 phosphorus needed for each crop, and the phosphorus  
14 carryover from previous years.

15 How is it possible for the  
16 unpermitted CAFO to comply with the requirements of  
17 502.510, and that is that waste be applied at an  
18 agronomic rate, if the determinations in 502.625  
19 that I just listed are not also required?

20 To rephrase that more simply,  
21 how is the large unpermitted CAFO going to ensure  
22 that it applies at an agronomic rate if it doesn't  
23 have an estimate of its annual livestock waste, if  
24 it doesn't know the nutrient value of the waste?

1                   You know, I understand...I'll  
2       stop there.

3                   MR. HEACOCK: I don't think the  
4       presumption of 510(b) is that they wouldn't have to  
5       make some of these kinds of determinations.

6                   What these criteria do is  
7       provide a specific way to do that and that a  
8       permitted large CAFO could choose to use these but  
9       they may have alternative ways to determine some of  
10      these factors.

11                  MS. KNOWLES: Thank you.

12                  502.635 of subpart (f)  
13      contains manure and soil sampling protocols.  
14      According to your answer to our question No. 16,  
15      this section does not apply to unpermitted CAFOs.

16                  Why are you requiring these  
17      specific sampling methods for permitted?

18                  MR. HEACOCK: There's two parts to  
19      that I think.

20                  One is it's something that  
21      needs to be specified in the nutrient management  
22      plan for permitted CAFOs.

23                  I'm not sure I got your  
24      question. Could you ask that again?

1 MS. KNOWLES: Yeah.

2 In the proposed rule,  
3 Section 502.635, you require that manure and soil  
4 sampling be conducted according to specified  
5 protocols, and that applies only to the permitted  
6 CAFOs.

7 So my question is, why those  
8 protocols? Really, what's achieved by following the  
9 protocols that you've chosen?

10 MR. HEACOCK: The second part of my  
11 answer is that this relates to the criteria that we  
12 have in Part 615 for proper application rates,  
13 particularly with regard to phosphorus but also  
14 nitrogen in making those determinations.

15 So the rates that you come up  
16 with are dependent upon having the proper sampling,  
17 and following those criteria is also dependent on  
18 having proper sampling of the soils in the livestock  
19 waste to get meaningful results.

20 MS. KNOWLES: So the protocol as  
21 you've chosen to put in the rule will allow proper  
22 sampling?

23 MR. HEACOCK: Yes.

24 MS. KNOWLES: Section 502.510(b)(9)

1 requires unpermitted CAFOs to use protocols for the  
2 appropriate testing of livestock waste and soil.

3 What are appropriate protocols  
4 for such testing?

5 MR. HEACOCK: Well, it could be the  
6 ones that are in 635. Again, depending on what  
7 their practices are under their plan, or not their  
8 plan but their practices under (b)(10) or (b), I'm  
9 sorry, 510(b), they may have alternative ways that  
10 they may do the sampling and/or analysis to make  
11 their determinations that they're providing  
12 agricultural utilization of the nutrients and  
13 following whatever practices they have determined  
14 they are going to follow.

15 MS. KNOWLES: Why would the soil  
16 sampling requirements differ from permitted versus  
17 unpermitted CAFOs?

18 MR. HEACOCK: They may not, but  
19 again, there may be other ways to deal with  
20 phosphorus application rates for instance besides  
21 what we have laid out in 600 series of the rule

22 MS. KNOWLES: Are you able to  
23 identify for us alternative protocols for soil  
24 manure sampling?

1 MR. HEACOCK: Not offhand, no.

2 MS. KNOWLES: My next set of  
3 questions pertain to the livestock waste, land  
4 application equipment, and the inspection thereof.

5 Mr. Heacock, can you please  
6 describe some of the problems that occur with land  
7 application equipment, that might occur with land  
8 application equipment?

9 MS. WILLIAMS: Can you repeat the  
10 question? It might be a Bruce question.

11 MS. KNOWLES: Could you please  
12 describe some of the problems that might occur with  
13 land application, the equipment that's used to land  
14 apply livestock waste?

15 MR. YURDIN: I think the direction  
16 that we're giving to producers in Section 502.640  
17 concerns calibration of the equipment. So the  
18 understanding there is that we're trying to cross  
19 that threshold where there may not be calibration.  
20 The equipment, therefore, may overapply or the  
21 producer may overapply, not actually know it.

22 So by establishing this  
23 calibration requirement, we're trying to avoid that.

24 But if you're asking about

1       what types of mechanical malfunctions occur, that's  
2       a broad area.

3                   MS. KNOWLES:  If you could name  
4       maybe the top, the common problems.

5                   MR. YURDIN:  Pumps that fail,  
6       pipelines that come apart, break, rupture.  Those  
7       are probably the most common things we've seen.

8                   MS. KNOWLES:  It's my understanding  
9       that a typical way to land apply is to have a pump  
10      at the storage unit.  The pump sprays through what's  
11      really more like hoses, through a tractor or some  
12      kind of pivot irrigation system, is that correct?

