



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

Illinois

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Nutrient Management Plans

STATE OF ILLINOIS

1) 510 ILCS § 77/20; 8 Ill. Adm. Code §§ 900.801–816

2) 415 ILCS §§ 5/11—5/13, 5/39; 35 Ill. Adm. Code §§ 307.2201, 501.238, 502.101, 502.201, 502.310, 502.510

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Illinois Reference Bureau.

1) 510 ILCS § 77/20; 8 Ill. Adm. Code §§ 900.801–816

§ 77/20. Handling, storing and disposing of livestock waste.

(a) The livestock management facility owner or operator shall comply with the requirements for handling, storing, and disposing of livestock wastes as set forth in the rules adopted pursuant to the Illinois Environmental Protection Act [415 ILCS 5/1 et seq.] concerning agriculture related pollution.

(b) The livestock management facility owner or operator at a facility of less than 1,000 animal units shall not be required to prepare and maintain a waste management plan.

(c) The livestock management facility owner or operator at a facility of 1,000 or greater animal units but less than 5,000 animal units shall prepare and maintain on file at the livestock management facility a general waste management plan. Notwithstanding this requirement, a livestock management facility subject to this subsection may be operated on an interim basis but not to exceed 6 months after the effective date of the rules promulgated pursuant to this Act to allow for the owner or operator of the facility to develop a waste management plan. The waste management plan shall be available for inspection during normal business hours by Department personnel.

(d) The livestock management facility owner or operator at a facility of 5,000 or greater animal units shall prepare, maintain, and submit to the Department the waste management plan for approval. Approval of the waste management plan shall be predicated on compliance with provisions of subsection (f). The waste management plan shall be approved by the Department before operation of the facility or in the case of an existing facility, the waste management plan shall be submitted within 60 working days after the effective date of the rules promulgated pursuant to this Act.

The owner or operator of an existing livestock management facility that through growth meets or exceeds 5,000 animal units shall file its waste management plan with the Department within 60 working days after reaching the stated animal units.

The owner or operator of a livestock management facility that is subject to this subsection (d) shall file within 60 working days with the Department a revised waste management plan when there is a change as provided in subsection (e) of this Section that will materially affect compliance with the waste management plan.

(d-5) The owner or operator of multiple livestock management facilities under common facility ownership where the cumulative animal units of the facilities are equal to or greater than the animal unit numbers provided for in subsection (c) of this Section shall prepare and keep on file at each facility a waste management plan in accordance with the requirements of subsection (c). The owner or operator of multiple livestock management facilities that are under common facility ownership where the cumulative animal units of the facilities are equal to or greater than the animal unit numbers provided for in subsection (d) of this Section shall prepare and file with the Department a waste management plan in accordance with the provisions of subsection (d). Cumulative animal units shall be determined by combining the animal units of multiple livestock management facilities under the common facility ownership based upon the design capacity of each facility. For the purposes of this subsection (d-5), “under common facility ownership” means the same person or persons own, directly or indirectly, through majority owned business entities at least 51% of any person or persons (as defined by Section 10.55 [510 ILCS 77/10.55]) that own or operate the livestock management facility or livestock waste handling facility located in the State of Illinois.

(e) The owner or operator of a livestock management facility shall update the waste management plan when there is a change in values shown in the plan under item (1) of subsection (f) of this Section. The waste management plan and records of livestock waste disposal shall be kept on file for three years.

(f) The application of livestock waste to the land is an acceptable, recommended, and established practice in Illinois. However, when livestock waste is not applied in a responsible manner, it may create pollutional problems. It should be recognized that research relative to livestock waste application based on livestock waste nutrient content is currently ongoing. The Dean of the College of Agricultural, Consumer and Environmental Sciences at the University of Illinois, or his or her designee, shall annually report to the Advisory Committee on the status of phosphorus research, including research that has been supported in whole or in part by the Illinois Council on Food and Agricultural Research. The Advisory Committee may also consult with other appropriate research entities on the status of phosphorus research. It is considered acceptable to prepare and implement a waste management plan based on a nitrogen rate, unless otherwise restricted by this Section. The waste management plan shall include the following:

(1) An estimate of the volume of livestock waste to be disposed of annually, which shall be obtained by multiplying the design capacity of the facility by the appropriate amount of waste generated by the animals. The values showing the amount of waste generated in Table 2-1, Midwest Plan Service’s, MWPS-18, Livestock Waste Management Facilities

Handbook or Design Criteria for the field application of livestock waste adopted by the Agency may be used.

(2) The number of acres available for disposal of the waste, whether they are owned by the owner or operator of the livestock waste management facility or are shown to be contracted with another person or persons for disposal of waste.

(3) An estimate of the nutrient value of the waste. The owner or operator may prepare a plan based on an average of the minimum and maximum numbers in the table values derived from Midwest Plan Service's, MWPS-18, Livestock Waste Facilities Handbook, the Agency's Agriculture Related Pollution regulations, or the results of analysis performed on samples of waste. For the purposes of compliance with this subsection, the nutrient values of livestock waste may vary as indicated in the source table. In the case of laboratory analytical results, the nutrient values may vary with the accuracy of the analytical method.

(3.5) Results of the Bray P1 or Mehlich test for soil phosphorus reported in pounds of elemental phosphorus per acre. Soil samples shall be obtained and analyzed from the livestock waste application fields on land owned or under the control of the owner or operator where applications are planned. Fields where livestock waste is applied shall be sampled every 3 years. Sampling procedures, such as the number of samples and the depth of sampling, as outlined in the current edition of the Illinois Agronomy Handbook shall be followed when soil samples are obtained.

(3.6) If the average Bray P1 or Mehlich test result for soil phosphorus calculated from samples obtained from the application field is 300 pounds or less of elemental phosphorus per acre, livestock waste may continue to be applied to that field in accordance with subsection (f) of this Section. If the average Bray P1 or Mehlich test result for soil phosphorus for an application field is greater than 300 pounds of elemental phosphorus per acre, the owner or operator shall apply livestock waste at the phosphorus rate to the field until the average Bray P1 or Mehlich test for soil phosphorus indicates there is less than 300 pounds of elemental phosphorus per acre. Upon the development of a phosphorus index that is approved subject to the provisions established in Section 55 of this Act [510 ILCS 77/55], the owner or operator shall use such index in lieu of the 300 pounds of elemental phosphorus per acre.

(4) An indication that the livestock waste will be applied at rates not to exceed the agronomic nitrogen demand of the crops to be grown when averaged over a 5-year period.

(5) A provision that livestock waste applied within $\frac{1}{4}$ mile of any residence not part of the facility shall be injected or incorporated on the day of application. However, livestock management facilities and livestock waste handling facilities that have irrigation systems in operation prior to the effective date of this Act or existing facilities applying waste on frozen ground are not subject to the provisions of this item (5).

(6) A provision that livestock waste may not be applied within 200 feet of surface water unless the water is upgrade or there is adequate diking, and waste will not be applied within 150 feet of potable water supply wells.

(7) A provision that livestock waste may not be applied in a 10-year flood plain unless the injection or incorporation method of application is used.

(8) A provision that livestock waste may not be applied in waterways.

(9) A provision that if waste is spread on frozen or snow-covered land, the application will be limited to land areas on which:

(A) land slopes are 5% or less, or

(B) adequate erosion control practices exist.

(10) Methods for disposal of animal waste.

(g) Any person who is required to prepare and maintain a waste management plan and who fails to do so shall be issued a warning letter by the Department for the first violation and shall be given 30 working days to prepare a waste management plan. For failure to prepare and maintain a waste management plan, the person shall be fined an administrative penalty of up to \$1,000 by the Department and shall be required to enter into an agreement of compliance to prepare and maintain a waste management plan within 30 working days. For failure to prepare and maintain a waste management plan after the second 30 day period or for failure to enter into a compliance agreement, the Department may issue an operational cease and desist order until compliance is attained.

§ 900.801. Purpose.

