



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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DOUGLAS P. SCOTT, DIRECTOR

217-782-0610

October 20, 2009

Danielle Diamond, Attorney
Illinois Citizens for Clean Air and Water
181 Illinois Street
Crystal Lake, Illinois 60050

Re: NPDES General Permit No. ILA01

Dear Ms. Diamond:

The Agency has completed its review of your comments regarding the draft NPDES General Permit for Concentrated Animal Feeding Operations public noticed on May 6, 2009. Based on that review the Agency has the following responses to the concerns expressed in your letter regarding specific items in the permit.

Attached please find a copy of the final NPDES Permit. Please note that the permit has been modified and reorganized based on public comments. Also please find an attached cross referenced listing of modified or new Special Condition numbers.

Special Condition 1: General Requirements The Agency has reorganized Special Conditions 1 and 2 to specify the permit requirements. In addition we have added additional definitions of animal feeding operations (AFO) and concentrated animal feeding operations (CAFO) for clarification. The general permit does not need to clarify what constitutes an alternative general permit. An alternative general permit would be a separate general permit to handle a group of facilities which would be substantially different from the facilities covered under this permit.

Special Condition 1: Duty to Apply Those facilities that discharge or propose to discharge are required to apply for and obtain a permit. This is contained in the first sentence of Special Condition 1. The first paragraph of Special Condition 1 has been modified to specify which facilities are required to obtain a permit.

If such an entity, which discharges or proposes to discharge, chooses not to apply for a permit it would be subject to enforcement action which would require that they apply for and obtain a permit for the discharges.

Special Condition 1: Individual Permits Alternative The Agency has included limitations on coverage for facilities which would discharge to impaired waters or biologically significant waters. Potential discharges to impaired waters would be examined on a case-by-case basis. Coverage by the general permit will not be issued for discharges to biologically significant waters.

Special Condition 1: Alternative General Permit A watershed based permit for specific geographical areas would be an example of an alternative general permit. A watershed based permit might be developed for CAFOs that discharge to impaired waters, including those with a TMDL based on data regarding the CAFOs and the watershed. If a significant number of CAFO facilities in a specific watershed would discharge to impaired waters, including waters with a TMDL, a watershed based general permit might be developed or would be considered by the Agency.

Special Condition 2: Authorization The Agency recognizes ICCAW's concerns regarding public notice and comment. The permit has been revised to require electronic submission of the permit application and documents, annual reports, non-compliance reports and any modification to the approved plans. The Agency will allow a 30 day comment period on the initial permit application and modifications pursuant to Special Condition 16 prior to potential issuance of a permit to the applicant. See revised Special Conditions 1, 7 and 16.

Special Condition 4: Best Management Practices

Special Condition 4 has been revised to cover all elements of 40 CFR 122.42(e)(1)(i) through (ix). Special Condition 8 requires records be kept for 5 years after issuance pursuant to 40 CFR 122(e)(2). Special Condition 4 now includes the requirement for a site specific Nutrient Management Plan referenced in 40 CFR 122.42(e) and 40 CFR 412. The Nutrient Management Plan and other required plans are incorporated as an enforceable condition of the permit under Special Condition 1. In addition, any coverage letter to a permittee will include this requirement.

The permit requires the Nutrient Management Plan, Storm Water Management Plan, and Spill Control and Prevention Plan to be submitted by the applicant and reviewed by the Agency to determine if the facility will comply with the general permit requirements. Compliance with Special Condition 3 of the permit will ensure compliance with water quality standards. If the general permit requirements will be satisfied by the submitted documentation the permittee will be covered by the general permit subject to the limitations on coverage in Special Condition 1. If the general permit requirements will not be met, an individual permit or alternative general permit would be applicable to the facility.

Special Condition 4: Setbacks of Temporary Manure Stacks

The Illinois Groundwater Protection Act adopted in 1987 allows the installation of temporary manure stacks between 200 feet and 75 feet of a private water supply well as specified in the Groundwater Protection Act. This provision was incorporated into the Environmental Protection Act at the time of the adoption of the Groundwater Protection Act. The Agency has not modified the permit to impose additional restrictions on the setback from potable wells. This allowance only applies to situations where the owner lives in the residence, the well only supplies the residence, the residence is a single family dwelling and the owner of the residence is the owner of the temporary manure stack. The Agency has modified this condition to clarify that the owner of the residence and the temporary manure stack are the same when the prohibition of location of the temporary manure stack is 75 feet from the well.

