

Therriault, John

PC# 3048

From: Danielle Diamond <ddiamond@iccaw.org>
Sent: Monday, July 14, 2014 12:41 PM
To: dharmon@senatedem.ilga.gov; info@timschmitz.org; Pamela Althoff; amunoz@senatedem.ilga.gov; senatorrezin@gmail.com; Dale Righter; Silverstein, Ira; Greg Harris; langli@ilga.gov; David Leitch; moffitt@grics.net; Andre Thapedi; Therriault, John
Cc: Deborah Connelly; Thomas, Vicki ILGA; Silverstein@senatedem.ilga.gov; munoz@senatedem.state.il.us; don@donharmon.org
Subject: Letter regarding JCAR and IPCB action on CAFO regulations
Attachments: LTR to JCAR & IPCB July 14 2014 - final.pdf; LTR to JCAR July 9 2014 final.pdf

Please find the attached letter and accompanying document regarding the Illinois Pollution Control Board's Proposed amendments to 35 Ill. Adm. Code Parts 501, 502, and 504 for Concentrated Animal Feeding Operations, which will be considered by JCAR on July 15, 2014.

This letter addresses the IPCB's response to JCAR's concerns regarding the rulemaking.

Thank you for your attention to this matter.

Sincerely:

Danielle Diamond

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ILLINOIS CITIZENS FOR CLEAN AIR & WATER, PRAIRIE RIVERS NETWORK,
ENVIRONMENTAL LAW & POLICY CENTER, ILLINOIS ENVIRONMENTAL COUNCIL,
ILLINOIS SIERRA CLUB, ENVIRONMENTAL INTEGRITY PROJECT

July 9, 2014

VIA FACSIMILE/EMAIL

Members of the Joint Committee on Administrative Rules
700 Stratton Building
Springfield, Illinois 62706

**Re: Proposed amendments to 35 Ill. Adm. Code Parts 501, 502, and 504 for
Concentrated Animal Feeding Operations**

Dear Co-Chairs Harmon and Schmitz and Members of the Joint Committee on Administrative Rules:

We write to request your support of the Illinois Pollution Control Board (IPCB) Concentrated Animal Feeding Operation (CAFO) rules as currently written. The proposed regulations are intended to bring Illinois' Clean Water Act program for CAFOs into compliance with federal law and govern how millions of tons of animal waste is disposed of on Illinois lands each year.

Livestock in the U.S. produce up to 20 times more manure than humans produce sewage every year. Like sewage, animal waste contains pathogens, toxins and other pollutants that can be harmful when it gets into our water. The IPCB CAFO rules are an important step toward addressing the public health threat posed by the massive amounts of animal waste produced by Illinois CAFOs annually.

Below we address three issues of concern raised by the Joint Committee on Administrative Rules (JCAR) and two additional issues regarding limitations on land application of animal waste.

1. Is the reporting requirement redundant (Section 501.505)?

No. The IPCB rule requires unpermitted large CAFOs to report basic information to the Illinois EPA so that the agency knows where and what type of CAFOs exist. The scope of the information required is very limited, and includes:

1. Name of owners/operators and contact information;
2. Location of facility;
3. Numbers and types of animals housed at facility;
4. Type of animal confinement system;
5. Type of waste storage system, and
6. Capacity of waste storage system.

This information is not currently available to the Illinois EPA for all CAFOs in Illinois.

While the Illinois EPA has been attempting to collect information on CAFOs in Illinois, the existing information the agency has via the Illinois Department of Public Health (DPH) and the Department of Agriculture (DOA) is full of gaps. The DPH data **only covers dairy CAFOs**, not poultry, hog or meat cattle. (Most CAFOs in Illinois are hog CAFOs.) Further, the DPH data does not include information on the number of animals or how the waste is stored.

The DOA data **only covers CAFOs built or expanded since 1996**, leaving out many of Illinois' older CAFOs, and often lacks complete information on waste and confinement systems, facility locations, etc.