Livestock waste management plans shall be prepared by livestock management facility owners or operators to provide for adequate land area for the proper application of livestock waste at rates not to exceed the agronomic nitrogen demand of the crops to be grown when averaged over a 5-year period or at the phosphorus rate, depending on soil test results. [510 ILCS 77/20(f)(4)]

§ 900.802. Scope and Applicability.

a) A waste management plan shall be prepared according to the requirements contained in Section 20 of the Livestock Management Facilities Act [510 ILCS 77/20] and in this Subpart. The application of livestock waste to the land is an acceptable, recommended, and established practice in Illinois. However, when livestock waste is not applied in a responsible manner, it may create pollutional problems. It is considered acceptable to prepare and implement a waste management plan based on a nitrogen rate, unless

otherwise restricted by Section 20 of the Livestock Management Facilities Act and this Part. [510 ILCS 77/20(f)]

b) The livestock management facility owner or operator at a facility of less than 1,000 animal units shall not be required to prepare and maintain a waste management plan. [510 ILCS 77/20(b)]

c) The livestock management facility owner or operator at a facility of 1,000 or greater animal units but less than 5,000 animal units shall prepare, maintain and implement a waste management plan and comply with the following:

1) For facilities which commence operations or reach or exceed 1,000 animal units after January 1, 2001, the owner or operator shall prepare, maintain, and implement a waste management plan within 60 working days after commencing operations or exceeding 1,000 animal units;

2) Prior to the expiration of the waste management plan preparation period, the owner or operator shall submit to the Department a form certifying that a waste management plan has been prepared. The form shall list the animal unit capacity of the facility and the location of the plan;

3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours; and

4) Notwithstanding the provisions of this subsection (c), a livestock management facility subject to this subsection (c) may be operated on an interim basis but not to exceed 6 months after the effective date of this Part to allow for the owner or operator of the facility to develop a waste management plan. [510 ILCS 77/20(c)]

d) The livestock management facility owner or operator at a facility of 5,000 or greater animal units shall prepare, maintain, implement, and submit to the Department the waste management plan for approval [510 ILCS 77/20(d)] and comply with the following:

1) For facilities which commence operations after January 1, 2001, the owner or operator shall submit a waste management plan to the Department. The facility shall not commence operation before the Department approves the plan;

2) For existing facilities that reach or exceed 5,000 animal units through expansion, the owner or operator shall submit for approval by the Department a waste management plan within 60 working days after reaching or exceeding 5,000 animal units; and

3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours.

e) The owner or operator of multiple livestock management facilities under common facility ownership where the cumulative animal units of the facilities are equal to or greater than the animal unit numbers provided for in subsection (c) of this Section shall prepare and keep on file at each facility a waste management plan in accordance with the requirements of subsection (c) of this Section. The owner or operator of multiple livestock management facilities that are under common facility ownership where the cumulative animal units of the facilities are equal to or greater than the animal unit numbers provided for in subsection (d) of this section shall prepare and file with the Department a waste management plan in accordance with the provisions of subsection (d) of this Section. Cumulative animal units shall be determined by combining the animal units of multiple livestock management facilities under the common facility ownership based upon the maximum design capacity of each facility. For the purposes of this subsection, "under common facility ownership" means the same person or persons own, directly or indirectly, through majority owned business entities at least 51% of any person or persons (as defined by Section 10.55 of the Livestock Management Facilities Act [510 ILCS 77/10.55]) that own or operate the livestock management facility or livestock waste handling facility located in the State of Illinois. [510 ILCS 77/20(d-5)] A separate waste management plan shall be developed for each livestock waste handling facility.

f) Waste management plans prepared pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996, the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, and the rules adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997 shall be revised as follows:

1) The owner or operator of an existing facility of 1,000 or greater animal units but less than 5,000 animal units shall prepare a new or revised waste management plan that complies with the requirements of this Part and submit a waste management plan certification form to the Department pursuant to Section 900.802(c)(2) of this Subpart within 60 days after January 1, 2001.

2) The owner or operator of an existing facility of 5,000 or greater animal units shall prepare a new or revised waste management plan that complies with the requirements of this Part for submittal to and review by the Department within 60 days after January 1, 2001.

g) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility shall be determined as the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.

§ 900.803. Waste Management Plan Contents.

The livestock waste management plan shall contain the following items:

a) Name, address, and phone number of the owners of the livestock facility;

- b) Name, address, and phone number of the managers or operators if different than the owners;
- c) Address, phone number, and plat location of the facilities;
- d) Type of waste storage for the facilities;
- e) Species, general size, number of animals, and number of animal units at the facilities;
- f) Aerial photos or maps depicting fields available and intended for livestock waste applications with available acreage listed and indicating residences, non-farm businesses, common places of assembly, streams, wells, waterways, lakes, ponds, rivers, drainage ditches, other water sources, and areas restricted for application by this Subpart;
- g) For application fields not owned or rented, copies of waste application agreements between the owner or operator of the livestock facilities and the owner of the land where livestock waste will be applied;
- h) Cropping schedule for each field for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year;
- i) Targeted crop yield goal for each crop in each field;
- j) An estimate of the nutrient value of the waste [510 ILCS 77/20(f)(3)];
- k) Livestock waste application methods;
- l) Results of the Bray P1 or Mehlich test for soil phosphorus reported in pounds of elemental phosphorus per acre [510 ILCS 77/20(f)(3.5)];
- m) Calculations showing the following:
 - 1) An estimate of the volume of livestock waste to be disposed of annually [510 ILCS 77/20(f)(1)];
 - 2) Nitrogen loss due to the method of storage, if applicable;
 - 3) Amount of nitrogen available for application;
 - 4) Nitrogen loss due to the method of application;
 - 5) Amount of plant-available nitrogen including first-year mineralization of organic nitrogen;

6) Amount of nitrogen required by each crop in each field based on targeted crop yield goal;

7) Nitrogen credits from previous crops, from other sources of fertilizer applied for the growing season, and from any manure applications during the previous three years for each application field;

8) Livestock waste application rate based on nitrogen for each application field; and

9) Land area required for application;

n) A listing of fields and the planned livestock waste application amounts for each field;

o) A provision that livestock waste applied within 1/4 mile of any residence not part of the facility shall be injected or incorporated on the day of application. However, livestock management facilities and livestock waste handling facilities that have irrigation systems in operation prior to May 21, 1996, or existing facilities applying waste on frozen ground, are not subject to the provisions of this subsection (o) [510 ILCS 77/20(f)(5)];

p) A provision that livestock waste may not be applied within 200 feet of surface water unless the water is upgrade or there is adequate diking and waste will not be applied within 150 feet of potable water supply wells [510 ILCS 77/20(f)(6)];

q) A provision that livestock waste may not be applied in a 10-year flood plain unless the injection or incorporation method of application is used [510 ILCS 77/20(f)(7)];

r) A provision that livestock waste may not be applied in waterways. [510 ILCS 77/20(f)(8)] For the purposes of this Part, a grassed area serving as a waterway may receive livestock waste through an irrigation system if there is no runoff, the distance from applied livestock waste to surface water is greater than 200 feet, the distance from applied livestock waste to potable water supply wells is greater than 150 feet; the distance from applied livestock waste to a non-potable well, an abandoned or plugged well, a drainage well, or an injection well is greater than 100 feet; and precipitation is not expected within 24 hours;

s) A provision that if waste is spread on frozen or snow-covered land, the application will be limited to land areas on which:

1) land slopes are 5% or less; or

2) adequate erosion control practices exist [510 ILCS 77/20(f)(9)];

t) For livestock facilities utilizing an earthen lagoon or other earthen waste storage structure, a provision that the owner, operator, or certified livestock manager shall inspect all bermtops, exterior berm sides, and non-submerged interior berm sides for evidence of erosion, burrowing animal activity, and other indications of berm degradation on a frequency of not less than once every two weeks; and

u) A provision that livestock waste may not be applied during a rainfall or to saturated soil and that conservative waste loading rates will be used in the case of a high water table or shallow earth cover to fractured bedrock. Caution should be exercised in applying livestock wastes, particularly on porous soils, so as not to cause nitrate or bacteria contamination of groundwaters.

§ 900.804. Livestock Waste Volumes.

The estimate of the annual volume of available livestock waste for application, as required in Section 900.803(m)(1) of this Part, shall be obtained by multiplying the number of animals constituting the maximum design capacity of the facility by the appropriate amount of waste generated by the animals. [510 ILCS 77/20(f)(1)] The following sources may be used to obtain the amount of waste generated: MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 2-1, or 35 Ill. Adm. Code 560, Table 1.