13                  MR. YURDIN:  That's one means of  
14      doing it, yes.

15                  MS. KNOWLES:  And how long can  
16      those hoses be?

17                  MR. YURDIN:  Quite a long way.  How  
18      big is your pump?

19                  MS. KNOWLES:  I've heard they can  
20      be as long as two miles.  Is that --

21                  MR. YURDIN:  That's possible.

22                  MS. KNOWLES:  Thank you.

23                               As you've stated in your  
24      answers, unpermitted facilities use the same manure

1 application equipment as permitted; is that correct?

2 MR. YURDIN: Yes.

3 MS. KNOWLES: As such, isn't it  
4 likely that these same problems will arise with  
5 equipment used at unpermitted facilities?

6 MR. YURDIN: Yes.

7 MS. KNOWLES: Thank you.

8 502.640(b) requires permitted  
9 CAFOs, as you said, to properly calibrate land  
10 application equipment on a routine basis.

11 How can the Agency ensure that  
12 an unpermitted facility is applying at agronomic  
13 rates as it's required to do so by 502.510(b)(10) if  
14 the facility is not also required to calibrate its  
15 land application equipment in accordance with  
16 502.640?

17 MR. HEACOCK: Again, the  
18 unpermitted large CAFO could choose to follow these  
19 calibration procedures in the rule, but they also  
20 may have alternatives to the way they would do that  
21 for their land application practices.

22 MS. KNOWLES: Alternatives for  
23 inspecting their equipment and calibrating their  
24 equipment?

1 MR. HEACOCK: Our rule is not that  
2 specific as to how it's done, so, I mean, they may  
3 need to do that to assure the agricultural  
4 utilization, so there may be some practices in their  
5 keeping records of that as required in (b)(10).  
6 They would have those practices.

7 MS. KNOWLES: And finally, why are  
8 we creating a separate and more vague regulatory  
9 system for nonpermitted CAFOs, particularly when  
10 they are the great majority of livestock facilities  
11 in the state?

12 MR. SOFAT: Again, it goes back to  
13 keeping the flexibility. I think I'm hearing the  
14 line of questioning where the assumption is that  
15 somehow CAFO operators won't be doing the things  
16 that are necessary.

17 If they are land applying, I'm  
18 sure they are mindful of the pipe, how it's  
19 attached, and if there is an issue with calibration  
20 or other things, because at the end of the day, they  
21 still have to show us that the land application was  
22 consistent with the ag stormwater exemption.

23 So therefore, nothing in this  
24 rule is trying to imply that somehow they don't have

1 to follow those requirements. It's just that they  
2 are not specified for them because we are  
3 considering them to be someone who will look into  
4 their own site, own cases, and decide what is  
5 necessary to comply with the ag stormwater  
6 exemption.

7 MS. KNOWLES: This is my last area  
8 of questions.

9 These pertain to off-site  
10 transfer which means a CAFO operation can actually  
11 transfer livestock waste to land that is not owned  
12 by it.

13 So in your answer to question  
14 18, our question 18, you state that...I'm calling  
15 this third party land application. In your answer  
16 to question 18, you state that third party land  
17 application areas may be specified to be part of the  
18 CAFO owner's nutrient management plan in the permit  
19 application.

20 Under what circumstances would  
21 such third party land application area be part of  
22 the CAFOs' nutrient management plan?

23 MR. HEACOCK: If the applicant  
24 proposes to include that in the nutrient management

1 plan as part of the necessary land base for land  
2 application of the waste from that CAFO, then that  
3 would be part of their nutrient management plan.

4 MS. KNOWLES: So that sounds like  
5 it would be everybody because if you're land  
6 applying to third-party land, it means you need it,  
7 right? So shouldn't it be part of every nutrient  
8 management plan?

9 MR. HEACOCK: There is the  
10 opportunity for off-site recipients of the waste,  
11 which could be a third party, to come in and take  
12 the waste off-site, and they have to keep records of  
13 that, the CAFO does, under a part of these  
14 regulations as far as the amount and who it is and  
15 where it goes and the acreage that it goes to, but  
16 they're not actually part of the full nutrient  
17 management plan, that site. That is a possibility.

18 But at the same time, the rule  
19 does also require that facility to have adequate  
20 land available to them to land apply the waste they  
21 generate so they'll have that land available, but it  
22 may not include the off-site recipients that might  
23 take waste off-site.

24 MS. KNOWLES: Why would you land

1       apply to third-party land if you don't need it?

2                   MR. HEACOCK: I'm not sure I  
3       understand that question.

4                   MS. KNOWLES: I'm sorry. I  
5       understood your answer to mean that if you're  
6       applying to third-party land, it has to be part of  
7       the nutrient management plan if you need that land,  
8       right?

9                   You don't have enough of your  
10      own land and you need to go elsewhere. You have too  
11      much waste, so you apply it to third-party land,  
12      you'd have to show in your nutrient management plan  
13      that, you know, you don't have adequate land and you  
14      needed this other land.

15                  MR. HEACOCK: CAFO land applies  
16      that material to third-party land under their  
17      control of the CAFO. That has to be part of the  
18      nutrient management plan.

