

Public Comments Regarding the Illinois FSA Final EA and determination of FONSI  
Finding of No Significant Impact – Fanter Farms hog farm FSA Loan  
Request for Environmental Impact Statement and/or denial of Josh Fanter loan

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The following public comments are submitted by Mason County Concerned Citizens within the 30 day review window after the Illinois Farm Services Agency (FSA) authorized publication of the FSA Environmental Assessment (EA) and determination of Finding of No Significant Impact (FONSI) on October 6, 2021, in the Mason County Democrat newspaper.

It is our understanding that the loan to Josh Fanter will not be distributed until a 30 day review period has elapsed. We are asking the Illinois FSA to not issue the loan to Josh Fanter and to either (a) deny the loan for Fanter Farm hog farm or (b) suspend the loan approval until the FSA has completed the Environmental Impact Statement process.

During the Environmental Assessment process, the FSA should have recognized that an Environmental Impact Statement was warranted because of (a) the presence of the shallow end of the Mahomet Sole Source Aquifer, (b) the presence of the threatened species Chorus Frog and the expected site investigation using the Illinois EcoCAT process<sup>1</sup>, and (c) the presence of Peterville in close proximity to the proposed hog farm where nearly 50 residents use the shallow Mahomet Sole Source Aquifer as their drinking water source.

In addition, we intend to show that the Illinois FSA relied upon faulty and incomplete information when the agency made the determination of Finding of No Significant Impact (FONSI) for the Josh Fanter (Fanter Farms) loan.

### **Issue 1 – Shallow Portion of Mahomet Sole Source Aquifer**

During the draft Environmental Assessment public review and comment period, John Gehrke of Illinois FSA assured the community members that the public comment period would be left open until he had received the USEPA Region V Sole Source Aquifer recommendations allowing for the public to review that portion of the Draft EA which at the time of original public notice was blank. Instead, John Gehrke incorporated USEPA Region V recommendations into the draft EA, finalized the EA, and made the final determination of FONSI. The community was denied the opportunity to finish their public comments on the draft EA portion regarding Sole Source Aquifer.

Once we understood that the FSA had shut us out of the public comment period contrary to their numerous promises to not do that – we decided to go ahead and submit public comments on the Sole Source Aquifer portion of the Environmental

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<sup>1</sup> See: <https://www2.illinois.gov/dnr/programs/EcoCAT/Pages/default.aspx>

Assessment to FSA. We submitted a 34 page analysis of the USEPA Sole Source Aquifer Program's recommendations detailing numerous problems with the practicality, efficacy, and enforcement of those recommendations.

We are incorporating all public comments into this appeal to the Illinois FSA for an Environmental Impact Statement and as a basis to deny the loan– including the original 27 page analysis submitted as public comments on the draft EA sans SSA portion on July 1, 2021 (**Exhibit 1**), and the 34 page analysis of the USEPA Region V SSA recommendations submitted as public comments on October 22, 2021 (**Exhibit 2**).

## **Issue 2 – Threatened Species Chorus Frog nominated to Federal Endangered**



Photo credit: Michael Jeffords

During the draft Environmental Assessment phase of the FSA NEPA review, the public attempted to educate John Gehrke on numerous occasions, including emails and written public comments, about the potential for the chorus frog habitat very near to the proposed location of the Fanter Farms hog facility. Mr. Gehrke was informed that a public official had initiated an EcoCAT study of the Chorus Frog, which is the formal process to engage the Illinois DNR to do a site specific investigation of the habitat potential for threatened and endangered species. We informed Mr. Gehrke that there is a multi-state initiative to preserve the chorus frog habitat, including the following: <sup>2</sup>

“Illinois Chorus Frogs (*Pseudacris illinoensis*) occur in west-central and southwestern Illinois, southeastern Missouri, and northeastern Arkansas. They are listed as a Species of Special Concern in all three states and threatened in one (IL). The Illinois Chorus Frog is a habitat specialist, requiring fine, sandy soils for aestivation and ephemeral (seasonally flooded) wetlands or fishless ponds for reproduction. Suitable conditions are limited geologically to those areas represented by the species' range and distributed patchily within it.”

