

US EPA ARCHIVE DOCUMENT

## **Attachment C- Case Studies of Illinois EPA CAFO Permitting Compliance and Enforcement Activities**

The following case studies summarize the Review Team's observations from selected file reviews, and are representative of the files reviewed. These observations provide the bases for many of the findings in the report.

### **Jerry Grauf Farm/JK Pork**

This swine facility had originally submitted an NPDES permit application in 1997. The following year Illinois EPA replied to JK Pork with a notice of incomplete submission of application. The notice was followed by a Consent Order entered in the Hancock County Circuit Court in 1999. The Consent Order required the facility to cease discharges from its onsite lagoon, and to apply for a NPDES permit. The facility also agreed to a penalty, and to two Supplemental Environmental Projects, at that time. In 2002, the enforcement case file was closed.

A CAFO facility inspection was conducted by the Peoria Field Office in January 2007 as follow-up to the 1999 Consent Order, in order to determine whether or not the facility required an NPDES permit.

This permit application remained in the Illinois EPA central office until 2008, when it was sent to the Peoria Regional Office. In late 2008, the Peoria Office informed the Illinois EPA Bureau of Water that the permit could be issued based on the information provided in 1999<sup>1</sup>.

***Case-specific Findings:*** The CAFO was mandated by court order to apply for an NPDES permit following a discharge event documented by Illinois EPA. A permit had not been issued in the ten years following application.

### **Bradford Pig Palace/Cowser Feedlot**

This swine operation, under the name "Bradford Pig Palace," had an individual NPDES permit from 1994-99. An Illinois EPA inspection report documented that the operation had been the source of a large spill that occurred in March 1997. A Section 43 Injunction was issued by the State Attorney General's office in response to the spill. Cowser Feedlot leased the facilities from Bradford Pig Palace in March 1999. A reconnaissance inspection was conducted in April 2002; the Illinois EPA inspector noted that no complaints had been received at that point in time since operation of the facility had changed. The facility submitted a permit application in 2003. Illinois EPA conducted another inspection in 2005. At the time of the inspection, the operation was reportedly expanding from 1200 to 2300 sows. The report from the 2005 inspection indicated that the operation would be a CAFO as a result of the expansion, but did not confirm it would be a Large or Medium CAFO upon expansion, and did not discuss the CAFO's permit

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<sup>1</sup> Illinois EPA's 2008 inspection determined that while no hogs were onsite at the time of the inspection, three waste lagoons remained at the facility. Illinois EPA reaffirmed the need for the facility to be permitted.

application. The report indicated that no apparent compliance issues were noted. As a result of the inspection, Illinois EPA included the facility on its list of CAFOs that did not need a permit (See Attachment D).

In March 2007, the operation reported a 1000 gallon spill to the Illinois Emergency Management Agency (IEMA). According to the IEMA report, about 1000 gallons of liquid hog waste was spilled due to a rodent hole in the berm surrounding the lagoon. Without a permit, this discharge was not a violation of a permit condition (i.e. inspection and maintenance of storage structures). If such conditions had been complied with, the discharge may have been prevented.

*Case-specific Findings:* The CAFO had a discharge from its lagoon subsequent to Illinois EPA's determination that it did not need an NPDES permit. The operation was included on Illinois EPA's list of CAFOs that did not need permits, despite it having submitted an application.

#### **Byington Farm/Judd Farm**

The Byington Farm, a large cattle operation in Kane County, Illinois, was associated with a fish kill in 1998 under a prior owner. At that time, regional office staff requested that Illinois EPA's Bureau of Water issue a Violation Notice, and a Court Order was filed by the Illinois Attorney General's office. The facility was subsequently vacant for several years. The facility resumed operation as Judd Farm. As of 2007, the facility had 1300 feeder cattle. In September 2007, Illinois EPA's Rockford Regional Office again recommended that the Bureau of Water issue a Violation Notice to the facility, indicating that the water quality issues in the 1998 inspection had not been addressed.

A Violation Notice was issued in December 2007. The Notice required the facility to cease discharges; develop a manure management plan; channel excess storm water to a subsurface tile; and properly dispose of mortalities. In February 2008, Illinois EPA accepted Judd Farm's Compliance Commitment Agreement. Neither the Violation Notice nor the Compliance Commitment Agreement compelled the facility to apply for a NPDES permit.

*Case-specific Findings:* Illinois EPA's enforcement action did not address the CAFO's failure to apply for an NPDES permit. The lack of effective enforcement against a known discharger contributed to long-standing water quality issues.

#### **Christensen Family Farms-Newman**

This swine facility was previously the subject of complaint and investigation in 1995 while operating as Heartland Pork. In April 2002, a new complaint was made about the facility, then operating as Christensen Family Farms-Newman. An inspection was conducted on April 29, 2002 in response to an anonymous complaint of discharge of manure to a stream.

Basic facility information, including the address of the facility, and the number and type of animals located therein, were not provided in the inspection report. No description of the general operational parameters of the facility was provided. A storage structure was examined, but other parts of the facility do not appear to have been inspected. No evidence was noted of any discharge at the time of the inspection.

Land application of manure was implicated in the spill, though no application was occurring at the time of the inspection. The facility had reportedly told the inspector that they would notify Illinois EPA when land application was to resume, although no further record of follow-up was provided in the case file. No enforcement action was taken in response to this inspection.

According to the case file, additional anonymous complaints about the facility were submitted to Illinois EPA in December 2004, and in April 2005. None of the three complaints were recorded in any centralized database; the information was only available in the Field Office files.