19                  MS. KNOWLES: What do you mean by  
20      under the control?

21                  MR. HEACOCK: If they're  
22      determining the rates and how it's going to be  
23      applied and they're applying it to that land, even  
24      though it's not their own land or it's not readily

1 released by them, they have to include it in the  
2 nutrient management plan. They have to get consent  
3 under these proposed rules to take it there, and it  
4 has to be part of the nutrient management plan in  
5 that case.

6 MS. KNOWLES: And to clarify, when  
7 you say it has to be part of the nutrient management  
8 plan, does that mean that the technical standards in  
9 the rule and the limitations on the rates of  
10 application and all that apply just as they would to  
11 the land owned by the CAFO owner?

12 MR. HEACOCK: Yes.

13 MS. KNOWLES: Thank you.

14 This practice I'm calling  
15 third party, we may not be talking about the same  
16 thing here.

17 What I'm referring to is land  
18 that is definitely not owned by the CAFO owner. The  
19 CAFO owner takes its waste itself and applies it to  
20 this land owned by another.

21 What I understand you to say  
22 is that in that case, it has to be in the nutrient  
23 management plan and treated the same as the land  
24 owned by the CAFO owner.

1 MR. HEACOCK: Yes.

2 MS. KNOWLES: And how common is  
3 that practice?

4 MR. HEACOCK: I don't know if I can  
5 give you a percentage but it does happen.

6 MS. KNOWLES: And the other  
7 situation you described I believe is that a third  
8 party comes to the CAFO, removes the waste, takes it  
9 somewhere else and land applies it.

10 Does that happen?

11 MR. HEACOCK: I believe that that  
12 can happen and probably does happen.

13 MS. KNOWLES: And under those  
14 circumstances, that is not included in the nutrient  
15 management plan.

16 MR. HEACOCK: If that land is not  
17 owned, rented, or leased by the CAFO and not under  
18 the control of that CAFO, then they may be able to  
19 do that and not be part of the nutrient management  
20 plan, yes.

21 MS. WILLIAMS: Can I --

22 MS. KNOWLES: And do you know if  
23 that practice is common?

24 MR. HEACOCK: I don't know how

1 common that is.

2 MS. WILLIAMS: Can I ask a  
3 follow-up?

4 HEARING OFFICER FOX: Please go  
5 ahead, Ms. Williams.

6 MS. WILLIAMS: Mr. Heacock, we're  
7 kind of dancing around this third-party term, right?  
8 So you've clarified that when the CAFO controls the  
9 land application, even if they don't own the land,  
10 that's not a third party.

11 Is there a situation where  
12 application is conducted by a third party but the  
13 CAFO must include that in its nutrient management  
14 plan? Can you explain?

15 MR. HEACOCK: Yes. If it is  
16 applied to land by the third party but it's on land  
17 owned, rented or leased by that CAFO, then they  
18 would have to include it in the plan.

19 HEARING OFFICER FOX: Ms. Williams,  
20 any further follow-up?

21 MS. WILLIAMS: Is it required that  
22 the CAFO own/rent/lease enough land to land apply  
23 all its waste?

24 MR. HEACOCK: No, it's not

1 required.

2 MS. WILLIAMS: So what happens if  
3 the CAFO doesn't own/rent/lease enough land to land  
4 apply its waste?

5 MR. HEACOCK: They would need to  
6 seek permission or consent to land apply waste on  
7 another site that they don't own, rent or lease, and  
8 that land would need to become part of the nutrient  
9 management plan so that they have enough land  
10 available to them under the plan to manage their  
11 facilities and the waste in those facilities.

12 MS. KNOWLES: We believe that the  
13 regulations are not sufficiently clear on this  
14 issue. Would the Agency consider additional edits  
15 to clarify this issue?

16 MR. HEACOCK: We can look at that  
17 issue.

18 MS. KNOWLES: Do you want  
19 suggestions?

20 MR. HEACOCK: Yes.

21 MS. KNOWLES: Thank you.

22 MS. MANNING: Could I do a  
23 follow-up question, Mr. Fox, on this line of  
24 questioning as well?

1 HEARING OFFICER FOX: Ms. Manning,  
2 please go ahead.

3 MS. MANNING: We've talked a lot  
4 about the requirements for permitted and unpermitted  
5 CAFOs and the regulations, and Mr. Heacock and  
6 Mr. Sofat have accurately I think explained that  
7 there's a certain amount of flexibility built into  
8 these rules.

9 Mr. Sofat, is it accurate to  
10 say that the Livestock Management Facilities Act as  
11 well has regulations related to the proper  
12 application of nutrients to the soil and there are  
13 other requirements?

14 For example, many of the  
15 producers, would you agree that a practice out there  
16 is that many of the producers work with NRCS and get  
17 USDA dollars in terms of developing nutrient  
18 management plans that may not have the identical  
19 specificity that is contained in these rules but  
20 nonetheless are sufficiently protective?

21 MS. WILLIAMS: I think that may be  
22 a little too compound.

23 Can you ask it just about LMFA  
24 or just about NRCS or more generally?

1 MS. MANNING: Does the LMFA have  
2 manure management plans that producers use to  
3 establish appropriate agronomic rates for the land  
4 application and have producers been using those  
5 provisions of the Livestock Management Facilities  
6 Act regulations pursuant to the Department of  
7 Agriculture?