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<sup>2</sup> See: <https://www.dnr.illinois.gov/conservation/IWAP/Documents/SWGReportSegments/T-62%20D-1%20GS%20-%20Hab.%20Con.%20Init.IL%20Chorus%20Frog.pdf>

According to the Illinois Prairie Research Institute's Conservation Guide to the Chorus Frog, the preferred habitat for the chorus frog is similar to environmental conditions near the proposed Fanter Farms hog facility:<sup>3</sup>

"Habitat – ICF is fossorial, spending around 85% of its life burrowed underground in sparsely vegetated areas with sandy soil, near ephemeral (i.e. temporary) breeding ponds. ICF is found in loose soils that allow easy burrowing, such as sand, loamy sand, or sandy loam. Bare areas (blow outs) or sparsely vegetated areas, such as sand prairies and old fields, provide habitat that allow burrowing because plant roots do not fill the soil."

On September 10, 2021, the Illinois Department of Natural Resources wrote to Hugh McHarry regarding the requested EcoCAT study on the chorus frog (**Exhibit 3**):

The proposed action being reviewed in this letter consists of the construction of a Concentrated Animal Feeding Operations (CAFO) near Kilbourne, Illinois (40.213°, -89.986°).

EcoCAT has indicated records for the state-listed Illinois chorus frog (*Pseudacris illinoensis*) may be in the vicinity of the project area. The Illinois chorus frog is a habitat specialist requiring fine, sandy soils for aestivation. Habitats include sand prairies and sandy agricultural fields. They emerge after heavy rains in early spring to breed in nearby flooded fields, ditches, and ephemeral (seasonally flooded) wetlands or fishless ponds. Tadpoles go through metamorphosis and leave the water to burrow in sandy soils typically by early July. To ensure adverse impact to the Illinois chorus frog are avoided, the Department recommends a habitat assessment be conducted in the project area by a qualified biologist to determine if habitat in the area is suitable for this species. If the project area does contain suitable habitat, the Department recommends an Illinois chorus frog survey be conducted. Results of the habitat assessment should be provided to the Department for concurrence. If determined necessary, the survey proposal should be sent to this office for concurrence on methods, along with the results for determination of impacts.

Alternatively, the project proponent may assume the presence of the Illinois chorus frog and seek an Incidental Take Authorization (ITA) pursuant to Part 1080 and Section 5.5 of the *Illinois Endangered Species Protection Act* from the Department. Be advised, an ITA can take at least four months to complete. All questions pertaining to ITA should be directed to the ITA coordinator, Heather Osborn ([Heather.Osborn@Illinois.gov](mailto:Heather.Osborn@Illinois.gov)).

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<sup>3</sup> See:

[https://www2.illinois.gov/sites/naturalheritage/speciesconservation/SpeciesGuidance/Documents/ICF%20species%20guidance\\_final.pdf](https://www2.illinois.gov/sites/naturalheritage/speciesconservation/SpeciesGuidance/Documents/ICF%20species%20guidance_final.pdf)

In the final FSA Environmental Assessment Comment Summary Report, John Gehrke makes the following remarks about the FSA efforts to investigate the Chorus Frog (see page 146 of 279):

“The Illinois chorus frog (*Pseudacris illinoensis*) as is protected as a state listed species under the Illinois Endangered Species Protection Act. This law under section (520 ILCS 10/11) (from Ch. 8, par. 341) paragraph (b) requires state agencies to coordinate with the Department of Natural Resources in determining, whether actions authorized, funded, or carried out by them are likely to jeopardize the continued existence of Illinois listed endangered and threatened species or are likely to result in the destruction or adverse modification of the designated essential habitat of such species.

Where a State agency does consult in furtherance of this public policy, such State agency shall be deemed to have complied with its obligations under the "Illinois Endangered Species Act. In this case the Illinois Department Agriculture was required to consult with the Illinois Department of Natural Resources prior to approval of construction plans on March 19, 2021.

In addition to the Illinois Department of Agriculture approval, Agency personnel conducted a pedestrian site review on May 14, 2021. During this visit the Illinois chorus frog was not observed and the prime habitat requirements were absent including ponds.”