Special Condition 3(i) requires temporary manure stacks to be constructed or established and maintained in a manner to prevent runoff and leachate from entering surface or groundwater and prevent discharges. In addition, Special Condition 3(i) has been modified to not allow temporary manure stacks in the 10 year floodplain unless adequate protection from flooding is provided.

If the facility does not provide containment necessary to prevent discharge from these facilities it would need to cover the stack or otherwise prevent runoff and leachate from entering groundwater or surface water.

Special Condition 5: Standards for Air/Odor Control

The provisions cited in Special Condition 4(b) are taken from 35 Ill. Adm. Code 501.102(d), and the list of practices are from 35 Ill. Adm. Code 501.405(b) and 560.208. The odor provisions of the general permit are based on these two sections.

Special Condition 4(b) of the general permit requires the permittee to operate the livestock facility during manure removal and land application so as to prevent air pollution due to odor. These provisions are based upon existing standards for odor in Subtitle E: Agriculture Related Pollution and the Illinois Environmental Protection Act. The Illinois EPA responds to complaints regarding odors from livestock facilities and has enforced these provisions of the regulations and Illinois Environmental Protection Act with regard to odor. Please refer to the Illinois Livestock Management Facilities Act for further information regarding setbacks from residences and populated areas for new livestock facilities.

The Agency relies on field inspections, odor logs kept by neighbors, the substantiated effects on neighbors, information provided by the livestock facility and other information when evaluating the potential for odor emissions and their effects on neighbors. There are no chemical specific or other quantifiable measurements that can be taken by instrument, that have been shown to reliably correlate with odor emissions, their effects on neighbors and the odor provisions of the Illinois Environmental Protection Act and Pollution Control Board regulations.

Special Condition 5: Setbacks from Drainage Tiles

These setback distances were used pursuant to 40 CFR 412.4(c)(5). No setbacks exist from drainage tiles in the Illinois Pollution Control Board regulations.

Special Condition 5: Off-site Recipients of Livestock Waste

The Illinois EPA is aware of the potential for problems in the tracking of manure moved from the production areas to application fields owned or operated by a party not affiliated with the permitted CAFO.

The Agency has revised Special Conditions 4(f), 7(a)(iii) and 7(g)(vii) to identify sites on topographic maps and specify the acreage used by off-site recipients of livestock waste and the quantity of livestock waste received. The Agency expects the sites to be identified in the supporting documents of the application pursuant to Special Condition 1 and the Annual Reports.

The off-site recipients are not considered CAFOs under the present definitions. Therefore, they may not be made co-permittees.

The Agency presently has a manifest system for special waste. The Illinois Pollution Control Board and legislature have modified this manifest system numerous times over the years and has not included livestock waste under the manifest requirements. Subtitle G: Section 809.211(b) exempts any person who hauls only livestock waste intended for land application pursuant to 35 Ill. Adm. Code 560 from the manifesting system. The Agency will not impose manifesting requirements due to previous regulatory actions on this issue.

Special Condition 5: Land application on Frozen or Snow Covered Ground

The Agency will not prohibit application on frozen or snow covered ground. Special Condition 4(c)(vii) prohibits the land application of livestock waste on frozen, snow or ice covered ground if such an application would result in a discharge to waters of the state. Please refer to requirements of Special Conditions 4(a) and 4(e)(ii).

Special Condition 5: Best Management Practices

The permit allows either a narrative rate approach or a linear rate approach. Either approach is acceptable under the Federal regulations. The Agency has modified Special Condition 4 to be entitled Nutrient Management Plan (NMP) and has modified the various sections from the previously specified best management practices to incorporate them into the NMP. The NMP is incorporated as a condition of the permit.

With regard to public review of the NMP please note that the application for coverage under this permit requires the identification of land application areas on topographic maps and that Special Condition 16(a) of this permit requires notification of the addition of new fields to the NMP. Please review the public participation requirement pursuant to the last paragraph of Special Condition 16. Please refer to the limitations on coverage contained in Special Condition 1 and the Agency's response to your previous comments above regarding impaired waters and biologically significant waters.

Special Condition 6: Monitoring and Reporting Requirements

The Agency has modified the definition of release to clarify what must be reported to the Agency. Also Special Condition 7(c)(ii) and 7(d)(ii) require notification of the Agency when the permittee cannot adequately dewater the livestock waste handling facility sufficiently to contain the specified precipitation event.