The information submission required under the new rule is not required under any other existing laws. This is not a redundant reporting requirement and the rule is not asking the agency to collect any information beyond what is necessary to determine how many CAFOs there are in Illinois, where there are, and how they are handling their animals and waste.

2. Can we clarify what "visual inspection" of field tiles means (Section 502.510(b)(13))?

Yes. Field tiles are porous pipes laid 2 to 3 feet below the surface that drain agricultural fields and carry the water to nearby streams, or in some cases simply drain into aquifers (e.g. groundwater).

Field tiles are ubiquitous on Illinois farms. The danger posed is that animal waste and other pollutants can seep into field tiles and pollute streams and groundwater.

The IPCB rule (502.510(b)(13)) requires visual inspection of tiles before and after waste is land applied so if there is a problem with waste in the tiles, the farmer can address it.

We understand the Agricultural Coalition's concerns regarding visual inspection because some farmers do not have adequate maps showing where all the tiles are. In addition, tile inlets and outlets may be covered by crops or hidden by weeds and other vegetation. Nevertheless, tiles pose a serious threat to human health and water quality and should be inspected each time waste is applied. Farmers typically land apply waste twice per year. To address the concerns regarding locating tiles while also prioritizing visual inspections, we would be open to the following language change

Inspection of subsurface drainage systems shall include visual inspection of tile inlets and outlets connected to the operation's subsurface drainage system prior to each land application to determine failures that may cause discharges and visual inspection of inlets and outlets during and after each land application to identify discharges. Visual inspection shall occur at all known inlets and outlets and where inlets and outlets can be identified using good faith efforts to locate; 502.510 (b)(13).

With this requirement, farmers are not being asked to pull up their crops or dig underground to locate tiles, but instead to do their best to locate inlets and outlets, and to visually inspect those identified before and after applying animal waste. Drainage district commissioners and drainage maps can assist a farmer in identifying inlets and outlets.

3. Why is it important to limit land application of waste over fractured bedrock with soil cover less than 3 feet (Section 502.620 (h))?

Aquifers form in fractured bedrock and hold water that many people in Illinois rely on for drinking water. Putting animal waste over fractured bedrock can pose a very real threat of drinking water contamination. The only way to protect the aquifer from the waste is to ensure there is enough soil covering the bedrock to filter the pollutants. There is a good deal of evidence in the IPCB record that 25 feet or more of soil is needed to protect the aquifer. Because many places where CAFOs are located may not have 25 feet of soil over fractured bedrock, the 3 foot requirement in the rule represents a compromise that balances the business interests of CAFOs with public health concerns. It is our understanding that accurate soil depth over fractured bedrock data is not available in Illinois, though we do know that most of Illinois has soil depth far greater than 3 feet.

Given the threat to drinking water posed by putting CAFO waste over aquifers, the burden should be on CAFOs located over fractured bedrock to show that before waste is applied in areas with less than 3 feet of soil cover, land application will not contaminate drinking water supplies. This could be done using groundwater data from nearby wells.

4. Should we allow waste to be applied on land with steep slopes (Section 502.620 (g))?

No. The IPCB rule prohibits land application of waste on slopes greater than 15%. The steeper the slope the greater the danger that waste will run off into streams. This issue was fully vetted before the Board and the Board decided to retain IEPA's prohibition of 15% as necessary to protect streams and the public. Section 502.620(g) should be retained in the final rule.

5. Should we allow waste to be applied within 200 feet of our waterways (Section 502.615(c)(6))?

No. For nearly twenty years, Illinois has prohibited land applying livestock waste within 200 feet of streams, because the practice is dangerous. The Agricultural Coalition wants to change this historical prohibition by allowing waste application within 200 feet of streams if the waste is injected in the soil within 24 hours of the time it is applied. Injection of waste does not eliminate the threat because there is still waste on the surface. The Agricultural Coalition's proposal is a weakening of the rule, not a clarification, and should be rejected. Section 502.615 (c)(6) should be retained in the final rule.