There are two problems with this statement: (a) John Gehrke does not confirm that IDOA performed its due diligence in determining if the proposed Fanter Farms hog facility and subsequent land application of millions of gallons of liquid swine manure on lands would interfere chorus frog habitats in Mason County and (b) that a pedestrian site review by “agency personnel” is equivalent to an EcoCAT survey performed by properly trained IDNR scientists. It is not clear who was the “agency personnel” nor were any qualifications proffered in the EA to substantiate that person’s opinion about chorus frog habitat.

Hugh McHarry has requested and paid for an EcoCAT study to be performed by the IDNR during typical chorus frog emergence in Spring 2022. The IDNR confirmed the requested study September 11, 2021. The FSA was informed of this request for an EcoCAT study on the chorus frog habitat near the proposed Fanter Farms hog facility. Rather than erring on the side of caution and confirming the IDNR’s EcoCAT process and timing, John Gehrke dismissed the public’s concerns about the Chorus Frog.

### **Issue 3 – Residents of Peterville all drink the shallow groundwater from the shallow portion of the Mahomet Sole Source Aquifer.**

The FSA never mentions Peterville (in the EA or the FONSi) nor all the people that live there and drink the shallow groundwater. In the FSA's explanation of why an alternative site is not feasible, there is no mention whether a site farther away from a populated area would be beneficial (see page 10 of 279 final EA):

“Selecting an alternative location would consist of moving the proposed project to a different site within the property boundaries or to another parcel of land. Relocating the project would not offer environmental benefits and likely have a greater impact on the affected environment. Construction of the barn at the proposed location would be compliant with all applicable laws and regulations. The applicant has secured access to the land selected for the proposed barn. It may not be possible for the applicant to secure access to another location that meets the criteria for the proposed project. If the applicant were to select an alternative site, they could incur additional costs and delay. A change to the site location may also result in additional environmental impacts since the proposed site is vacant land with limited sensitive environmental resources present. Mitigation measures for protection of the Mahomet Sole Source Aquifer have been incorporated into the project. This location also provides ready access to family owned or controlled farm real estate, allowing for manure use as fertilizer and requiring less transportation. This alternative offers no benefit and is not feasible.”

Claiming that ‘relocating the project would not offer environmental benefits and likely have a greater impact’ is a spurious conclusion based on zero information. We contend that relocating the project to a place that is *not overlying the shallow Mahomet Sole Source Aquifer* would be a vast environmental improvement. To say otherwise is disingenuous and ignores the facts that have been presented.

To say that the proposed site is ‘vacant land with limited sensitive environmental resources’ serves as a callous and casual dismissal of the most obvious potential adverse impacts to shallow groundwater drinking water (Mahomet) and the threatened species (chorus frog) habitat. Just because the land is family owned cannot be a reason to jeopardize the drinking water supply of nearly 50 people within a mile of the proposed site.

In the public comments, information was provided on 100's of farms that are for sale in Illinois that would not be located over the Mahomet Sole Source Aquifer.

#### **Issue 4 – The FSA Finding of No Significant Impact is based on faulty and incomplete information.**

On June 11, 2021, the Illinois FSA wrote to USEPA Region V asking for consultation on the Sole Source Aquifer related to Environmental Assessment for the FSA loan to Josh Fanter (**Exhibit 4**). In the letter, John Gehrke states [**emphasis added**]:

“In considering FSA's responsibilities pursuant to the Safe Drinking Water Act and its implementing regulations, we are requesting your assistance in identifying potential adverse impacts to a sole source aquifer which may be affected by this project.

FSA has reviewed the list of sole source aquifers, and to the best of our knowledge there is no indication of probable adverse impacts. Attached for your reference are:

Location maps

Aerial views of the property for its current use

Soils Map

Site Photographs

FEMA Flood Map

A copy of the Notice of Intent to Construct with attachments that was submitted to and approved by the Illinois Department of Agriculture

The map outlining the Mahomet Aquifer, the only designated sole source aquifer in Illinois.