§ 900.805. Nutrient Value of Livestock Waste.

a) The owner or operator may prepare a plan based on an average of the minimum and maximum numbers in the table values derived from MidWest Plan Service's MWPS-18, Livestock Waste Facilities Handbook (Table 2-1, 10-6, or 10-7) or the Agency's Agriculture Related Pollution regulations (35 Ill. Adm. Code 560, Table 1 or Table 2), or the results of analysis performed on samples of waste. [510 ILCS 77/20(f)(3)] If "as produced" or "as excreted" nutrient values are used, the nitrogen value shall be adjusted to account for losses due to the type of storage system utilized using an average of the ranges in MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 10-1. Other sources of nutrient values may be used if approved by the Department.

b) If results of an analysis performed on samples of waste are used for the nutrient values in a plan, the following procedures shall be followed:

1) The livestock waste handling facility owner or operator shall annually obtain a laboratory analysis of the nutrient content of the livestock waste to be applied to land as provided within the waste management plan. Livestock waste shall be sampled during the application process. Multiple subsamples shall be obtained and combined into one sample so that a representative sample is obtained for analysis. Results of a sample taken during waste application the previous year can

be used for plan preparation unless there has been a change in the waste management practices during the year.

2) Livestock waste sampling shall be performed under the direction of a certified livestock manager to ensure a representative sample from the livestock waste storage facility and to preserve the integrity of the sample.

3) The laboratory analysis of the livestock waste sample shall include, but not be limited to, total nitrogen, ammonium nitrogen, total phosphorus, and total potassium. Results of the analysis shall be included in the waste management plan.

§ 900.806. Adjustments to Nitrogen Availability.

Adjustments shall be made to nitrogen availability to account for the following:

a) Nitrogen loss from livestock waste due to method of application, as required in Section 900.803(m)(4) of this Part and obtained from an average of the ranges in MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 10-2; and

b) The first-year mineralization of organic nitrogen into a plant available form, as required in Section 900.803(m)(5) of this Part and obtained from MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 10-5.

§ 900.807. Targeted Crop Yield Goal.

a) The targeted crop yield goal, as required in Section 900.803(m)(6) of this Part, shall be determined for each field where the livestock waste is to be applied. The targeted crop yield goal shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The following listing of sources of data shall be utilized to determine the targeted crop yield goal.

1) Proven yields. The proven yield shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The owner or operator shall indicate the method used to determine the proven yield. Data from years with crop disasters may be discarded. Proven yields shall be used unless there is a sound agronomic basis for predicting a different targeted crop yield goal;

2) Crop insurance yields. A copy of the crop insurance yields shall be included in the plan; or

3) Farm Service Agency - United States Department of Agriculture yields. A copy of the assigned crop yields shall be included in the plan.

b) Soils based yield data from the Natural Resources Conservation Service of the United States Department of Agriculture shall be used if the owner or operator cannot obtain a targeted crop yield goal pursuant to subsection (a) of this Section. A soil map of the application areas shall be included in the plan. The targeted crop yield goal shall be determined by a weighted average of the soil interpretation yield estimates for the areas that will receive livestock waste.

c) Nitrogen and phosphorus fertilization rates for the targeted crop yield goal may be obtained from the Illinois Agronomy Handbook, or 35 Ill. Adm. Code 560, Appendix A.

§ 900.808. Nitrogen Credits.

a) Nitrogen credits shall be calculated by the livestock facility owner or operator, pursuant to Section 900.803(m)(7) of this Part, for nitrogen-producing crops grown the previous year, for other sources of nitrogen applied for the growing season, and for mineralized organic nitrogen in livestock waste applied during the previous three years.

b) Nitrogen credits shall be calculated by the livestock facility owner or operator for the mineralized organic nitrogen in livestock waste applied during the previous three years at the rate of 50%, 25%, and 12.5%, respectively, of that mineralized during the first year.

§ 900.809. Records of Waste Disposal.

Records of the livestock waste disposal shall include the following items:

- a) Date of livestock waste application;
- b) The field where livestock waste application was made;
- c) Method of livestock waste application;
- d) Livestock waste application rate;
- e) Number of acres receiving waste; and
- f) Amount of livestock waste applied.

§ 900.810. Approval of Waste Management Plans.

a) Department approval of livestock waste management plans shall be based on the following criteria:

- 1) Livestock waste application rate of nitrogen not to exceed the crop nitrogen requirements for targeted crop yield goals;

2) Demonstration of adequate land area for livestock waste application based on Section 900.803 of this Part; and

3) Completeness and accuracy of plan contents as specified in Section 900.803 of this Part.

b) The owner or operator of the livestock management facility shall be notified by the Department within 30 working days after receipt of the livestock waste management plan that the plan has been approved or that further information or changes are needed. The owner or operator shall provide the information or changes within 30 working days.

§ 900.811. Sludge Removal.

a) Within 60 days prior to periodic removal of sludge from a livestock waste storage structure, the livestock facility owner or operator shall test the sludge for nutrient content. Application of the sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown for fields with soil phosphorus test results of 300 pounds or less of elemental phosphorus per acre pursuant to Section 900.813(a) of this Subpart. Application of the sludge shall be at a rate not to exceed the phosphorus rate on fields with soil phosphorus test results of greater than 300 pounds of elemental phosphorus per acre pursuant to Section 900.813(b) and (c)(3) of this Subpart.

b) Prior to the removal of the remaining livestock waste, soil, and sludge during a lagoon closure, the waste, soil, and sludge shall be tested for nutrient content. Application of the waste, soil, and sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown for fields with soil phosphorus test results of 300 pounds or less of elemental phosphorus per acre pursuant to Section 900.813(a) of this Subpart. Application of the waste, soil, and sludge shall be at a rate not to exceed the phosphorus rate on fields with soil phosphorus test results of greater than 300 pounds of elemental phosphorus per acre pursuant to Section 900.813(b) and (c)(3) of this Subpart.

c) Nitrogen requirements based on targeted yields for the crop to be grown may be met but shall not be exceeded by any combination of the following:

1) Livestock waste applications;

2) Periodic sludge applications; or

3) Remaining livestock waste, soil, or sludge applications during a waste storage structure closure.

§ 900.812. Soil Phosphorus Testing.

Soil samples shall be obtained and analyzed from the livestock waste application fields on land owned or under the control of the owner or operator where applications are planned. Fields where livestock waste is applied shall be sampled every 3 years.

Sampling procedures, such as the number of samples and the depth of sampling, as outlined in the Illinois Agronomy Handbook shall be followed when soil samples are obtained. [510 ILCS 77/20(f)(3.5)] For the purposes of this Subpart, "land owned or under the control of" means livestock waste application fields which are owned, rented, or leased by the owner or operator of the livestock management facility or livestock waste handling facility, or those fields that are the subject of a livestock waste application agreement between the facility owner or operator and the land owner.

§ 900.813. Phosphorus Based Application.

a) If the average Bray P1 or Mehlich test result for soil phosphorus calculated from samples obtained from the application field is 300 pounds or less of elemental phosphorus per acre, livestock waste may continue to be applied to that field in accordance with subsection (f) of Section 20 of the Livestock Management Facilities Act [510 ILCS 77/20(f)] and this Subpart. [510 ILCS 77/20(f)(3.6)]

b) If the average Bray P1 or Mehlich test result for soil phosphorus for an application field is greater than 300 pounds of elemental phosphorus per acre, the owner or operator shall apply livestock waste at a rate not to exceed the phosphorus maintenance fertilizer rate to the field pursuant to subsection (c) of this Section, until the average Bray P1 or Mehlich test for soil phosphorus indicates there is less than 300 pounds of elemental phosphorus per acre. [510 ILCS 77/20(f)(3.6)]

c) If a phosphorus application rate is required for a field, the plan shall be amended by the owner or operator for that field to determine the maximum livestock waste application rate. The amendment to the plan for that field shall contain the following:

1) The phosphorus content of the livestock waste, expressed as P[2]O[5], derived from MidWest Plan Service's MWPS-18, Livestock Waste Facilities Handbook (Table 2-1, 10-6, or 10-7), 35 Ill. Adm. Code 560 (Table 1 or Table 2), or the results of analysis performed on samples of waste;

2) The targeted crop yield goal of each crop in the field, obtained pursuant to Section 900.807 of this Subpart;

3) The phosphorus maintenance fertilizer amount, expressed as P[2]O[5] for the targeted crop yield goal of each planned crop, obtained from the Illinois Agronomy Handbook; and

4) The maximum livestock waste application rate, calculated from the items in this subsection (c), for each planned crop.

