

Case No.: R2012-023 (In the Matter of: CAFOs: Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504)

My name is Jim Francis, my wife and I operate a farm in Jo Daviess County just south of Warren, Illinois that my parents bought 61 years ago. Our son is actively involved in the operation with hopes of taking ownership in the future. We have a beef cow/calf operation along with raising some young stock from new-born to feeder calf size.

In 2010 I was invited to participate in a stakeholders work group sponsored by the IEPA that was assigned the task of forming environmental guidelines sufficient to meet the criteria of the USEPA Clean Water Act. We had some very interesting meetings and I appreciated the opportunity to participate as livestock operator. A lot of time and effort was involved to discuss and draft provisions in regards to set backs for land spreading, steepness of slope and vegetative covers to fields receiving animal waste applications.

Sadly, with all the good intentions applied to this process, a major flaw in the system still exists. That being the tracking and regulation of application of animal waste to properties not owned or controlled by the livestock waste generating facility. We farmers like to think of our selves as responsible operators who care for our properties in safe, environmentally sound condition so as to perpetuate the ongoing existence of sustainable agriculture. Referring to a statement from author unknown, "none of us own the land we are responsible for, we merely borrow it from our children and grandchildren and all those who follow."

The farmers who are good stewards of this land for the most part practice sound, responsible husbandry that preserves our precious natural resources for the generations that follow. Unfortunately, agriculture is no different than any other industry, in that it inevitably contains some "bad apples" who, for reasons of greed or incompetence, think that burdensome rules are "not for them" or simply look at short-term gains for themselves. They forget about long-term consequences or simply do not intend to be the one responsible for a particular piece of property in years to come. It is this fraction of our agricultural society that needs the additional scrutinizing and policing. It is no different than the reason why we need speed limits posted, and law enforcement personnel to monitor these limits. We all like to think of ourselves as law-abiding citizens, but there are always those select few, whether it be with a new car or an old clunker who feel "those laws don't apply to them" and "how dare you tell me how to drive."

As a 30 plus year member of the Jo Daviess County Farm Bureau, I am proud to be a part of those in agriculture who respect the guidelines set forth for us by others, but also appreciate the ability to turn on our water faucet to a clean source of drinking water for our children and livestock.

It appears that the oversight currently in place to monitor and regulate large

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CAFO operations disposal of liquid manure is flawed and inadequate. The simple knowledge of where large CAFO's are located in the State of Illinois is substandard when the potential for pollution by such large facilities is so much greater than that presented by smaller operations.

I realize that the Livestock Management Facilities Act (LMFA) was drafted to address such issues as proper citing and monitoring of storage and disposal of waste. Although section 100 of the LMFA 510 ILCS 77/100 States "Limitation or Preemption. Nothing in this Act shall be construed as a limitation or preemption of any statutory or regulatory authority under the Illinois Environmental Protection Act." is does not always seem to be adhered to as such.

My reference to this stems from recent experiences we have had with the proposed "Tradition Dairy" that was until recently under construction in Jo Daviess County. It is our belief that the Illinois Department of Agriculture prematurely approved citing of this facility without properly researching the sensitivity of this area. Had they required the substantial scientific testing that would have resulted in a more scrutinized application process they could have prevented a major pollution event.

Concerned citizens of this area mounted a very large investigative process that drained those same citizens of legal and other professional fees exceeding \$550,000. Had those residents stood back and let the regulatory agencies proceed virtually unchecked except for the Illinois Department of Ag's self-policing practices, this facility would have proceeded to house as many as 20,000 animal units, (Attachment #1 Expansion) not the 10,000 originally described initially. The subsequent failure by unsound practices, as demonstrated by the pollution event that was ultimately resolved in front of the Illinois Pollution Control Board by the Illinois Attorney General's office, would have resulted in an irreversible destruction of both ground and surface waters in the State.

The Jo Daviess County Board did their due diligence and mounted a well-defined investigative process in order to become familiar with this particular situation and to respond to the IL Dept of Ag's request for a nonbinding advisory from that public board. If the County's 11 – 5 vote against citing the facility would have had to be recognized as binding vs. nonbinding, the developer would probably not have purchased the property, which ultimately caused them to waste millions of dollars. Hundreds of ordinary citizens concerned with their water and air quality and would not have had to spend over \$550,000 to stop something that the Illinois Department of Agriculture and the Illinois EPA should not have allowed to proceed in the first place.