**FSA has made a finding of no effect for this proposed project.** Your concurrence with this determination is requested within thirty (30) days of the email receipt or delivery of this letter based on standard United States Post Office delivery schedules not to exceed 5 days from the post mark. If we do not hear from you within the specified time frame it will be assumed that you are in agreement and have no further interest in this matter.”

The June 11 letter shows that the Illinois FSA *had already made up their mind* that the proposed Fanter Farm hog facility would have ‘no effect’ prior to any input from the USEPA Region V Sole Source Aquifer program.

The final EA includes an Environmental Justice section that relies upon the results of USEPA's EJSCREEN program. The FSA only looked at a “one mile ring” or a radius of a half-mile of the proposed facility (See Figure 1). If you look at the results header, that small area **only captured 8 residents**.

We know that there are **nearly 50 residents in the nearby town of Peterville** of which all would be captured in a one-mile radius or a two mile ring.

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**EJSCREEN Report (Version 2020)**

1 mile Ring Centered at 40.216238,-89.932614, ILLINOIS, EPA Region 5

Approximate Population: 8

Input Area (sq. miles): 3.14

FF Swine Project

**Figure 1** – Snapshot of the header of EJSCREEN results page

Considering the name Peterville appears **64 times in the public comments** (submitted during the review of the draft Environment Assessment) and **zero times in the final Environmental Assessment** sections prepared by the FSA, one might conclude that there has been a deliberate attempt to ghost the nice Mahomet water-drinking people of Peterville.

**The big question to the FSA and USEPA – why did you ignore Peterville?**



**Figure 2** – Map showing inhabited residences in Peterville submitted in public comment to FSA by Randy Burgett, Sr (June 2021).



## Issue 5 – The FSA public participation process was fatally flawed

In the FSA Environmental Assessment Appendix P Comment Summary Report, John Gehrke described the public notice process:

“The Draft EA was available for public review and comment for 30 days, from June 9, 2021 through July 9th, 2021. Table 1 provides the dates the NOA was published. A copy of the Certificate of Publication is provided in Attachment A. Copies of Draft EA were made available at the Farm Service Agency, 3500 Wabash Avenue Springfield, IL 62711-8287.

“Written comments on the Draft EA were accepted by email and mail during the 30-day public comment period. All comments received or postmarked on or before July 30th, 2020 were reviewed and considered in the preparation of the Final EA.”

Note: the typo is on the part of the FSA – should be July 30, 2021

The draft Environmental Assessment available for the public to review and comment was incomplete with respect to the section on the Sole Source Aquifer. We made this problem perfectly clear in our written public comments submitted on July 1, 2021 (**Exhibit 1**).

The public asked for an extension to the public comment period:

**From:** Karen Hudson <[karenh@sraproject.org](mailto:karenh@sraproject.org)>  
**Sent:** Thursday, July 1, 2021 2:17 PM  
**To:** Gehrke, John - FSA, Springfield, IL <[john.gehrke@usda.gov](mailto:john.gehrke@usda.gov)>  
**Subject:** [External Email]Request

Dear John,

I am requesting an extension of public comment period to at least a week after we see a complete assessment on the sole source aquifer by the FSA. That section of the assessment is still incomplete.

Please advise.

Thank you,  
Karen Hudson  
[karenh@sraproject.org](mailto:karenh@sraproject.org)



In response to Karen Hudson's request for the public comment period to remain open, John Gehrke wrote:

From: **Gehrke, John - FSA, Springfield, IL** <[john.gehrke@usda.gov](mailto:john.gehrke@usda.gov)>  
Date: Fri, Jul 2, 2021 at 12:40 PM  
Subject: Request  
To: Karen Hudson <[karenh@sraproject.org](mailto:karenh@sraproject.org)>

Karen,

Here is the written responses I received to date, with the exception of Hugh McHarry. I believe you have the same information from him that I do. The "summary" was cut and pasted directly from the emails and is all inclusive, minus their email information i.e. no edits.

The comment period remains open.

John Gehrke  
217 331-6873

At no point did John Gehrke inform the public that FSA would close the public comment period on the draft Environmental Assessment while it was still missing the section on Sole Source Aquifer. Yet that is exactly what happened. Remember that the USEPA letter of recommendations to protect the Mahomet Sole Source Aquifer was sent to the Illinois FSA on August 12, 2021 – *after* the above stated close of public comment period on July 30, 2020 (typo should be 2021).