8 MR. HEACOCK: The LMFA does have  
9 provisions regarding agronomic rates. I think we've  
10 seen some plans where they've attempted to use or do  
11 use those provisions or at least in part those  
12 provisions for agronomic rates currently.

13 MS. MANNING: And do many producers  
14 as well use the standards set forth in NRCS in terms  
15 of land application of livestock waste?

16 MR. HEACOCK: Some of them do.

17 MS. MANNING: And when a producer  
18 gets -- you're familiar with the term EQUIP dollars  
19 from the U.S. Department of Agriculture?

20 MR. HEACOCK: Yes, I'm familiar  
21 with the term.

22 MS. MANNING: So are you familiar  
23 that when a producer requests such EQUIP dollars,  
24 they have to go through NRCS's protocols and various

1 standards in order to justify whatever it is that  
2 they're seeking from NRCS?

3 MR. HEACOCK: It's my understanding  
4 they have to follow NRCS standards in both programs.

5 MS. MANNING: And that some of the  
6 flexibility that the Agency then built into this  
7 rule is for the purpose of allowing a producer to be  
8 able to use all of those other protocols as well,  
9 many of which are established as well by the  
10 University of Illinois and other institutions that  
11 producers are used to working with. Is that  
12 accurate as well?

13 MR. HEACOCK: It's true that the  
14 flexibility may allow those other protocols to be  
15 used.

16 MS. MANNING: Thank you.

17 HEARING OFFICER FOX: Ms. Knowles,  
18 do you have any further questions?

19 MS. KNOWLES: I believe I just have  
20 one more if I can have a second.

21 (Pause)

22 MS. KNOWLES: This is my final  
23 question and on the same topic of this off-site  
24 transfer.

1                               In your answer to our question  
2       No. 19, you state that when there's third-party land  
3       application which again is land applied by a CAFO  
4       owner to land not owned by that CAFO owner, in that  
5       case, that third-party land is not required to be  
6       included in the aerial photos or maps that are  
7       required in 502.505(g).

8                               So part of the application  
9       process is that you have to submit aerial photos and  
10      maps of where you're land applying, but our  
11      understanding is again if it's third-party land, you  
12      don't have to have aerial photos and maps, and the  
13      question is why not.

14                           MR. HEACOCK: The maps that are  
15      required when those sites are in the nutrient  
16      management plan, they must be submitted.

17                           When it's off-site land  
18      application that's not part of the nutrient  
19      management plan, they have to keep records with maps  
20      of the sites where the waste is taken by the  
21      off-site recipient.

22                           That's really all I've got to  
23      say.

24                           MS. KNOWLES: Okay. Well, thank

1       you.

2                       HEARING OFFICER FOX: All right.

3       No further questions then, Ms. Knowles?

4                       MS. KNOWLES: No.

5                       HEARING OFFICER FOX: Ms. Dexter,  
6       any other questions, follow-up questions on the part  
7       of the environmental groups?

8                       MS. DEXTER: I just have one more  
9       that I think got lost in the wash, and I'm actually  
10      not sure, I'm guessing this is a question for Sanjay  
11      but I'm not sure. Anyone can answer it.

12                      Is IEPA aware of any Illinois  
13      Pollution Control Board regulations that put some  
14      kind of restriction or limitation on some community  
15      of polluters but don't require a permit to effect  
16      that restriction?

17                      MS. WILLIAMS: Can you read that  
18      back?

19                      (The reporter read back the last  
20      question.)

21                      MR. SOFAT: I believe Part 501  
22      could be characterized that way, the way you  
23      characterized, and again, this is a new model that  
24      USEPA proposed, and we wanted to keep that

1 flexibility in the rule.

2 MS. DEXTER: Thank you.

3 HEARING OFFICER FOX: Ms. Dexter,  
4 that sounds like the end of the follow-ups on the  
5 part of the Environmental Groups?

6 MS. DEXTER: Yes.

7 HEARING OFFICER FOX: Very good.

8 Were there any other  
9 follow-ups, Ms. Manning, on the part of the  
10 Agricultural Coalition?

11 MS. MANNING: I do have one  
12 follow-up for Mr. Sofat.

13 Mr. Sofat in light of that  
14 answer that you just gave, would it be safe to say  
15 that the entire impetus of this rulemaking both  
16 federally and from the state's perspective is to  
17 prevent a discharge?

18 It's to actually -- let me  
19 rephrase that. It's to require those facilities  
20 that are discharging to get a permit, so if a  
21 facility uses its flexibility that's written in  
22 these rules, they're an unpermitted large CAFO and  
23 they use flexibility but they nonetheless have a  
24 discharge to a water of the United States, they are

1       then required to get a permit and they are required  
2       to be scripted in terms of the very language set  
3       forth in its entirety in the rule, correct?

4                   MR. SOFAT: The way I understand  
5       the question and therefore I will try to respond  
6       that way, our proposal, Part 502 sets out the  
7       requirement for the permitted world and outlined  
8       that if unpermitted large CAFOs want to seek ag  
9       stormwater exemption, then they must comply with  
10      certain requirements.