The Agency intends to post the applications, all required management plans, annual reports and modifications to plans on the Agency website. Agency records will be available through the FOIA process and Agency website.

Special Condition 6: Reporting of Waste Transferred Off-site

The Agency has corrected the typographical error in the citation of the Federal Register.

Please refer to the previous discussion of Special Condition 5: Offsite Recipients of Livestock Waste concerning off-site transfer and manifesting of livestock waste.

Special Condition 6: New CAFOs and the 100 year 24-hour Precipitation Event

The Federal regulations require an evaluation of 100 years of daily data. Actual local weather data will not be available for many locations. The Agency has determined for design evaluation and operational purposes that a 100-year, 24-hour precipitation event must be used, as a minimum, to determine when additional monitoring and reporting to the Agency is required. In addition the Agency has modified Special Condition 7(d) to use the appropriate freeboard mark based on the design precipitation event (100-year, 24-hour precipitation event minimum) used to design the livestock waste handling facility. Additionally the Agency is modifying the language contained in Special Condition 7(d) to clarify the applicability of the capacity requirements.

The Agency determined that for design evaluation and modeling purposes, the 100-year, 24-hour precipitation event could be used to determine an estimated capacity as one component of the design volume of the facility. The facility must contain adequate capacity to contain a 100-year, 24-hour storm event in addition to other components of the design volume including freeboard, storage between application periods and other additional capacities necessary to prevent an overflow during the modeled 100 year period. The 100-year, 24-hour capacity is not the total capacity needed to comply with the no discharge requirement as stated above. The depth markers are necessary to provide operational data to the facility operator.

Special Condition 6: Groundwater Monitoring Requirements

The NPDES Permit is intended to regulate CAFO facilities that discharge or propose to discharge to surface waters not groundwater. Consequently, groundwater monitoring requirements will not be placed in this permit.

Thank you for your comments on the draft General NPDES Permit for discharges from livestock management facilities. Should you have any questions regarding this letter or its contents please contact Dan Heacock at 217-782-0610.

Sincerely,



Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

SAK:JCH:j:/docs/permits/npdes/Hutton/cafo response/steele.docx

CC: Records
Dan Heacock

Attachment
CAFO NPDES Permit Cross Reference

Final CAFO NPDES Permit	Draft CAFO NPDES Permit May 6, 2009
Special Condition 1	Special Condition 1, Special Condition 2
Special Condition 2	Special Condition 3
Special Condition 3	Special Condition 4
Special Condition 4	Special Condition 5
Special Condition 5	Special Condition 7
Special Condition 6	Special Condition 8
Special Condition 7	Special Condition 6
Special Condition 8	Special Condition 9
Special Condition 9	Special Condition 10
Special Condition 10	Special Condition 11
Special Condition 11	Special Condition 12
Special Condition 12	Special Condition 13
Special Condition 13	Special Condition 14
Special Condition 14	Special Condition 15
Special Condition 15	Special Condition 16
Special Condition 16	Special Condition 17
Special Condition 17	Special Condition 18
Special Condition 4 (e) and 4 (e) (x) replaces	Special Condition 4(l)
Special Condition 7 (a) (viii) (l)	Special Condition 6 (a) (ix)
Special Condition 7(d) moved from	Special Condition 6 (k)
Special Condition 7(e)	Special Condition 6(d)
Special Condition 7(f)	Special Condition 6(e)
Special Condition 7(g)	Special Condition 6(f)
Special Condition 7(h)	Special Condition 6(g)
Special Condition 7(i)	Special Condition 6(h)
Special Condition 7(j)	Special Condition 6(i)
Special Condition 7(k)	Special Condition 6(j)
1 st paragraph Special Condition 1	new
2 nd paragraph Special Condition 1	new
Paragraph under Limitations on Coverage in Special Condition 1	new
Special Condition 3 (l)	new
Special Condition 4 (c) (viii)	new
Special Condition 4 (c) (ix)	new
Special Condition 4 (e) (vii)	new
Special Condition 4 (e) (viii)	new
Special Condition 4 (e) (ix)	new
Special Condition 4 (e) (xi)	new
Special Condition 7 (a) (viii) (H)	new
Special Condition 7 (a) (viii) (J)	new
Three paragraphs in Special Condition 7 (a) after 7 (a) (viii) (J)	new
Paragraph at end of Special Condition 16	new