As part of this process and during one of the County Board's public meetings, which I attended, a board member asked Warren Goetsch of the Illinois Department of Agriculture (IDOA) whom they should contact for an opinion on the presence or non-

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presence of “Karst” in the proposed construction area. (Attachment #2 LMFA Code). Mr. Goetsch's response was duly noted in the official meeting minutes (Attachment #3 Transcript). He referred those present to Sam Panno of the Illinois State Geological Survey (ISGS) as the expert in karst. The Board subsequently contacted Mr. Panno. The Environmental Division of the Attorney General's Office also contacted Mr. Panno and requested a report on the site from him. It is our understanding that the IDOA and Mr. Goetsch never contacted Mr. Panno.

Had this issue been properly investigated, and more in depth determination been made of the presence of karst on the building site, this project would have been halted before the developer wasted millions of dollars, disfigured hundreds of acres of rich farmland, and local citizens would not have had to endure five (5) years of litigation and investigations.

Large CAFO operators are relocating their operations to new areas to overcome water shortages in other parts of the country. One of their limitations, besides available water, is available farmland where they can spread their liquid wastes. These mega-size facilities must be scrutinized to the maximum prior to citing and the LMFA seems to fall short in meeting this need as demonstrated in the “Traditions Catastrophe.”

Another large deficiency in the current LMFA is the definition of non-lagoon waste holding facilities vs. lagoon waste holding facilities. In the “Traditions Case” the definition of non-lagoon waste holding storage allowed the developer and its engineers to attempt the construction of huge waste storage facilities that required much less scrutinizing and cheaper construction standards vs. lagoon waste storage. (Attachment #2). Had the completion of the facility been allowed, experts from both parties agreed that long-term daily seepage of the stored material into the groundwater would have been unavoidable and pollution of our area's groundwater could have gone on for years to come.

On September 29, 2008, under oath in front of the Honorable Judge Ward in Jo Daviess County, James Evans, Senior Agricultural Engineer for Mauer Stutz, who was the firm that engineered the Tradition Dairy Project, testified that 42 acres of manure ponds will leak “a little less than 1,000 gallons (of manure) per day per acre.” (Attachment #4) Had both planned facilities been constructed as intended and designed, each containing roughly 40 acres of lagoons, this would have resulted in a little less than 80,000 gallons per day of manure seeping into our groundwater, in the words of the developer's own engineer. This type of construction is unacceptable, given the karst terrain that exists in our region of the state, yet came close to reality had it been allowed to proceed with the IL Dept. of Ag's blessing.

As a third-generation farmer/landowner and lifetime member of the Jo Daviess County Farm Bureau, I take very seriously the trust put upon us by the general public

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and I expect the state agencies and others responsible for maintaining a healthy environment to do the same. Because of our close attachment to the land and all of our water resources, we, as farmers, have a responsibility to the general public to do whatever we can to protect this environment and preserve it for generations to follow. We need to be considered first in line of defense in regards to the protection of these resources.

Until the 1970s, the vast majority of food produced in the United States was grown by family farmers on family farms. Aside from providing for their families, these farmers main concern was to leave their farms to their children in as good a condition as it was left to them by their parents. Since the 70's, government incentives and corporate influence in the legislature has lead to the growth of industrial agriculture. Instead of being stewards of the land, these corporate entities are slaves of their investors and lending institutes. The profit earned, rather than the fertility of the land, was their bottom line.

The preservation of clean water and fertile soil is vital to the survival of our country. Now that profits are the main motivator of industrial agriculture, it is up to governmental agencies to impose standards that used to be a normal part of a farmer's duties. It is imperative that the IPCB impose the proposals put forth by the Environmental Groups in order to preserve our clean water, and indirectly, our irreplaceable farmland for future generations. We therefore urge the Agency and the PCB to include an information collection or registration requirement in the final CAFO regulations.

Sincerely,

Jim Francis, Farmer
7330 Il Rt. 78 North
Warren, IL 61087

livestock facility with manure that has significant amount of suspended solids the rate would be even less into a clay liner. It is not considered a seepage rate it is a standard to which the applicant is required to build the clay liner. Engineer Terry Feldmann stated that the applicant took 15 borings at each site and ran tests on the soil. Permeability results were very good and all exceeded the standard with the best ones 10 times better than standard.

Lester Johnson stated that he received a detailed copy of the soil borings from Terry Feldmann and had with him the state geologic survey map from the late 1990's. The map showed both highly sensitive soil conditions and low sensitive soils in the same area and the soil borings corresponded. The North site has a bit shallower soil to bed rock. The south site has some dolomite lime stone rock which maybe considered aquifer material. Warren discussed design standards for clay liners.

Beth Baranski asked Warren Goetsch for definition of a karst. Goetsch stated that if the geological information meets the definition of a karst area per the LMFA then design must be modified consistent with the Act. If everyone just feels it meets a karst area that does not do it, it has to meet the definition. Beth asked again about the area versus the site. Warren stated that the geographical extent of what the Dept looks at when applying this definition is the foot print of where the facility will be built. The Dept has not yet taken a position on this site and needs the submittal of more information for this specific site. Warren referred those present to Samuel Panno of the Illinois State Geological Survey as the expert on karst in Illinois.