11                   So that is pretty much the  
12      objective the way we have laid this rule out.

13                   MS. MANNING: And that's consistent  
14      with the federal rule, correct?

15                   MR. SOFAT: I believe so.

16                   MS. MANNING: Thank you.

17                   HEARING OFFICER FOX: Anything  
18      further, Ms. Manning?

19                   MS. MANNING: No.

20                   HEARING OFFICER FOX: Very good.

21                   Having had the Environmental  
22      Groups indicate that their follow-ups are complete  
23      and the follow-ups on the part of the Agricultural  
24      Coalition are complete, we can at this stage turn to

1 the follow-up questions that were filed by the  
2 Pollution Control Board in an attempt to get a  
3 hearing officer order.

4 I do want to address two of  
5 them with Mr. Rao's indulgence quickly. That is the  
6 response to question No. 1 in which the Agency had  
7 indicated that it was able to provide a copy for the  
8 record of a particular document entitled "An Urgent  
9 Call to Action" and also address the Agency's  
10 response to the Board's question No. 3 in which it  
11 indicated the willingness to introduce a permit  
12 writer's manual into the record, and, Ms. Olson, I  
13 believe you're the right person to recognize for  
14 those two issues, and if you need to take a moment,  
15 please do so, and when you're ready, let us know.

16 In the meantime, Mr. Rao  
17 raised a question that's worth clarifying.

18 Question No. 2 addressed a  
19 water quality report and Section 303D list, and that  
20 has been admitted as Exhibit No. 11, so I don't mean  
21 to overlook the Board's question but that has been  
22 addressed, and we won't press that any further.

23 MS. OLSON: In response to the  
24 Pollution Control Board's prefiled question 1, the

1 Agency has prepared what's been marked as  
2 Exhibit 19, a copy of "An Urgent Call to Action"  
3 report of the state's EPA Nutrient Innovations Task  
4 Group, and in response to the Pollution Control  
5 Board's question No. 3, we have prepared what has  
6 been marked as Exhibit 20, NPDES Permit Writers  
7 Guidance Manual and example NPDES permit for  
8 concentrated animal feeding operations.

9 I believe we have -- did we  
10 give these?

11 MS. WILLIAMS: How many copies do  
12 you need?

13 HEARING OFFICER FOX: A minimum of  
14 one.

15 MS. WILLIAMS: So will two be  
16 enough?

17 HEARING OFFICER FOX: I believe for  
18 our purposes this afternoon, two would be just fine.

19 MS. OLSON: We have given each of  
20 the parties a copy, and at this time, we'd like to  
21 move for the admission into the record of  
22 Exhibits 19 and 20.

23 HEARING OFFICER FOX: Having heard  
24 Ms. Olson's motion to admit those two documents as

1 Exhibit Nos. 19 and 20 respectively, is there any  
2 participant who objects to the motion?

3 Neither seeing nor hearing  
4 any, Ms. Olson, it will be granted, and if I may get  
5 a copy of those two, I'll mark them and admit them  
6 under those exhibit numbers.

7 (Whereupon Ms. Olson handed the  
8 aforementioned exhibits to the  
9 Hearing Officer.)

10 HEARING OFFICER FOX: Thank you  
11 very much.

12 (Whereupon Exhibits 19 and 20  
13 were admitted into evidence at  
14 this time.)

15 HEARING OFFICER FOX: And the first  
16 two questions, follow-up questions on the Board's  
17 part, we've addressed those, and at this point, I'll  
18 recognize Mr. Rao as I introduced him earlier of the  
19 Board's Technical Unit who has some follow-ups for  
20 the Agency personnel, and I'll turn it over to him.

21 MR. RAO: I have a few follow-ups.  
22 I just want to say that you guys did a good job  
23 answering all the questions.

24 QUESTIONING OF IEPA PANEL

1 BY MR. RAO:

2 Question No. 3, in your  
3 response to the question, you had stated that this  
4 permit writer's document was revised in 2012.

5 Has the IEPA reviewed the  
6 revised permit manual from 2012?

7 MR. HEACOCK: No, we have not  
8 reviewed that document.

9 MR. RAO: Whatever revisions that  
10 USEPA has done to the Permit Writer's Manual, would  
11 that have any bearing on the proposed rules?

12 MR. HEACOCK: I don't know. I  
13 haven't reviewed it. We're not aware of anything  
14 that would be changed by it, but we haven't reviewed  
15 the document so...

16 MR. RAO: In your discussions with  
17 USEPA, has this issue come up where they said you  
18 guys need to take a look at this document?

19 MR. HEACOCK: Not that I'm aware  
20 of.

21 MR. RAO: In response to question  
22 4, you stated that the Illinois EPA may be involved  
23 in the design and construction to ensure compliance  
24 with Environmental Protection Act, Clean Water Act,

1 and the state or federal regulations.