§ 900.814. Plan Updates.

a) The waste management plan shall be reviewed annually by the livestock facility owner or operator and updated when there is a change in the volume of livestock waste to

be disposed of annually, calculated pursuant to Section 900.804 of this Subpart, that will cause additional application land not already included in the plan to be needed.

b) The waste management plan shall also be updated when at least one of the following occurs:

- 1) The average Bray P1 or Mehlich test result for soil phosphorus for an application field is greater than 300 pounds of elemental phosphorus per acre, in which case a separate plan for that field shall be prepared pursuant to Section 900.813 of this Subpart if application to that field is to continue;
- 2) A change in land that is available for livestock waste application occurs, if the land is not currently included in the waste management plan;
- 3) A change in the method of livestock waste disposal or application occurs; or
- 4) A change in the crop to be grown on the application field occurs, if the crop is not already included in the plan.

§ 900.815. Penalties.

a) Any person who is required to prepare a waste management plan and who fails to do so shall be subject to the following:

- 1) The person shall be issued a warning letter by the Department for the first violation and shall be given 30 working days to prepare a waste management plan.
- 2) For failure to prepare a waste management plan within 30 working days pursuant to subsection (a)(1) of this Section, the person shall be fined an administrative penalty of up to \$ 1,000 by the Department and shall be required to enter into an agreement of compliance to prepare a waste management plan within 30 working days.
- 3) For failure to prepare a waste management plan after the second 30 day period or for failure to enter into a compliance agreement pursuant to subsection (a)(2) of this Section, the Department may issue an operational cease and desist order until compliance is attained. [510 ILCS 77/20(g)]

b) Any person who is required to maintain and implement a waste management plan and who fails to do so shall be subject to the following:

- 1) The person shall be issued a warning letter by the Department for the first violation and shall be given 30 working days to maintain and implement a waste management plan.

2) For failure to maintain and implement a waste management plan within 30 working days pursuant to subsection (b)(1) of this Section, the person shall be fined an administrative penalty of up to \$ 1,000 by the Department and shall be required to enter into an agreement of compliance to maintain and implement a waste management plan within 30 working days.

3) For failure to maintain and implement a waste management plan after the second 30 day period or for failure to enter into a compliance agreement pursuant to subsection (b)(2) of this Section, the Department may issue an operational cease and desist order until compliance is attained.

c) The operational cease and desist order procedures may be suspended by the Department upon submittal of a waste management plan by the owner or operator to the Department. The cease and desist order shall be canceled by the Department upon approval of the waste management plan by the Department.

d) A waste management plan prepared as a result of a warning letter or compliance agreement shall be subject to approval by the Department.

e) Penalties shall not be imposed for excessive nitrogen application for unplanned cropping changes due to weather or other unforeseeable circumstances.

§ 900.816. Odor Control.

a) Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application. Odor control methods shall be those methods identified in the rules adopted pursuant to the Illinois Environmental Protection Act concerning agriculture related pollution as set forth in 35 Ill. Adm. Code 501.405(b). [510 ILCS 77/25(a)]

b) Upon the occurrence of a violation of this Section, the following procedures shall be followed:

1) For a first violation of this Section by the owner or operator of a livestock management facility or livestock waste handling facility, the Department shall send the owner or operator a written notice of the violation by certified mail, return receipt requested.

2) If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a second violation of this Section, the Department shall impose on the owner or operator a civil administrative penalty in an amount not exceeding \$ 1,000. The Attorney General may bring an action in the circuit court to enforce the collection of a penalty imposed under this Section.

3) If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a third violation of this Section, the Department shall enter an administrative order directing that the owner or operator cease operation of the facility until the violation is corrected.

4) If a livestock management facility or livestock waste handling facility has not committed a violation of this Section within the 5 years immediately preceding a violation, the violation shall be construed and treated as a first violation. [510 ILCS 77/25(d)]

2) 415 ILCS §§ 5/11—5/13, 5/39; 35 Ill. Adm. Code §§ 307.2201, 501.238, 502.101, 502.201, 502.310, 502.510

415 ILCS 5/11 [Legislative findings]

(a) The General Assembly finds:

(1) that pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, depresses property values, and offends the senses;

(2) that the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], provides for a National Pollutant Discharge Elimination System (NPDES) to regulate the discharge of contaminants to the waters of the United States;

(3) that the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300f et seq.], provides for an Underground Injection Control (UIC) program to regulate the underground injection of contaminants;

(4) that it would be inappropriate and misleading for the State of Illinois to issue permits to contaminant sources subject to such federal law, as well as State law, which do not contain such terms and conditions as are required by federal law, or the issuance of which is contrary to federal law;

(5) that the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], provides that NPDES permits shall be issued by the United States Environmental Protection Agency unless (a) the State is authorized by and under its law to establish and administer its own permit program for discharges into waters within its jurisdiction, and (b) pursuant to such federal Act, the Administrator of the United States Environmental Protection Agency

approves such State program to issue permits which will implement the provisions of such federal Act;

(6) that Part C of the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300h et seq.], provides that the United States Environmental Protection Agency shall implement the UIC program authorized therein unless (a) the State is authorized by and under its law to establish and administer its own UIC program, and (b) pursuant to such federal Act, the Administrator of the United States Environmental Protection Agency approves such State program which will implement the provisions of such federal Act;

(7) that it is in the interest of the People of the State of Illinois for the State to authorize such NPDES and UIC programs and secure federal approval thereof, and thereby to avoid the existence of duplicative, overlapping or conflicting state and federal statutory permit systems;

(8) that the federal requirements for the securing of such NPDES and UIC permit program approval, as set forth in the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], and in the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300f et seq.], respectively, and in regulations promulgated by the Administrator of the United States Environmental Protection Agency pursuant thereto are complex and detailed, and the General Assembly cannot conveniently or advantageously set forth in this Act all the requirements of such federal Act or all regulations which may be established thereunder.

(b) It is the purpose of this Title to restore, maintain and enhance the purity of the waters of this State in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State of Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with State and federal law; and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval to issue NPDES permits pursuant to the provisions of the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], and federal regulations pursuant thereto and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval of the State UIC program pursuant to the provisions of Part C of the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300h et seq.], and federal regulations pursuant thereto.

(c) The provisions of this Act authorizing implementation of the regulations pursuant to an NPDES program shall not be construed to limit, affect, impair, or diminish the authority, duties and responsibilities of the Board, Agency, Department or any other governmental agency or officer, or of any unit of local government, to regulate and

control pollution of any kind, to restore, to protect or to enhance the quality of the environment, or to achieve all other purposes, or to enforce provisions, set forth in this Act or other State law or regulation.

415 ILCS 5/12 Actions prohibited

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.
- (b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.
- (c) Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency.
- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.
- (e) Sell, offer, or use any article in any area in which the Board has by regulation forbidden its sale, offer, or use for reasons of water pollution control.
- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act [415 ILCS 5/39], or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program. No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], and regulations pursuant thereto.

For all purposes of this Act, a permit issued by the Administrator of the United States Environmental Protection Agency under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1342], shall be deemed to be a permit issued by the Agency pursuant to Section 39(b) of this Act.

However, this shall not apply to the exclusion from the requirement of an operating permit provided under Section 13(b)(i) [415 ILCS 5/13].

Compliance with the terms and conditions of any permit issued under Section 39(b) of this Act shall be deemed compliance with this subsection except that it shall not be deemed compliance with any standard or effluent limitation imposed for a toxic pollutant injurious to human health.

In any case where a permit has been timely applied for pursuant to Section 39(b) of this Act but final administrative disposition of such application has not been made, it shall not be a violation of this subsection to discharge without such permit unless the complainant proves that final administrative disposition has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(g) Cause, threaten or allow the underground injection of contaminants without a UIC permit issued by the Agency under Section 39(d) of this Act or in violation of any term or condition imposed by such permit, or in violation of any regulations or standards adopted by the Board or of any order adopted by the Board with respect to the UIC program.

No permit shall be required under this subsection and under Section 39(d) of this Act for any underground injection of contaminants for which a permit is not required under Part C of the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300h et seq.], unless a permit is authorized or required under regulations adopted by the Board pursuant to Section 13 of this Act.

(h) Introduce contaminants into a sewage works from any nondomestic source except in compliance with the regulations and standards adopted by the Board under this Act.