Marvin Schultz asked AJ Bos if there have been any changes in plans since the public hearing in Warren regarding the holding ponds. AJ stated that he plans to build the south site first and getting it up and running good then if or when the north site is built it will be built right and environmental friendly. Tourism may be underestimated, told of a friend in Wisconsin who gives a lot of tours. AJ discussed his research on digesters. He did not want to say if he would or would not put one in, he did discuss green energy and carbon credits. He discussed his commitment to manure management, being a good neighbor and doing it right. Marv asked about the depth of the ponds (up to 20') and if they are dug below ground level. Terry Feldmann explained that the design is balanced by cut and fill and particularly dug in the ground and particularly above existing grade.

Alan Kent asked if AJ is applying for one or two sites and if the proposal is for holding ponds or lagoons. Terry Feldmann responded that they are proposing holding ponds which will be periodically pumped completely down. AJ stated that he would build the south site first and is applying for two sites now so he doesn't have to go through the process again. He stated that the permitting standards he is applying for are above the minimum standards, he wants to get all the operational aspects going first and wait until the second or third year to decide on the type of a digester. A digester on each facility will cost \$3-3.5 million dollars. He has also looked at other technologies.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
OF THE STATE OF ILLINOIS, JO DAVIESS COUNTY

HELPING OTHER MAINTAIN ENVIRONMENTAL)
STANDARDS, an Illinois Not For Profit)
Corporation, Leroy Behrens, Laurel)
Behrens, Mary Jo Burke, Isabelle)
Cropper, Juanita Cropper, Jeffrey)
Graves, Roger Hicks II, Anita Hicks,)
Dean B. Hicks, Kathleen M. Hicks,)
Steve Holesinger, Russell Kruzinski,)
Will Liberton, Greg McKinstrey, Bonnie)
Rillie, Richard Runkle, Lori Runkle,)
Todd Sargent, Kathy Sargent, Dick)
Slamp, Kathryn Slamp, Dawn Tomlinson,)
Ronald Tomlinson,)

Plaintiffs,)

vs.)

Case No.: 2008-CH-42

A.J. BOS and ILLINOIS DEPARTMENT OF)
AGRICULTURE,)

Defendants.)

REPORT OF THE PROCEEDINGS at the hearing on the Preliminary
Injunction in the above-entitled cause, recorded on the Jo
DavieSS County computer based digital recording system before
the HONORABLE KEVIN J. WARD, Associate Judge of said court,
continuing on the 29th day of September, 2008.

APPEARANCES:

HELPING OTHERS MAINTAIN ENVIRONMENTAL STANDARDS, PLAINTIFFS
Represented by their attorneys, DAVID ALBEE and CHARLES
CRONAUER.

A. J. BOS, DEFENDANT represented by his attorney, MR.
THOMAS NACK.

ILLINOIS DEPARTMENT OF AGRICULTURE, DEFENDANT, represented
by their attorney, MR. ALLAN ABINOJA.

Tammy Stephenson
Certified Electronic Recorder Operator

1 A Alright, yes. Um...If I can--if I can throw out a few
2 numbers...um...and I apologize but I don't know of any other way to
3 do it. The--A two-foot compacted clay liner with a coefficient
4 of permeability 1×10^{-7} centimeters per second, alright,
5 will yield...um...eventually, if you have 20 feet of head (water
6 piled 20 feet deep) and I'll use some different figures than Mr.
7 Huettl but they're close; 20 feet of head would yield you a
8 little less than 1,000 gallons per day per acre at the bottom of
9 the two-foot liner, alright? That would be the maximum yield
10 that you would expect. That's based on Darcy's law which Mr.
11 Huettl also...um...quoted correctly, by the way. So it would yield
12 about a 1000. That is, however, prior to...um...ah...continued sealing
13 of that liner by the very materials that are contained in the
14 pond. The liquid manures will contain--will still be subject to
15 anaerobic action. Um...There will be--which tends to seal ponds.
16 The suspended solids that will remain in the liquids tend to
17 settle out; they clog--they physically clog the pores of the
18 soil surface itself...um...and there's some bio-chemical actions
19 that also will take place and I'm probably not qualified to
20 discuss, but all these things typically continue to seal a pond
21 beyond its initial...um...permeability. Again, the U.S. Department
22 of Agriculture suggests that's normally in the vicinity of a
23 power of 10. So if you had a coefficient of permeability of $1 \times$
24 10^{-7} initially, they would suggest that you would have,
25 after some period of time, not many years, you would realize an