

**ORIGINAL**

BEFORE THE

**ILLINOIS POLLUTION CONTROL BOARD**

**RECEIVED**

CLERK'S OFFICE

JUL 03 2001

STATE OF ILLINOIS  
*Pollution Control Board*

IN THE MATTER OF: )  
 )  
 AMENDMENTS TO LIVESTOCK )  
 WASTE REGULATIONS ) R01-28  
 (35 ILL. ADM. CODE 506) ) (Rulemaking-Land)  
 )

*P.C. #11*

**NOTICE OF FILING**

Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph Street, Suite. 11-500  
 Chicago, Illinois 60601

**AND THE ATTACHED SERVICE LIST**  
 (Via U. S. Mail)

Carol Sudman,  
 Hearing Officer  
 Illinois Pollution Control Board  
 600 South Sixth Street, Suite 402  
 Springfield, Illinois 62704

**PLEASE TAKE NOTICE** that I have today filed with the Office of the Clerk of the Pollution Control Board the Motion for Leave to file Instanter and Post-Hearing Comments of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY  
 OF THE STATE OF ILLINOIS

By: *Connie L. Tonsor*  
 Connie L. Tonsor  
 Associate Counsel  
 Division of Legal Counsel

DATED: June 29, 2001

Illinois Environmental Protection Agency  
 1021 North Grand Avenue East  
 Post Office Box 19276  
 Springfield, Illinois 62794-9276  
 (217) 782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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MOTION FOR LEAVE TO FILE INSTANTER

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Connie L. Tonsor, and requests that the Hearing Officer allow the filing of these Post Hearing Comments instanter for the reasons set forth herein.


1. After the comment period closed, the Illinois EPA received post-hearing comments from the Illinois Department of Agriculture (Department) and post-hearing comments, received June 6, 2001 and June 26, 2001 from Terry Feldmann, P.E.
2. The Illinois EPA received the post-hearing comments of the Department and a copy of its Motion to File Instanter on June 21, 2001.
3. After review of the post-hearing comments, the Illinois EPA believes that the testimony it offering during this proceeding has been misunderstood by the Department and Mr. Feldmann.
4. The Illinois EPA seeks to clarify this misunderstanding.
5. The Illinois Pollution Control Board (Board) has an interest in developing a full, complete and accurate record in this rulemaking.

6. Because there is no statutory deadline and this response will be provided to other members of the public, no members of the public or regulatory agency has been or will be adversely impacted by the late filing of these comments.

Therefore, for the reasons set forth herein, the Illinois EPA requests that the Hearing Officer grant this Motion for Leave to File Instanter authorizing the filing of the attached Post Hearing Comment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
\_\_\_\_\_  
Connie L. Tonsor  
Associate Counsel

June 29, 2001

Illinois Environmental Protection Agency  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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POST HEARING COMMENT OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Connie L. Tonsor, and hereby submits comments in the above rulemaking.

1) The Illinois EPA offers this comment to clarify a misunderstanding concerning its pre-filed testimony and to provide full information for the Illinois Pollution Control Board (Illinois PCB) in the instant rulemaking. After the comment period closed, confusion arose in the interpretation of the Illinois EPA's pre-filed testimony.

2) In its June 19, 2001 post-hearing comments, the Illinois Department of Agriculture ("the Department") refers to Illinois EPA pre-filed testimony of April 24, 2001 on the provision for a perimeter drainage tube, as follows:

"The Department concurs with Mr. Feldmann's comment number 2 with regard to the testimony of the Illinois Environmental Protection Agency. The requirement for a storage facility for perimeter drainage tubing effluent is excessive and unnecessarily expensive."

Mr. Feldmann's comment of June 7, 2001 states "a storage facility for perimeter drain tiles is not feasible," further stating that such releases are not likely given the high standards for new facility construction under the proposed Part 506 rules.

We certainly hope so. Since no rule can be made foolproof and the placement of drainage tubing adjacent to a structure to protect that structure from damage caused by hydraulic uplift also makes that drainage tubing a means to convey livestock waste, we should be cautious about broad statements of feasibility. Mr. Feldmann seems to share our feelings of caution by concluding that if a release to the drainage tubing did occur "the liquid must be captured."