2 This relates to construction  
3 of waste handling facilities at CAFOs.

4 Does IEPA review and approve  
5 plans or designs relating to the waste handling  
6 facilities at CAFOs?

7 MR. SOFAT: No.

8 MR. RAO: Is there some other  
9 agency that does that?

10 MR. SOFAT: I think what we are  
11 trying to say there was that we do have some  
12 requirements like 180 days for Board that we are  
13 requiring that could influence the design and  
14 construction of these facilities.

15 MR. HEACOCK: As part of the answer  
16 or more of the answer to that question, the  
17 Department of Agriculture under the Livestock  
18 Management Facilities Act has a review program for  
19 designing construction of livestock facilities.

20 MR. RAO: Thank you.

21 Moving on to question 35,  
22 Section 502.505, the nutrient management plan  
23 information, subsection (d) requires that the NMP  
24 include the name of the person that developed the

1 NMP and whether the NMP was developed or approved by  
2 a certified nutrient management planner.

3 Please clarify whether the  
4 proposed rules require an NMP to be developed by a  
5 certified NMP planner or is it an option?

6 MR. HEACOCK: It's an option, and  
7 they're just required to tell us in an NMP whether  
8 they used a certified planner.

9 MR. RAO: What's the rationale for  
10 proposing this provision as an option not requiring  
11 an NMP planner to certify?

12 MR. HEACOCK: That is something  
13 that follows the federal requirement and that they  
14 required this reporting of whether the certified  
15 nutrient management planner was being used in the  
16 application or in the submittal for the NPS  
17 application for development of the NMP, so we were  
18 following generally those requirements with that  
19 same option.

20 MR. RAO: Do we have something  
21 similar in the LMFA rules where we require a  
22 certified planner?

23 MR. HEACOCK: In the answer we gave  
24 you, the Livestock Management Facilities Act does

1       require the larger facilities with 300 or more  
2       animal units to actually get a certification,  
3       livestock manager's certification which does include  
4       some requirements about nutrient management plans.

5               MR. RAO:   So some of those rules  
6       apply to those CAFOs also?

7               MR. HEACOCK:   Yes.   So most of the  
8       larger sites would have that.

9               MR. RAO:   Thank you.

10               Moving on to question 58,  
11       Section 502.645, we had raised a question regarding  
12       what adequate diking means, and in response to the  
13       question, the Agency had stated that it did not  
14       intend the definition in the TSD to be used in the  
15       rules to define what adequate diking means.

16               Would it be acceptable for the  
17       Agency to use the definition in the TSD as an  
18       example of what adequate diking means in the context  
19       of these rules?

20               MR. SOFAT:   The Agency is okay with  
21       that approach.

22               MR. RAO:   That's all.

23               HEARING OFFICER FOX:   Mr. Rao has  
24       indicated that those exhaust his follow-up questions

1       based on the Agency's written responses to the  
2       Board's questions.

3                               Before we move on, Ms. Manning  
4       or Ms. Dexter, do you have any follow-ups to what  
5       the Agency had submitted in response to the Board?

6                               MS. DEXTER: No, thank you.

7                               MS. MANNING: No.

8                               HEARING OFFICER FOX: Very good.

9                               That appears to exhaust the  
10       follow-up questions.

11                              Ms. Manning, we briefly had  
12       mentioned Mr. Kaitschuk who had, of course, prefiled  
13       testimony. His, of course, did not elicit any  
14       written questions, but it would be in order at this  
15       point if you would like to introduce him to make any  
16       kind of summary or introduction based on what he has  
17       filed with the Board already.

18                              MS. MANNING: I think we would like  
19       to do that.

20                              HEARING OFFICER FOX: And although  
21       it did not elicit any questions, there may be some  
22       that have come up, and we can entertain those after  
23       he's completed that.

24                              MS. MANNING: I have

1 Mr. Kaitschuk's testimony in written form. Would  
2 you like me to enter it as --

3 HEARING OFFICER FOX: Exhibit  
4 No. --

5 MS. MANNING: 22? 21?

6 HEARING OFFICER FOX: It will be  
7 21. You're exactly right, Ms. Manning. And I will  
8 construe that distribution, Ms. Manning, as a motion  
9 to admit this as Exhibit No. 21.

10 MS. MANNING: Thank you. I move to  
11 admit.

12 HEARING OFFICER FOX: Does any  
13 participant have any objection to its admission as  
14 Exhibit No. 21?

15 Neither seeing nor hearing  
16 any, Ms. Manning, it is being marked as Exhibit  
17 No. 21 and will be admitted into the record in this  
18 proceeding.

19 (Whereupon Exhibit 21 was  
20 admitted into evidence at this  
21 time.)

22 MS. MANNING: Mr. Kaitschuk is the  
23 executive director of the Illinois Pork Producers  
24 here on behalf of not only the Illinois Pork

1 Producers but the entire Illinois Agricultural  
2 Coalition which as well, as the Hearing Officer  
3 pointed out earlier, is the Illinois Farm Bureau,  
4 the Illinois Pork Producers, the Illinois Milk  
5 Producers Association and the Illinois Beef  
6 Association.

7 So, Mr. Kaitschuk, we've  
8 talked about his testimony. He's not going to go  
9 through it line by line but he would like to sort of  
10 summarize his testimony and is available for  
11 whatever questions the Board may have.