(i) Beginning January 1, 2013, or 6 months after the date of issuance of a general NPDES permit for surface discharging private sewage disposal systems by the Illinois Environmental Protection Agency or by the United States Environmental Protection Agency, whichever is later, construct or install a surface discharging private sewage disposal system that discharges into the waters of the United States, as that term is used in the Federal Water Pollution Control Act, unless he or she has a coverage letter under a NPDES permit issued by the Illinois Environmental Protection Agency or by the United States Environmental Protection Agency or he or she is constructing or installing the surface discharging private sewage disposal system in a jurisdiction in which the local public health department has a general NPDES permit issued by the Illinois Environmental Protection Agency or by the United States Environmental Protection Agency and the surface discharging private sewage disposal system is covered under the general NPDES permit.

415 ILCS 5/13 Regulations

(a) The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes and provisions of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe:

- (1) Water quality standards specifying among other things, the maximum short-term and long-term concentrations of various contaminants in the waters, the minimum permissible concentrations of dissolved oxygen and other desirable matter in the waters, and the temperature of such waters;
- (2) Effluent standards specifying the maximum amounts or concentrations, and the physical, chemical, thermal, biological and radioactive nature of contaminants that may be discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State;
- (3) Standards for the issuance of permits for construction, installation, or operation of any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution or designed to prevent water pollution or for the construction or installation of any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State;
- (4) The circumstances under which the operators of sewage works are required to obtain and maintain certification by the Agency under Section 13.5 [415 ILCS 5/13.5] and the types of sewage works to which those requirements apply, which may, without limitation, include wastewater treatment works, pretreatment works, and sewers and collection systems;
- (5) Standards for the filling or sealing of abandoned water wells and holes, and holes for disposal of drainage in order to protect ground water against contamination;
- (6) Standards and conditions regarding the sale, offer, or use of any pesticide, detergent, or any other article determined by the Board to constitute a water pollution hazard, provided that any such regulations relating to pesticides shall be adopted only in accordance with the "Illinois Pesticide Act", approved August 14, 1979 as amended [415 ILCS 60/1 et seq.];
- (7) Alert and abatement standards relative to water-pollution episodes or emergencies which constitute an acute danger to health or to the environment;
- (8) Requirements and procedures for the inspection of any equipment, facility, or vessel that may cause or contribute to water pollution;

(9) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, the collection of samples and the collection, reporting and retention of data resulting from such monitoring.

(b) Notwithstanding other provisions of this Act and for purposes of implementing an NPDES program, the Board shall adopt:

(1) Requirements, standards, and procedures which, together with other regulations adopted pursuant to this Section 13, are necessary or appropriate to enable the State of Illinois to implement and participate in the National Pollutant Discharge Elimination System (NPDES) pursuant to and under the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.]. All regulations adopted by the Board governing the NPDES program shall be consistent with the applicable provisions of such federal Act and regulations pursuant thereto, and otherwise shall be consistent with all other provisions of this Act, and shall exclude from the requirement to obtain any operating permit otherwise required under this Title a facility for which an NPDES permit has been issued under Section 39(b) [415 ILCS 5/39]; provided, however, that for purposes of this paragraph, a UIC permit, as required under Section 12(g) and 39(d) of this Act [415 ILCS 5/12 and 415 ILCS 5/39], is not an operating permit.

(2) Regulations for the exemption of any category or categories of persons or contaminant sources from the requirement to obtain any NPDES permit prescribed or from any standards or conditions governing such permit when the environment will be adequately protected without the requirement of such permit, and such exemption is either consistent with the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], or regulations pursuant thereto, or is necessary to avoid an arbitrary or unreasonable hardship to such category or categories of persons or sources.

(c) In accordance with Section 7.2 [415 ILCS 5/7.2], and notwithstanding any other provisions of this Act, for purposes of implementing a State UIC program, the Board shall adopt regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency in accordance with Section 1421 of the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300h]. The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months. The provisions and requirements of Title VII of this Act shall not apply to regulations adopted under this subsection. Section 5-35 of the Illinois Administrative Procedure Act [5 ILCS 100/5-35] relating to procedures for rulemaking shall not apply to regulations adopted under this subsection.

(d) The Board may adopt regulations relating to a State UIC program that are not inconsistent with and are at least as stringent as the Safe Drinking Water Act (P.L. 93-523), as amended [42 U.S.C. § 300f et seq.], or regulations adopted thereunder. Regulations adopted pursuant to this subsection shall be adopted in accordance with the

provisions and requirements of Title VII of this Act and the procedures for rulemaking in Section 5-35 of the Illinois Administrative Procedure Act [5 ILCS 100/5-35].

415 ILCS 5/39 Issuance of permits; procedures.

(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance. The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to the following:

- (i) the Sections of this Act which may be violated if the permit were granted;
- (ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;
- (iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and
- (iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted.

If there is no final action by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued; except that this time period shall be extended to 180 days when (1) notice and opportunity for public hearing are required by State or federal law or regulation, (2) the application which was filed is for any permit to develop a landfill subject to issuance pursuant to this subsection, or (3) the application that was filed is for a MSWLF unit required to issue public notice under subsection (p) of Section 39 [415 ILCS 5/39]. The 90-day and 180-day time periods for the Agency to take final action do not apply to NPDES permit applications under subsection (b) of

this Section, to RCRA permit applications under subsection (d) of this Section, or to UIC permit applications under subsection (e) of this Section.

The Agency shall publish notice of all final permit determinations for development permits for MSWLF units and for significant permit modifications for lateral expansions for existing MSWLF units one time in a newspaper of general circulation in the county in which the unit is or is proposed to be located.

After January 1, 1994 and until July 1, 1998, operating permits issued under this Section by the Agency for sources of air pollution permitted to emit less than 25 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act [415 ILCS 5/39.5], shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and regulations promulgated hereunder. Such operating permits shall expire 180 days after the date of such a request. The Board shall revise its regulations for the existing State air pollution operating permit program consistent with this provision by January 1, 1994.

After June 30, 1998, operating permits issued under this Section by the Agency for sources of air pollution that are not subject to Section 39.5 of this Act and are not required to have a federally enforceable State operating permit shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and its rules. Such operating permits shall expire 180 days after the date of such a request. Before July 1, 1998, the Board shall revise its rules for the existing State air pollution operating permit program consistent with this paragraph and shall adopt rules that require a source to demonstrate that it qualifies for a permit under this paragraph.

(b) The Agency may issue NPDES permits exclusively under this subsection for the discharge of contaminants from point sources into navigable waters, all as defined in the Federal Water Pollution Control Act [33 U.S.C. § 1251 et seq.], as now or hereafter amended, within the jurisdiction of the State, or into any well.

All NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act.

The Agency may issue general NPDES permits for discharges from categories of point sources which are subject to the same permit limitations and conditions. Such general permits may be issued without individual applications and shall conform to regulations promulgated under Section 402 of the Federal Water Pollution Control Act [33 U.S.C. § 1342], as now or hereafter amended.

The Agency may include, among such conditions, effluent limitations and other requirements established under this Act, Board regulations, the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto, and schedules for achieving compliance therewith at the earliest reasonable date.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

The Agency, subject to any conditions which may be prescribed by Board regulations, may issue NPDES permits to allow discharges beyond deadlines established by this Act or by regulations of the Board without the requirement of a variance, subject to the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

(c) Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act [70 ILCS 2605/1 et seq.], no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act [415 ILCS 5/39.2]. For purposes of this subsection (c), and for purposes of Section 39.2 of this Act, the appropriate county board or governing body of the municipality shall be the county board of the county or the governing body of the municipality in which the facility is to be located as of the date when the application for siting approval is filed.

In the event that siting approval granted pursuant to Section 39.2 has been transferred to a subsequent owner or operator, that subsequent owner or operator may apply to the Agency for, and the Agency may grant, a development or construction permit for the facility for which local siting approval was granted. Upon application to the Agency for a development or construction permit by that subsequent owner or operator, the permit applicant shall cause written notice of the permit application to be served upon the appropriate county board or governing body of the municipality that granted siting approval for that facility and upon any party to the siting proceeding pursuant to which siting approval was granted. In that event, the Agency shall conduct an evaluation of the subsequent owner or operator's prior experience in waste management operations in the manner conducted under subsection (i) of Section 39 of this Act.

Beginning August 20, 1993, if the pollution control facility consists of a hazardous or solid waste disposal facility for which the proposed site is located in an unincorporated area of a county with a population of less than 100,000 and includes all or a portion of a parcel of land that was, on April 1, 1993, adjacent to a municipality having a population of less than 5,000, then the local siting review required under this subsection (c) in conjunction with any permit applied for after that date shall be performed by the governing body of that adjacent municipality rather than the county board of the county in which the proposed site is located; and for the purposes of that local siting review, any references in this Act to the county board shall be deemed to mean the governing body of that adjacent municipality; provided, however, that the provisions of this paragraph shall

not apply to any proposed site which was, on April 1, 1993, owned in whole or in part by another municipality.