The public was never notified by the FSA that the USEPA had sent the letter in August 2021. In fact, we were under the impression the public comment period had remained open for months assuming the FSA had not finished their draft EA.

We were not aware that the FSA had closed the public comment period on the *draft* EA until October 1, 2021, when we were informed by email that the FSA had *finalized* the EA and made the determination of FONSI.

We memorialized all these issues about the public comment period in a letter to Dan Puccetti, Acting SED, Farm Services Agency Illinois State Office on October 6, 2021 (**Exhibit 5**).

## Arguments for an Environmental Impact Statement

In the 2007 Office of the President's publication "A Citizen's Guide to NEPA", the purpose of the Act is included as follows: <sup>4</sup>

National Environmental Policy Act Sec. 101 [42 USC § 4331]

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

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<sup>4</sup> See: [https://ceq.doe.gov/docs/get-involved/Citizens\\_Guide\\_Dec07.pdf](https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Dec07.pdf)

According to the US Environmental Protection Agency NEPA website:<sup>5</sup>

“The National Environmental Policy Act (NEPA) process begins when a federal agency develops a proposal to take a major federal action. These actions are defined at [40 CFR 1508.1](#). The environmental review under NEPA can involve three different levels of analysis:

1. [Categorical Exclusion determination \(CATEX\)](#)
2. [Environmental Assessment/Finding of No Significant Impact \(EA/FONSI\)](#)
3. [Environmental Impact Statement \(EIS\)](#)

A federal agency can determine that a Categorical Exclusion (CATEX) does not apply to a proposed action. The federal agency may then prepare an Environmental Assessment (EA). The EA determines whether or not a federal action has the potential to cause significant environmental effects.”

The federal law at Title 40 Chapter V Subchapter A Part 1501 discusses when an environmental assessment is appropriate:<sup>6</sup>

“§ 1501.5 Environmental assessments.

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion ([§ 1501.4](#)) is applicable or has decided to prepare an environmental impact statement.”

The EPA NEPA website also includes this explanation of when an Environmental Impact Statement should be conducted:<sup>7</sup>

“Based on the EA, the following actions can occur:

- If the agency determines that the action will not have significant environmental impacts, the agency will issue a Finding of No Significant Impact (FONSI). A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.
- If the EA determines that the environmental impacts of a proposed Federal action will be significant, an Environmental Impact Statement is prepared.”

The proposed Fanter Farms hog facility represents a significant threat to groundwater located at shallow depths below ground where there is only sand between the surface and the water table. The public provided significant comments about the vulnerability of

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<sup>5</sup> See: <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>

<sup>6</sup> See: <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1501/section-1501.5>

<sup>7</sup> See: <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>

the Mahomet Aquifer and the local community, including Peterville residents, who rely upon that shallow groundwater as their drinking water source.

According to federal law at Title 40 Chapter V Subchapter A Part 1501:<sup>8</sup>

§ 1501.3 Determine the appropriate level of NEPA review.

(a) In assessing the appropriate level of NEPA review, Federal agencies should determine whether the proposed action:

(1) Normally does not have significant effects and is categorically excluded (§ [1501.4](#));

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ [1501.5](#)); or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement ([part 1502 of this chapter](#)).

(b) In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with [§ 1501.9\(e\)\(1\)](#).

We submitted our concerns about the Mahomet Sole Source Aquifer to the FSA in public comments and those comments and concerns were categorically dismissed by the FSA. We have submitted our concerns to the USEPA regarding their inadequate and flawed analysis of potential adverse impacts to the Mahomet Sole Source Aquifer. To this day, the USEPA has remained silent to the public's comprehensive 34 page review of the five page USEPA SSA recommendations.

It is our contention that the FSA and the USEPA SSA should have immediately recognized that the presence of the shallowest and most vulnerable portion of the Mahomet Sole Source Aquifer *was cause enough* to proceed to the Environmental Impact Statement process under NEPA.