The facility applied for an NPDES permit in June 2005, but requested to withdraw its application in March 2009. Illinois EPA had not made a final decision on this request at the time of EPA's review.

***Case-specific Findings:*** Christensen Family Farms was inspected in response to a 2002 citizen complaint. The inspection performed was inadequate to determine whether or not the facility required an NPDES permit, and no specific NPDES requirements were included in the report. Subsequent complaints were received regarding the facility, but no informal enforcement or subsequent inspections appear to have resulted from any of these complaints. It is unclear whether or not Illinois EPA recommended the facility apply for a permit.

### **Diekemper Dairy**

Diekemper Farm, a large dairy feed lot, has been the subject of various odor and land application-related complaints. The history of complaints goes back as far as 2001, when a discharge complaint was made. While Illinois EPA reportedly conducted an inspection in response to the discharge, the field inspection report was missing from the records reviewed. In September 2003, there was an odor complaint about the facility, followed by an Illinois EPA inspection. A letter regarding manure management practices was sent to the facility. A week following this incident, another manure management complaint was issued, again soliciting a response from Illinois EPA in the form of a manure management practice sheet. In October 2003, Illinois EPA conducted another inspection following a miscellaneous complaint. In November of the same year, a Noncompliance Advisory letter was sent to Diekemper.

In February of 2004, Illinois EPA sent a Violation Notice to the facility, citing eight violations. The Violation Notice required the facility to submit a Compliance Commitment Agreement. Illinois EPA provided four recommendations to bring the facility back into compliance. The Compliance Commitment Agreement submitted by the facility was rejected in April 2004 as insufficient. The rejection letter recommended the facility to apply for a permit, as the facility was continuing to discharge.

In October 2004, Illinois EPA issued a Notice of Intent to Pursue Legal Action to the facility. A meeting was held with the facility in an attempt to resolve the violations. While the outcome of the meeting is unclear, based on documentation within the case file, it is apparent that the case did not proceed.

The facility was the subject of a complaint in December 2005, regarding a winter land application of manure. Inspectors sent another manure management practice sheet to the facility. This process was repeated in June 2006. In May 2006, another discharge complaint was made to Illinois EPA. During the inspection following this complaint, the inspector observed no improvements to the operating procedures of the facility. A construction project required by Illinois EPA had not yet begun, and a need for further monitoring was noted. Illinois EPA conducted another inspection in October 2006, following a complaint of the facility. The inspection included samples taken directly upstream and downstream of the facility. Inspection results were well-documented with appropriate regulatory citations and recommendations to bring the facility back into compliance. Another Violation Notice with a Compliance Commitment Agreement was issued to Diekemper the same month. Soon thereafter, the facility was vacated due to bankruptcy and the file on the facility was closed by Illinois EPA.

***Case-specific Findings:*** Inspectors responded to repeated, ongoing complaints with a series of inspections. Inspection findings were adequately documented. Water quality impacts were evident. Illinois EPA made several attempts to escalate informal enforcement against the facility, but did not proceed to formal enforcement despite the fact that there were repeat violations and clear water quality impacts. Through an informal enforcement mechanism, the Illinois EPA did recommend the facility apply for a permit, but there was no consequence to the facility's failure to do so. A formal administrative and/or judicial action with penalty should have been pursued against the Diekemper facility.

### **McChesney Cattle & Swine Farm**

The McChesney Cattle and Swine farm is a large swine facility which has been operating and discharging without an NPDES permit. Between 1997 and 2001, inspectors visited the McChesney Farm three times. Several citizen complaints were lodged during that timeframe. At the time of a 1999 inspection, a discharge from the facility was documented, and a stream containing manure was found to be running through the feedlot. Sampling by the Field Office showed the stream contained high levels of nutrients. The water body to which the stream emptied was determined by an aquatic biologist to be chronically impaired with significant harm posed to fish populations. The Illinois EPA regional office subsequently referred the case for enforcement through a Violation Notice. The Violation Notice identified that the facility was discharging without a NPDES permit, but did not include notice of the requirement to apply for an NPDES permit. Citizen complaints continued from 2002-2007 while enforcement actions taken by Illinois EPA began informally. Enforcement steadily progressed from the issuance of a Noncompliance Advisory to a Violation Notice, to a Notice of Intent to Pursue Legal Action. A Consent Order was subsequently issued in 2004. The Consent Order required the facility to take specific steps to come into compliance, but it was not clear based on information available in the

case file when the corrective actions required under the terms of the Consent Order were completed. Illinois EPA's latest inspection of this facility was in 2007. The report for this inspection was lacking the date and time of inspection, and did not indicate whether or not the facility needed an NPDES permit. The facility continues to operate without an NPDES permit, and was not on Illinois EPA's list of CAFOs either needing or not needing NPDES permits.

***Case-specific Findings:*** Illinois EPA made several attempts to escalate informal enforcement against the facility, but did not proceed to formal enforcement despite the fact that there were repeat violations and clear water quality impacts. A Violation Notice with Compliance Commitment Agreement issued to the facility did not result in compliance. Enforcement should have been escalated earlier, based on proven environmental impacts. Citizen complaints may have been avoided with effective escalated enforcement. The five-year cycle of inspections employed by Illinois EPA does not allow the state agency to determine whether prompt corrective actions have been taken to address prior violations. The enforcement actions did not address the failure to apply for a permit or seek an order to require a permit application, despite a history of discharges, and discharge-related enforcement actions.