In the case of a pollution control facility for which a development permit was issued before November 12, 1981, if an operating permit has not been issued by the Agency prior to August 31, 1989 for any portion of the facility, then the Agency may not issue or renew any development permit nor issue an original operating permit for any portion of such facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved by the appropriate county board or municipal governing body pursuant to Section 39.2 of this Act.

After January 1, 1994, if a solid waste disposal facility, any portion for which an operating permit has been issued by the Agency, has not accepted waste disposal for 5 or more consecutive calendar years, before that facility may accept any new or additional waste for disposal, the owner and operator must obtain a new operating permit under this Act for that facility unless the owner and operator have applied to the Agency for a permit authorizing the temporary suspension of waste acceptance. The Agency may not issue a new operation permit under this Act for the facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved or re-approved by the appropriate county board or municipal governing body under Section 39.2 of this Act after the facility ceased accepting waste.

Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act [70 ILCS 2605/1 et seq.], and except for new pollution control facilities governed by Section 39.2, and except for fossil fuel mining facilities, the granting of a permit under this Act shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facility.

Before beginning construction on any new sewage treatment plant or sludge drying site to be owned or operated by a sanitary district organized under the Metropolitan Water Reclamation District Act for which a new permit (rather than the renewal or amendment of an existing permit) is required, such sanitary district shall hold a public hearing within the municipality within which the proposed facility is to be located, or within the nearest community if the proposed facility is to be located within an unincorporated area, at which information concerning the proposed facility shall be made available to the public, and members of the public shall be given the opportunity to express their views concerning the proposed facility.

The Agency may issue a permit for a municipal waste transfer station without requiring approval pursuant to Section 39.2 provided that the following demonstration is made:

- (1) the municipal waste transfer station was in existence on or before January 1, 1979 and was in continuous operation from January 1, 1979 to January 1, 1993;

(2) the operator submitted a permit application to the Agency to develop and operate the municipal waste transfer station during April of 1994;

(3) the operator can demonstrate that the county board of the county, if the municipal waste transfer station is in an unincorporated area, or the governing body of the municipality, if the station is in an incorporated area, does not object to resumption of the operation of the station; and

(4) the site has local zoning approval.

(d) The Agency may issue RCRA permits exclusively under this subsection to persons owning or operating a facility for the treatment, storage, or disposal of hazardous waste as defined under this Act.

All RCRA permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) [42 U.S.C. § 6901 et seq.], as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith as soon as possible. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a RCRA permit.

In the case of a permit to operate a hazardous waste or PCB incinerator as defined in subsection (k) of Section 44 [415 ILCS 5/44], the Agency shall require, as a condition of the permit, that the operator of the facility perform such analyses of the waste to be incinerated as may be necessary and appropriate to ensure the safe operation of the incinerator.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of RCRA permits, and which are consistent with the Act or regulations adopted by the Board, and with the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(e) The Agency may issue UIC permits exclusively under this subsection to persons owning or operating a facility for the underground injection of contaminants as defined under this Act.

All UIC permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a UIC permit.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of UIC permits, and which are consistent with the Act or regulations adopted by the Board, and with the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection, all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(f) In making any determination pursuant to Section 9.1 of this Act [415 ILCS 5/9.1]:

(1) The Agency shall have authority to make the determination of any question required to be determined by the Clean Air Act, as now or hereafter amended, this Act, or the regulations of the Board, including the determination of the Lowest Achievable Emission Rate, Maximum Achievable Control Technology, or Best Available Control Technology, consistent with the Board's regulations, if any.

(2) The Agency shall adopt requirements as necessary to implement public participation procedures, including, but not limited to, public notice, comment, and an opportunity for hearing, which must accompany the processing of applications for PSD permits. The Agency shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The Agency may group related comments together and provide one unified response for each issue raised.

(3) Any complete permit application submitted to the Agency under this subsection for a PSD permit shall be granted or denied by the Agency not later than one year after the filing of such completed application.

(4) The Agency shall, after conferring with the applicant, give written notice to the applicant of its proposed decision on the application including the terms and conditions of the permit to be issued and the facts, conduct or other basis upon which the Agency will rely to support its proposed action.

(g) The Agency shall include as conditions upon all permits issued for hazardous waste disposal sites such restrictions upon the future use of such sites as are reasonably necessary to protect public health and the environment, including permanent prohibition of the use of such sites for purposes which may create an unreasonable risk of injury to human health or to the environment. After administrative and judicial challenges to such restrictions have been exhausted, the Agency shall file such restrictions of record in the Office of the Recorder of the county in which the hazardous waste disposal site is located.

(h) A hazardous waste stream may not be deposited in a permitted hazardous waste site unless specific authorization is obtained from the Agency by the generator and disposal site owner and operator for the deposit of that specific hazardous waste stream. The Agency may grant specific authorization for disposal of hazardous waste streams only after the generator has reasonably demonstrated that, considering technological feasibility and economic reasonableness, the hazardous waste cannot be reasonably recycled for reuse, nor incinerated or chemically, physically or biologically treated so as to neutralize the hazardous waste and render it nonhazardous. In granting authorization under this Section, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and are consistent with this Act and regulations promulgated by the Board hereunder. If the Agency refuses to grant authorization under this Section, the applicant may appeal as if the Agency refused to grant a permit, pursuant to the provisions of subsection (a) of Section 40 of this Act [415 ILCS 5/40]. For purposes of this subsection (h), the term “generator” has the meaning given in Section 3.205 of this Act [415 ILCS 5/3.205], unless:

(1) the hazardous waste is treated, incinerated, or partially recycled for reuse prior to disposal, in which case the last person who treats, incinerates, or partially recycles the hazardous waste prior to disposal is the generator; or

(2) the hazardous waste is from a response action, in which case the person performing the response action is the generator. This subsection (h) does not apply to any hazardous waste that is restricted from land disposal under 35 Ill. Adm. Code 728.

(i) Before issuing any RCRA permit, any permit for a waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, waste incinerator, or any waste-transportation operation, any permit or interim authorization for a clean construction or demolition debris fill operation, or any permit required under subsection (d-5) of Section 55 [415 ILCS 5/55], the Agency shall conduct an evaluation of the prospective owner’s or operator’s prior experience in waste management operations, clean construction or demolition debris fill operations, and tire storage site management. The Agency may deny such a permit, or deny or revoke interim authorization, if the prospective owner or operator or any employee or officer of the prospective owner or operator has a history of:

(1) repeated violations of federal, State, or local laws, regulations, standards, or ordinances in the operation of waste management facilities or sites, clean construction or demolition debris fill operation facilities or sites, or tire storage sites; or

(2) conviction in this or another State of any crime which is a felony under the laws of this State, or conviction of a felony in a federal court; or conviction in this or another state or federal court of any of the following crimes: forgery, official misconduct, bribery, perjury, or knowingly submitting false information under any environmental law, regulation, or permit term or condition; or

(3) proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of waste, clean construction or demolition debris, or used or waste tires, or proof of gross carelessness or incompetence in using clean construction or demolition debris as fill.

(i-5) Before issuing any permit or approving any interim authorization for a clean construction or demolition debris fill operation in which any ownership interest is transferred between January 1, 2005, and the effective date of the prohibition set forth in Section 22.52 of this Act [415 ILCS 5/22.52], the Agency shall conduct an evaluation of the operation if any previous activities at the site or facility may have caused or allowed contamination of the site. It shall be the responsibility of the owner or operator seeking the permit or interim authorization to provide to the Agency all of the information necessary for the Agency to conduct its evaluation. The Agency may deny a permit or interim authorization if previous activities at the site may have caused or allowed contamination at the site, unless such contamination is authorized under any permit issued by the Agency.

(j) The issuance under this Act of a permit to engage in the surface mining of any resources other than fossil fuels shall not relieve the permittee from its duty to comply with any applicable local law regulating the commencement, location or operation of surface mining facilities.

(k) A development permit issued under subsection (a) of Section 39 for any facility or site which is required to have a permit under subsection (d) of Section 21 [415 ILCS 5/21] shall expire at the end of 2 calendar years from the date upon which it was issued, unless within that period the applicant has taken action to develop the facility or the site. In the event that review of the conditions of the development permit is sought pursuant to Section 40 or 41 [415 ILCS 5/40 or 415 ILCS 5/41], or permittee is prevented from commencing development of the facility or site by any other litigation beyond the permittee's control, such two-year period shall be deemed to begin on the date upon which such review process or litigation is concluded.