3) Mr. Heacock testified: "[T]he Agency recommends that this subsection [Section 506.304(c)] be revised to include:....A provision for the diversion of livestock waste that may be discharged from the drainage tubing, away from surface waters, to a field or collection area, pending collection and appropriate disposal" (emphasis added).

4) That field or collection area, because of its temporary use in receiving a release of livestock waste, need not meet the permeability, storage volume and other requirements of Part 506. It is something other than "waters of the State."

5) In their simplest forms, the field or collection areas could be:

an area of crop production, naturally lower in elevation than the livestock facility which could, in an emergency, receive livestock waste diverted away from surface waters by means of a gate valve and piping installed downstream of the perimeter drainage tubing; or

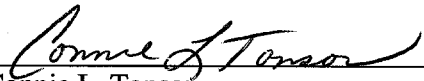
a manhole with a gate valve that could be closed in an emergency, allowing both the manhole and the upstream part of the drainage tubing to fill with livestock waste until appropriate disposal could be affected.

6) Apparently, the Department and Mr. Feldmann understood the term "field or collection area" to mean a permanent, fixed structure of extraordinary price.

7) This interpretation is not consistent with the intention of the Illinois EPA.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Connie L. Tonsor  
Associate Counsel

June 29, 2001

Illinois Environmental Protection Agency  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

STATE OF ILLINOIS

COUNTY OF SANGAMON

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)  
) SS  
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)

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached MOTION FOR LEAVE TO FILE INSTANTER AND POST-HEARING COMMENT upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
**(First Class Mail)**

**AND THE ATTACHED SERVICE LIST  
(First Class Mail)**

Carol Sudman  
Hearing Officer  
Illinois Pollution control Board  
600 South Second Street  
Suite 402  
Springfield, Illinois 62704  
**(First Class Mail)**

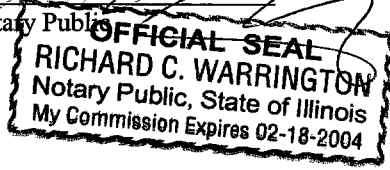
and mailing it from Springfield, Illinois on \_\_\_\_\_, 2001 with sufficient postage affixed as indicated above.

Nancy J D Lamport

**SUBSCRIBED AND SWORN TO BEFORE ME**

this 29 day of June, 2001

*[Handwritten signature]*



**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**R01-28 Service List  
Livestock Waste Management  
Friday, June 29, 2001**

Cindy Bushur-Hallam  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield, Illinois 62701

Richard Davidson  
Illinois Pork Producers Association  
2200 Greenside Drive  
Springfield, Illinois 62704-3218

Sheila Deely  
Gardner, Carton and Douglas  
321 North Clark Street, Suite 3400  
Chicago, Illinois 60610

Matthew Dunn  
Chief, Environmental Bureau  
Office of the Attorney General  
188 West Randolph Street, 11th Floor  
Chicago, Illinois 60601-3218

Cynthia Ervin  
Chief Legal Counsel  
Department of Agriculture  
Illinois State Fairgrounds, Post Office Box  
19281  
Springfield, Illinois 62708

Terry Feldmann  
Feldmann and Associates  
1191 Carolyn Court  
East Peoria, Illinois 61611

Scott Frank  
Bureau of Environmental Programs  
Illinois Department of Agriculture  
Illinois State Fairgrounds, Post Office Box  
19281  
Springfield, Illinois 62708

Warren Goetsch  
Division of Natural Resources  
Illinois Department of Agriculture  
Illinois State Fairgrounds, Post Office Box  
19281  
Springfield, Illinois 62708

Pam Hansen  
Illinois Stewardship Alliance  
Post Office Box 648  
Rochester, Illinois 62563

James Harrington  
Ross and Hardies  
150 North Michigan Avenue, Suite 2500  
Chicago, Illinois 60601-7567

Roy Harsch  
Gardner, Carton and Douglas  
321 North Clark Street, Suite 3400  
Chicago, Illinois 60610

Maralee Johnson  
Illinois Beef Association  
2060 West Iles Avenue, Suite B  
Springfield, Illinois 62704

John Lumpkin  
Illinois Department of Public Health  
535 West Jefferson, Floor 5  
Springfield, Illinois 62761-5058

Brent Manning  
Director  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield, Illinois 62701

Bruce St. John  
Doctor  
Illinois Citizens for Responsible Practices  
1620 Northedge Court  
Dunlap, Illinois 61525