When the FSA learned from the public comments during the draft EA process that:

- up to 50 people in Peterville live within a 1/2 to 1 mile of the proposed facility
- that the community of Peterville would be surrounded by fields used for the disposal of millions of gallons of untreated liquid swine manure wastewater
- and that those 50 people drink that shallow Mahomet Sole Source Aquifer.

There should have been no question in anyone's mind that the best course of action would be to proceed to an Environmental Impact Statement.

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<sup>8</sup> See: <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1501/section-1501.3>

## Comments on the Finding of No Significant Impact (FONSI)

**1. Benefits outweigh any potential adverse impacts.** On page 1 of the FSA states in the FONSI:

“1. Both beneficial and adverse impacts of implementing the preferred alternative have been fully considered within the Environmental Assessment. The benefits outweigh any potential adverse impacts. Potential adverse cumulative impacts are expected to be minor as implementation of the preferred alternative will cause little if any adverse impact on the area of potential effect and the human environment.”

**Public Comment:** We do not believe the FSA performed the Environmental Assessment with an open mind to the possibility that the loan should be denied. As early as June 2021, John Gehrke informed the USEPA that he was inclined to determine ‘no impact’. The FSA did not acknowledge the potential adverse impacts to the neighboring residents that rely upon the shallow groundwater as their only drinking water source. The FSA never mentions the town of Peterville in the FONSI or the EA.

**2. Mitigation Measures.** The FSA relied upon the recommendations of the USEPA Region V five page letter for mitigation measures as stated on page 2 of the FONSI:

“Consultation with EPA, completed on August 12, 2021, regarding the Mahomet Sole Source Aquifer identified the below mitigation. The EPA found that, if followed, the project is not likely to contaminate the Mahomet Sole Source Aquifer.”

**Public Comment:** We believe this assertion is based on faulty and incomplete information provided to the USEPA. A comprehensive evaluation of the efficacy of the USEPA Region V recommendations was submitted by the public to the FSA and USEPA on October 22, 2021 (**Exhibit 1**).

**3. Final Requirement of the USEPA for Mitigation Measures.** The FONSI did not include the final requirement by the USEPA (**Exhibit 3**) regarding a letter from the loan applicant to the USEPA as follows:

“We request that USDA-FSA, prior to loan approval, ask the farmer applicant to confirm in writing their receipt, understanding, and intention to make good faith efforts to implement the recommendations in this letter. Subsequent implementation could be via incorporation of these best management practices into their nutrient management plan.”

**Public Comment:** The FONSI does not include the USEPA language about writing a ‘good faith effort’ letter that meets the final requirement. The loan applicant has not

prepared a nutrient management plan that incorporates all the USEPA Region V recommendations to protect the Mahomet Sole Source Aquifer. The FONSI claims that a plan may be developed after the facility is constructed and in operation – thus denying the surrounding community the opportunity to read the nutrient management plan and ascertain that it includes all the USEPA’s recommendations *before construction*.

Neither the public nor the USEPA Region V have any real assurance that all the recommendations will be satisfactorily implemented by the loan applicant during the construction and operation of Fanter Farms hog facility.

The obvious pathway to enforcement of the USEPA SSA recommendations is to incorporate those recommendations as special conditions in an individual NPDES permit issued by the Illinois EPA.

**4. Environmental Impact Statement not prepared.** On the last page of the FONSI, the FSA states that an Environmental Impact Statement was not warranted as follows:

“According to the National Environmental Policy Act and FSA's environmental regulations at 7 CFR Part 799 implementing the regulations of the Council on Environmental Quality, 40 CFR Parts 1500-1508, I find that the Proposed Action is not a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared.”

**Public Comment:** One cannot emphasize enough that the ‘human environment’ includes the fine folks of Peterville – who have been summarily dismissed and ignored by the FSA NEPA process.