(l) No permit shall be issued by the Agency under this Act for construction or operation of any facility or site located within the boundaries of any setback zone established pursuant to this Act, where such construction or operation is prohibited.

(m) The Agency may issue permits to persons owning or operating a facility for composting landscape waste. In granting such permits, the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with applicable regulations promulgated by the Board. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit pursuant to this subsection, the Agency shall transmit to the applicant within the time limitations of this subsection specific, detailed statements as to the reasons the permit application was denied. Such statements shall include but not be limited to the following:

- (1) the Sections of this Act that may be violated if the permit were granted;
- (2) the specific regulations promulgated pursuant to this Act that may be violated if the permit were granted;
- (3) the specific information, if any, the Agency deems the applicant did not provide in its application to the Agency; and
- (4) a statement of specific reasons why the Act and the regulations might be violated if the permit were granted.

If no final action is taken by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued. Any applicant for a permit may waive the 90-day limitation by filing a written statement with the Agency.

The Agency shall issue permits for such facilities upon receipt of an application that includes a legal description of the site, a topographic map of the site drawn to the scale of 200 feet to the inch or larger, a description of the operation, including the area served, an estimate of the volume of materials to be processed, and documentation that:

- (1) the facility includes a setback of at least 200 feet from the nearest potable water supply well;
- (2) the facility is located outside the boundary of the 10-year floodplain or the site will be floodproofed;
- (3) the facility is located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence, and in the case of a facility that is developed or the permitted composting area of which is expanded after November 17, 1991, the composting area is located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility);

(4) the design of the facility will prevent any compost material from being placed within 5 feet of the water table, will adequately control runoff from the site, and will collect and manage any leachate that is generated on the site;

(5) the operation of the facility will include appropriate dust and odor control measures, limitations on operating hours, appropriate noise control measures for shredding, chipping and similar equipment, management procedures for composting, containment and disposal of non-compostable wastes, procedures to be used for terminating operations at the site, and recordkeeping sufficient to document the amount of materials received, composted and otherwise disposed of; and

(6) the operation will be conducted in accordance with any applicable rules adopted by the Board.

The Agency shall issue renewable permits of not longer than 10 years in duration for the composting of landscape wastes, as defined in Section 3.155 of this Act [415 ILCS 5/3.155], based on the above requirements.

The operator of any facility permitted under this subsection (m) must submit a written annual statement to the Agency on or before April 1 of each year that includes an estimate of the amount of material, in tons, received for composting.

(n) The Agency shall issue permits jointly with the Department of Transportation for the dredging or deposit of material in Lake Michigan in accordance with Section 18 of the Rivers, Lakes, and Streams Act [615 ILCS 5/18].

(o) (Blank.)

(p)

(1) Any person submitting an application for a permit for a new MSWLF unit or for a lateral expansion under subsection (t) of Section 21 of this Act for an existing MSWLF unit that has not received and is not subject to local siting approval under Section 39.2 of this Act shall publish notice of the application in a newspaper of general circulation in the county in which the MSWLF unit is or is proposed to be located. The notice must be published at least 15 days before submission of the permit application to the Agency. The notice shall state the name and address of the applicant, the location of the MSWLF unit or proposed MSWLF unit, the nature and size of the MSWLF unit or proposed MSWLF unit, the nature of the activity proposed, the probable life of the proposed activity, the date the permit application will be submitted, and a statement that persons may file written comments with the Agency concerning the permit application within 30 days after the filing of the permit application unless the time period to submit comments is extended by the Agency.

When a permit applicant submits information to the Agency to supplement a permit application being reviewed by the Agency, the applicant shall not be required to reissue the notice under this subsection.

(2) The Agency shall accept written comments concerning the permit application that are postmarked no later than 30 days after the filing of the permit application, unless the time period to accept comments is extended by the Agency.

(3) Each applicant for a permit described in part (1) of this subsection shall file a copy of the permit application with the county board or governing body of the municipality in which the MSWLF unit is or is proposed to be located at the same time the application is submitted to the Agency. The permit application filed with the county board or governing body of the municipality shall include all documents submitted to or to be submitted to the Agency, except trade secrets as determined under Section 7.1 of this Act [415 ILCS 5/7.1]. The permit application and other documents on file with the county board or governing body of the municipality shall be made available for public inspection during regular business hours at the office of the county board or the governing body of the municipality and may be copied upon payment of the actual cost of reproduction.

(q) Within 6 months after July 12, 2011 (the effective date of Public Act 97-95), the Agency, in consultation with the regulated community, shall develop a web portal to be posted on its website for the purpose of enhancing review and promoting timely issuance of permits required by this Act. At a minimum, the Agency shall make the following information available on the web portal:

(1) Checklists and guidance relating to the completion of permit applications, developed pursuant to subsection (s) of this Section, which may include, but are not limited to, existing instructions for completing the applications and examples of complete applications. As the Agency develops new checklists and develops guidance, it shall supplement the web portal with those materials.

(2) Within 2 years after July 12, 2011 (the effective date of Public Act 97-95), permit application forms or portions of permit applications that can be completed and saved electronically, and submitted to the Agency electronically with digital signatures.

(3) Within 2 years after July 12, 2011 (the effective date of Public Act 97-95), an online tracking system where an applicant may review the status of its pending application, including the name and contact information of the permit analyst assigned to the application. Until the online tracking system has been developed, the Agency shall post on its website semi-annual permitting efficiency tracking reports that include statistics on the timeframes for Agency action on the following types of permits received after July 12, 2011 (the effective date of Public Act 97-95): air construction permits, new NPDES permits and associated water construction permits, and modifications of major NPDES

permits and associated water construction permits. The reports must be posted by February 1 and August 1 each year and shall include:

(A) the number of applications received for each type of permit, the number of applications on which the Agency has taken action, and the number of applications still pending; and

(B) for those applications where the Agency has not taken action in accordance with the timeframes set forth in this Act, the date the application was received and the reasons for any delays, which may include, but shall not be limited to, (i) the application being inadequate or incomplete, (ii) scientific or technical disagreements with the applicant, USEPA, or other local, state, or federal agencies involved in the permitting approval process, (iii) public opposition to the permit, or (iv) Agency staffing shortages. To the extent practicable, the tracking report shall provide approximate dates when cause for delay was identified by the Agency, when the Agency informed the applicant of the problem leading to the delay, and when the applicant remedied the reason for the delay.

(r) Upon the request of the applicant, the Agency shall notify the applicant of the permit analyst assigned to the application upon its receipt.

(s) The Agency is authorized to prepare and distribute guidance documents relating to its administration of this Section and procedural rules implementing this Section. Guidance documents prepared under this subsection shall not be considered rules and shall not be subject to the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.]. Such guidance shall not be binding on any party.

(t) Except as otherwise prohibited by federal law or regulation, any person submitting an application for a permit may include with the application suggested permit language for Agency consideration. The Agency is not obligated to use the suggested language or any portion thereof in its permitting decision. If requested by the permit applicant, the Agency shall meet with the applicant to discuss the suggested language.

(u) If requested by the permit applicant, the Agency shall provide the permit applicant with a copy of the draft permit prior to any public review period.

(v) If requested by the permit applicant, the Agency shall provide the permit applicant with a copy of the final permit prior to its issuance.

(w) An air pollution permit shall not be required due to emissions of greenhouse gases, as specified by Section 9.15 of this Act [415 ILCS 5/9.15].

(x) If, before the expiration of a State operating permit that is issued pursuant to subsection (a) of this Section and contains federally enforceable conditions limiting the

potential to emit of the source to a level below the major source threshold for that source so as to exclude the source from the Clean Air Act Permit Program, the Agency receives a complete application for the renewal of that permit, then all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application for the renewal of the permit.