Finally, we note that the current rulemaking is in part a response to a pending 2008 Federal Clean Water Act Dedelegation Petition filed by citizens. In response to the Petition, the USEPA

determined in 2010 that Illinois' "NPDES program for CAFOs does not meet minimum thresholds for an adequate program."¹ Should Illinois fail to enact adequate regulations, including a reporting program to identify CAFOs, the state will be at risk of losing its authority to administer its Clean Water Act program.

Thank you for your consideration of these important issues. We ask that you support the IPCB rule as presented to you on Second Notice.

Sincerely:

Danielle Diamond
ILLINOIS CITIZENS FOR CLEAN AIR & WATER

Kim Knowles
PRAIRIE RIVERS NETWORK

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Cc: Vicki Thomas, JCAR
Deborah Connelly, JCAR

¹ USEPA Region 5, *Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois*, September 2010.

ILLINOIS CITIZENS FOR CLEAN AIR & WATER, PRAIRIE RIVERS NETWORK,
ENVIRONMENTAL LAW & POLICY CENTER, ILLINOIS ENVIRONMENTAL COUNCIL,
ILLINOIS SIERRA CLUB, ENVIRONMENTAL INTEGRITY PROJECT

July 14, 2014

VIA FACSIMILE/EMAIL

Members of the Joint Committee on Administrative Rules
700 Stratton Building
Springfield, IL 62706

Members of the Illinois Pollution Control Board
c/o John Therriault, Clerk
100 W. Randolph Street
Suite 11-500
Chicago, IL 60601

Re: JCAR consideration of proposed amendments to 35 Ill. Adm. Code Parts 501, 502, and 504 for CAFOs

Dear Members of the Joint Committee on Administrative Rules and Illinois Pollution Control Board:

The undersigned urge the Joint Committee on Administrative Rules (JCAR) and the Illinois Pollution Control Board (IPCB) to adopt the Concentrated Animal Feeding Operation (CAFO) rulemaking package as proposed, including reporting requirements for unpermitted CAFOs, but with additional clarifying language for visual inspections of subsurface drainage systems.

On July 3, 2014, the IPCB received a letter from the Co-Chairs of JCAR. The letter outlined JCAR's concerns with the proposed rules, specifically the reporting requirements for unpermitted CAFOs (501.505) and visual inspections of subsurface drainage systems (502.510(b)(13)). The IPCB responded by an Order dated July 10, 2014. The Order states, among other things, that the IPCB will: 1) open a new subdocket to address the reporting requirements for unpermitted CAFOs, and 2) adopt new language to clarify visual inspection requirements.

We are in full support of the Illinois EPA's proposed new language clarifying visual inspections of subsurface drainage, but strongly oppose the opening of a new subdocket to revisit the reporting requirements.

As explained in our attached letter of July 9, 2014 (and discussed extensively in the rulemaking record), the reporting requirements for unpermitted CAFOs are not redundant. No agency has collected this information and there is no reliable or complete database. The Department of Agriculture data only covers CAFOs built or expanded since 1996, leaving out many of Illinois' older CAFOs, and often lacks complete information on locations of CAFOs and how they manage waste. The Department of Public Health data only covers dairy CAFOs, not poultry, hog or meat cattle, and does not include information on number of animals or how waste is stored.

The information submission required under the new rule is not required under any other existing laws. The rule is not asking the agency to collect any information beyond what is necessary to determine how many CAFOs there are in Illinois, where they are, and how they handle animals and waste.

The Illinois EPA may have done more work on its database of unpermitted CAFOs since the rulemaking docket closed, but the database cannot capture complete information on all CAFOs in Illinois without the 501.505 reporting requirements. Opening a new subdocket on this issue would simply be a re-hash of an issue that was dealt with extensively during the rulemaking.

Again, we urge JCAR and the IPCB to adopt the Second Notice rule with minor changes to clarify visual inspections.

Thank you for your consideration.

Sincerely:

Danielle Diamond
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Cc: Vicki Thomas, JCAR
Deborah Connelly, JCAR

Encl. Letter to JCAR, dated July, 10, 2014