12 HEARING OFFICER FOX: Very good,  
13 and, Ms. Manning, I should have clarified, just as  
14 the case with the Agency's prefiled testimony,  
15 Mr. Kaitschuk, yours is admitted into the record as  
16 if read, and it has, of course, been in the Board's  
17 record since it was filed in June.

18 So forgive me for overlooking  
19 that, Ms. Manning, and we can go ahead with any  
20 introduction or summary Mr. Kaitschuk would like to  
21 offer.

22  
23  
24 NARRATIVE TESTIMONY

1 BY JIM KAITSCHUK:

2 Thank you all for the  
3 opportunity to present today. I've rewritten my  
4 testimony several times as the afternoon has gone  
5 on, but a little background about myself.

6 Jim Kaitschuk. I'm the  
7 Director. I've been here for nine years. Prior to  
8 that, I worked in the state government for a number  
9 of years including the development of the LMFA, the  
10 rules corresponding to that.

11 HEARING OFFICER FOX: Mr. Kaitschuk,  
12 I know what Ms. Olson is indicating. I neglected,  
13 and it's entirely my fault, to have our court  
14 reporter swear you in, and we may have her do that  
15 and have you...

16 MS. MANNING: I told him he would  
17 have to be sworn in.

18 HEARING OFFICER FOX: And  
19 Ms. Manning is exactly right. It's entirely my  
20 fault we can take care of that in just a moment.

21 (Whereupon Jim Kaitschuk was  
22 sworn by the reporter.)

23 HEARING OFFICER FOX: Please  
24 continue.

1 MR. KAITSCHUK: You want me to --

2 BOARD MEMBER JOHNSON: Retroactive.

3 MR. KAITSCHUK: Retroactive. Thank  
4 you.

5 I've been with the Pork  
6 Producers for nine years as I indicated. The ag  
7 groups have come together as a coalition because a  
8 lot of our interests are very similar on this. We  
9 do this on a regular basis dealing with the General  
10 Assembly, rules that come up on an ongoing basis as  
11 well.

12 Agriculture as you all know is  
13 a smaller part of the community and an ever  
14 increasingly small number over the number of years  
15 that we've been involved with this. These are  
16 issues that have been around since the inception of  
17 the LMFA. The CAFO rules has been something that is  
18 no stranger to any of us. It's been around for 17  
19 plus years that I've been engaged in this.

20 I have talked about a long  
21 history. That's what ultimately lead to the  
22 development of the LMFA in the State of Illinois.  
23 That was ultimately one of the signals and a  
24 standard bearer for the rest of the country in terms

1 of the development of construction standards.

2 The LMFA set up zero discharge  
3 construction standards rather than the NPDES  
4 permitting program. The NPDES permitting program is  
5 to allow for discharging. The LMFA is set up as a  
6 zero discharge situation. These facilities do not,  
7 I repeat, do not discharge waters.

8 The impression has been given  
9 I think at different times that we have ongoing  
10 issues on a regular basis. That's just not the  
11 case. Our farmers get up every day as  
12 representatives of Illinois agriculture and of the  
13 farms that they represent that they want to hand  
14 down to members of their families to take care of  
15 the environment, and they do that on a regular  
16 basis. They take pride in that. We take pride in  
17 what they do as well.

18 As associations, we're  
19 certainly here to help assist as Mr. Yurdin  
20 indicated earlier in terms of outreach programs.  
21 That's one of the things that we do as an  
22 association is educate, inform. If there are  
23 problems with folks, we surely aren't going to hide  
24 that. We will work with them to try to remedy and

1 bring those farms into compliance.

2 In large part and directed at  
3 some of the previous testimony, that this rule does,  
4 in fact, bridge...I think the testimony this morning  
5 in some of the opening public comments was trying to  
6 bridge between agriculture and the ability for us to  
7 prosper and at the same time bridging the gap  
8 between that and the community that it surrounds.

9 It's difficult when you talk  
10 about members of the community that now live in the  
11 country. You have less and less place to be able to  
12 operate farms today than you did in the past yet you  
13 have more and more people in the world that need to  
14 eat. So how do those things co-exist.

15 We've been working with the  
16 IEPA for a number of years now to try to come up  
17 with what we think is a fair and reasonable approach  
18 to all of this, and ultimately, in large part, I  
19 think what's proposed here today gets to a lot of  
20 that.

21 I'm not going to tell you that  
22 there aren't certain things and provisions in there  
23 that we do have some concerns about. However, with  
24 that said, I would say the vast majority of that

1 document, they are to be commended for what they've  
2 done, the leadership of the Agency in terms of  
3 getting where we are today.

4 With all of that said, you  
5 know, obviously we still have some concerns, and I  
6 think a number of those issues have already been  
7 identified today including some concerns about  
8 unpermitted facilities and the requirements under  
9 the nutrient management plan.

10 Again, the facilities that  
11 have been discussed here today, whether permitted or  
12 unpermitted, are still not allowed to discharge. So  
13 whether or not they're claiming the ag stormwater  
14 exemption or not, they are not allowed to discharge,  
15 and there are plans that they have to go by  
16 including anything that's a thousand animal units or  
17 more in the state has to abide by state law under  
18 the Livestock Management Facilities Act that governs  
19 them if they have to have a waste management plan on  
20 their farm and they certify that annually to the  
21 Department of Agriculture.