§ 307.2201 General

a) Applicability. This Section applies to manure, litter, or process wastewater discharges resulting from concentrated animal feeding operations (CAFOs). Manufacturing or agricultural activities that may be subject to this Section are generally reported under one or more of the following SIC codes, as defined in the Standard Industrial Classification Manual, incorporated by reference in 35 Ill. Adm. Code 310.107:

- 1) SIC Code 0211 (Beef Cattle Feedlots);
- 2) SIC Code 0213 (Hogs);
- 3) SIC Code 0214 (Sheep and Goats);
- 4) SIC Code 0241 (Dairy Farms);
- 5) SIC Code 0251 (Broiler, Fryer, and Roaster Chickens);
- 6) SIC Code 0252 (Chicken Eggs);
- 7) SIC Code 0253 (Turkeys and Turkey Eggs);
- 8) SIC Code 0254 (Poultry Hatcheries);
- 9) SIC Code 0259 (Poultry and Eggs, Not Elsewhere Classified); or
- 10) SIC Code 0272 (Horses and Other Equines).

b) General definitions. The Board incorporates by reference 40 CFR 412.2 (2011). This incorporation includes no later amendments or editions.

c) General pretreatment standards. The Board incorporates by reference 40 CFR 412.3 (2011) This incorporation includes no later amendments or editions.

d) A facility is determined a concentrated animal feeding operation (CAFO) according to the definitions and requirements of 40 CFR 122.23(b) and (c), incorporated by reference in 35 Ill. Adm. Code 310.107.

§ 501.238 Concentrated Animal Feeding Operation (CAFO)

An Animal Feeding Operation (AFO) that is defined as a Large CAFO pursuant to 35 Ill. Adm. Code 502.103 or as a medium CAFO pursuant to 35 Ill. Adm. Code 502.104, or that is designated as a CAFO pursuant to 35 Ill. Adm. Code 502.106.

§ 502.101 NPDES Permit Requirement and Duty to Maintain Permit Coverage

- a) A Concentrated Animal Feeding Operation (CAFO) is a point source. Any discharge of pollutants into waters of the United States from a CAFO is prohibited unless authorized by an NPDES permit or unless the discharge is an agricultural stormwater discharge as described in Section 502.102(b). No person shall cause or allow a discharge from a CAFO in violation of federal or State law, including but not limited to the Clean Water Act (CWA) (33 USC 1251), the Act or Board regulations.
- b) The owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges.
- c) The owner or operator of a CAFO that discharges must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Agency has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Agency. All permit applications and applications for permit modifications must contain the information set forth in Subpart B.
- d) Any permitted CAFO shall apply for reissuance of the NPDES permit not less than 180 days prior to the expiration date of the permit unless the CAFO will not discharge after the expiration date of the NPDES permit.
- e) The owner or operator of a new CAFO that will discharge must apply for NPDES permit coverage at least 180 days prior to the time that the CAFO commences operation.
- f) Once an Animal Feeding Operation is defined as a CAFO for at least one type of animal, the NPDES permit requirements for CAFOs apply with respect to all animals in confinement at the animal feeding operation and all livestock waste generated by those animals or the production of those animals.

§ 502.201 Permit Applications

- a) All applications from a new or existing CAFO for any permit, including an individual permit or a general permit, required under this Chapter shall contain, where appropriate, the following information and documents:
 - 1) The name of the owner or operator;
 - 2) The facility location and mailing addresses;

- 3) The latitude and longitude at the entrance to the production area;
 - 4) Specific information about the average and maximum number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
 - 5) A statement as to any projected changes in the size of the livestock operation and when they may occur during the term of the permit;
 - 6) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (in tons or gallons);
 - 7) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area and land application areas, and indicating the following:
 - A) Direction and location of surface and subsurface drainage and other discharges from the facility; and
 - B) Location of waterways in the area.
 - 8) Estimated amounts of livestock waste generated per year (in tons or gallons);
 - 9) The total number of acres of land application area and the estimated amount of waste to be applied to those acres per year;
 - 10) Estimated amount of livestock waste transferred to other persons per year (in tons or gallons);
 - 11) A nutrient management plan that is consistent with the requirements of Subpart E;
 - 12) A stormwater pollution prevention plan;
 - 13) A spill control and prevention plan; and
 - 14) A statement identifying and justifying any departure from current design criteria promulgated by the Agency.
- b) The Agency may adopt procedures requiring such additional information as is necessary to determine whether the CAFO will meet the requirements of the Act and applicable Board regulations.

c) Applicable requirements of 35 Ill. Adm. Code 309: Subpart A shall apply to applications for NPDES permits required by this Chapter. The Agency may prescribe the form in which information required under this Section shall be submitted.

§ 502.310 CAFOs Seeking Coverage Under NPDES General Permits

a) CAFO owners or operators must submit a notice of intent that meets the requirements of Section 502.201 and Subpart E of this Part when seeking authorization to discharge under a general permit.

b) When additional information is necessary to complete the notice of intent or to clarify, modify, or supplement previously submitted material, the Agency may request that information from the owner or operator as provided in 35 Ill. Adm. Code 309.106.

c) The Agency must notify the public of its proposal to grant coverage under the general permit to the CAFO. This public notice must include the CAFO's nutrient management plan.

d) The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, will follow the procedures applicable to draft individual permits found in 35 Ill. Adm. Code 309.109(b) and 309.115 through 309.118.

e) The time period for the public to comment and request a hearing is 30 days following the date of the notice issued pursuant to subsection (c).

f) When a public hearing is held, the Agency must respond to significant comments received during the comment period as provided in 35 Ill. Adm. Code 309.119 and 309.120, except that notice and transmission to the USEPA Regional Administrator is not required. If no hearing is held, the Agency shall follow the procedures in 35 Ill. Adm. Code 309.112 and 309.120 for Agency action after the comment period. If necessary, the Agency will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage.

g) When the Agency authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. This incorporation of terms and conditions does not require a modification of the general permit.

h) The Agency shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

i) Nothing in this Section shall limit the Agency's authority to require an individual NPDES permit pursuant to Section 39(b) of the Act.

§ 502.510 Nutrient Management Plan Requirements

- a) Any permit issued to a CAFO must include a requirement to implement a nutrient management plan by the date of permit coverage that, at a minimum, contains best management practices necessary to meet the requirements of this Section and the applicable livestock discharge limitations and technical standards in 35 Ill. Adm. Code 501 and 502.
- b) The nutrient management plan must specify and demonstrate:
 - 1) The livestock waste application rate of nitrogen in a single year and phosphorus in a single year or multiple years, not to exceed the single year crop nitrogen and single year or multi-year phosphorus requirements for realistic crop yield goals in the rotation;
 - 2) Adequate land application area for livestock waste application which may include:
 - A) land owned by the CAFO owner or operator;
 - B) land rented or leased by the CAFO;
 - C) land covered by a consent agreement between the CAFO owner or operator and the property owner; or
 - D) any combination of the land described in subsection (b)(2)(A) through (C);
 - 3) Adequate storage of livestock waste, including procedures to ensure proper operation and maintenance of the storage facilities;
 - 4) Proper management of mortalities to ensure that they are not disposed of in a liquid livestock waste or stormwater storage or treatment system that is not specifically designed to treat animal mortalities;
 - 5) That clean water is diverted, as appropriate, from the production area;
 - 6) Prevention of direct contact of confined animals with waters of the United States;
 - 7) That chemicals and other contaminants handled on-site are not disposed of in any livestock waste or stormwater storage or treatment system unless specifically designed to treat those chemicals and other contaminants;

- 8) Appropriate site specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- 9) Protocols for appropriate testing of livestock waste and soil. Livestock waste must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of twice every five years for phosphorus content. The results of these analyses are to be used in determining application rates for livestock wastes;
- 10) Protocols to land apply livestock waste in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the livestock waste;
- 11) Livestock waste shall not be applied within the distance from residences provided in Section 502.645(a) and within the areas prohibited from land application by this Part;
- 12) A winter time land application plan that meets the requirements of Section 502.630;
- 13) The plan for the inspection, monitoring, management and repair of subsurface drainage systems at the livestock waste application site. Inspection of subsurface drainage systems shall include visual inspection prior to land application to determine failures that may cause discharges and visual inspection during and after land application to identify discharges. For purposes of this subsection (b)(13), visual inspection means inspection by a person of the tile inlet, tile outlet and unobstructed land surface to assess the structural ability of the subsurface drainage system;
- 14) A spill prevention and control plan;
- 15) Annual review of the nutrient management practices to be implemented and an update of the nutrient management plan when there is a change in the nutrient management practices;
- 16) Specific records that will be maintained to document the implementation and management of the minimum elements described in subsections (b)(2) through (15); and
- 17) A description of the storage provisions and schedules provided for livestock waste when cropping practices, soil conditions, weather conditions or other conditions prevent the application of livestock waste to land or prevent other methods of livestock waste disposal.