22 If they're 5,000 animal units  
23 or more, that plan has to be approved by the  
24 Department of Agriculture.

I'd be happy to answer any questions.

Do any of the participants  
either from the Agency or the Environmental Group  
have any questions they wish to pose on the basis of  
Mr. Kaitschuk's prefiled testimony?

HEARING OFFICER FOX: A moment is fine, yes.

MS. KNOWLES: No further questions.

1 Thank you.

2 HEARING OFFICER FOX: Ms. Knowles,  
3 I'm sorry. I had difficulty hearing you.

4 MS. KNOWLES: No further questions.

5 HEARING OFFICER FOX: On the part  
6 of any of the environmental groups, is that correct?

7 MS. KNOWLES: Correct.

8 HEARING OFFICER FOX: Mr. Kaitschuk,  
9 we can end there, and thank you for your statement.

10 And at this point, if there  
11 are no further questions of any kind, we have  
12 exhausted all of those who have prefiled testimony.

13 Is there anyone, just to be  
14 clear, who did not prefile testimony that wishes to  
15 be sworn and offer any here today?

16 Neither seeing nor hearing  
17 any, is there any person who wishes to offer a  
18 comment on the Agency's proposal?

19 Neither seeing nor hearing  
20 any, let me take a moment before we begin to wrap up  
21 to address the issue of an economic impact  
22 statement.

23 Under Section 27(b) of the  
24 Environmental Protection Act, the Board must request

1       that the Department of Commerce and Economic  
2       Opportunity, or DCEO, conduct an economic impact  
3       study of proposed rules before the Board adopts  
4       rules.

5                       The Board must then make  
6       either the study itself or the department's  
7       explanation for not conducting one available to the  
8       public at least 20 days before a public hearing.

9                       As the Board's Clerk's Office  
10       on line will reflect, in a letter dated March 22,  
11       2012, our chairman, Tom Holbrook, specifically  
12       requested that DCEO conduct an economic impact study  
13       of this rulemaking proposal and specifically  
14       requested a response from DCEO no later than May 1st  
15       of 2012.

16                      The Board has to date received  
17       no response from DCEO to this request.

18                      Is there anyone who would like  
19       to testify regarding the Board's request for that  
20       study or the absence of a response from DCEO?

21                      Neither seeing nor hearing  
22       any, why don't we go off the record just for a  
23       moment or two and we can wrap up a couple of  
24       procedural issues.

1 (Whereupon an off-the-record  
2 discussion transpired at this  
3 time.)

4 HEARING OFFICER FOX: After going  
5 off the record briefly to discuss procedural issues,  
6 I want to remind the participants here today that  
7 the second hearing in this docket has been scheduled  
8 to take place and will take in place as scheduled on  
9 Tuesday, October 16, 2012 at 10 a.m. in Belleville  
10 with a deadline of Tuesday October 2, 2012 to  
11 prefile testimony. That is reflected in the  
12 original hearing officer order and does not  
13 represent any change.

14 Pardon me. And that hearing  
15 officer order is available on the Board's website if  
16 you have any questions about it.

17 As I indicated in going off  
18 the record, copies of the transcript of today's  
19 hearing are expected to be available by Friday,  
20 August 31st, and I do want to stress that as soon as  
21 we receive it, we will post it to the Board's Web  
22 page under this Docket No. R12-23 so that you may  
23 review it in its entirety.

24 In addition, anyone may file

1 written public comments on the rulemaking proposal  
2 with the Board's clerk, and those also may be made  
3 electronically through the clerk's office online.  
4 Our clerk's office staff can certainly answer any  
5 questions about how to do that.

6 If anyone has questions about  
7 procedural aspects of this rulemaking, my contact  
8 information is on that Web page.

9 Are there any questions or  
10 procedural issues we can address before we adjourn  
11 today?

12 Neither seeing nor hearing  
13 any, thank you all for your filings and for your  
14 time here today. I know the Board appreciates it,  
15 and we can adjourn this hearing and resume in  
16 Belleville in October.

17 Thank you very much.

18 (Conclusion of foregoing hearing  
19 at 3:53 p.m.)  
20  
21  
22  
23  
24

1 STATE OF ILLINOIS )

2 ) SS.

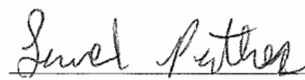
3 COUNTY OF SANGAMON)

4  
5 CERTIFICATE

6 I, Laurel A. Patkes, Certified Shorthand  
7 Reporter in and for said County and State, do hereby  
8 certify that I reported in shorthand the foregoing  
9 proceedings and that the foregoing is a true and  
10 correct transcript of my shorthand notes so taken as  
11 aforesaid.

12 I further certify that I am in no way  
13 associated with or related to any of the parties or  
14 attorneys involved herein, nor am I financially  
15 interested in this action.

16 Dated August 27, 2012.

17  
18  
19 

20 Certified Shorthand Reporter  
21  
22  
23  
24

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