**Additional Concerns:**

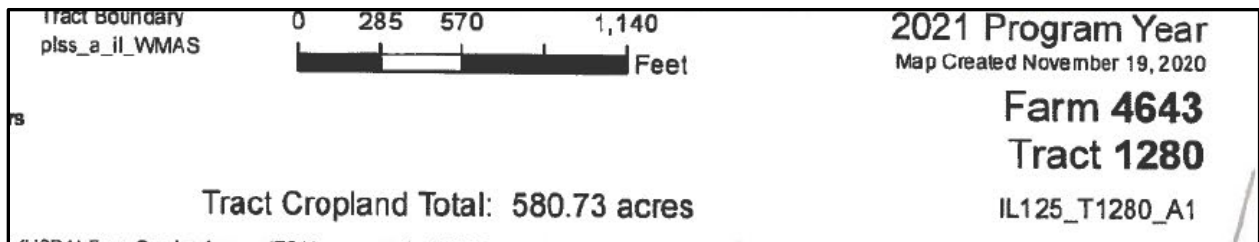
**1. Land Application of liquid swine manure wastewater.** In a June 23, 2001, email thread the following information was provided to Valerie Bosscher USEPA SSA by John Gehrke Illinois FSA:

Question: Regarding “The manure will be injected directly into the soil of the adjacent farmland by a commercial applicator at approved agronomic rates.,” are there specific addresses (e.g. approved by the state) or will all manure land application be only on the Fanter property? Please indicate the anticipated number of land application sites, whether they are above the Mahomet Aquifer, whether they have tile drains, and if there are any wells on-site.

Response: **The land is adjacent to the building site and is approximately 548 acres. It is not tilled, but it does contain an irrigation well. Being adjacent to the site, the land is located above the aquifer.**

**Public Concern:** The Fanter Farms animal unit numbers is low enough that according to the Illinois Livestock Management Facilities Act (LMFA) does not require the applicant to submit land application information to the Illinois Department of Agriculture. That means there has been no official approval of a Fanter Farms nutrient management plan or any state review of proposed land application sites. During the LMFA permit public comment period, the public was not provided information about how the millions of gallons of liquid swine manure wastewater will be disposed of throughout the life of the operation.

In the USEPA’s response to the community’s Freedom of Information Act (FOIA) request for copies of all emails, letters, and documents exchanged between the Illinois FSA and the USEPA, one document appears to include a map of the land application site but the specifics of where that land is located was redacted (the entire map was blacked out).



**Figure 3** – Portion of the Land Application map (that was not redacted) that was sent to USEPA SSA by Illinois FSA June 11, 2021, email with attachment that included some parts of the LMFA permit application highly redacted in public FOIA copy (page 5 of 22).





**Figure 4** – Google Earth image of Fanter Farms location, the town of Peterville along diagonal road (see black arrow), and surrounding crop land potentially used for land application of millions of gallons of liquid swine manure wastewater.

Now the only people that know where the liquid swine manure wastewater will be land applied are the applicant, the applicant’s consultant, the FSA and the USEPA. The folks that live near the location, which drink the shallow groundwater (neighbors and those who live in Peterville) – they are left in the dark.

In that same email thread, Valerie Bosscher asked John Gehrke the following:

Question: Were any negative/opposing public comments / letters received by the state during their review/permitting process?

Response: **There were negative comments received by the State regarding concerning potential air quality and water quality concerns. I believe they were more general comments rather than specifics. People wrote letters to the editor. Do you want to see those? My understanding that there was a discussion at the county board requesting set backs be increased in the county. The proposal died for lack of a second by a board member.**

**Public Concern:** John Gehrke sent Valerie Bosscher a document that contained ‘copy and paste’ portions of public comments that were sent to IDOA regarding the proposed Fanter Farms LMFA permit. He did not acquire all the public comments that were submitted in emails to Brad Beaver of IDOA and thus did not forward all the concerns to the USEPA.

**2. Depth to groundwater and perimeter tile drain.** In that same June 11, 2021, email thread the following question from USEPA was answered by FSA:

Question: Depth to groundwater (e.g., below ground surface)? Will the perimeter drain be routinely pumped out?

Response: I have attached the soil boring report. I received this response from the engineer: Regarding the perimeter tile, I believe the site allows the perimeter tile to gravity flow away from the building so that it will be continuously drained. If that is not feasible, then a sump pump will be placed at a corner of the barn and a pump with float will be placed in the sump to pump water away from the building as needed. I received this response from the integrator: I am not 100% sure what the slope will be around the barn once complete but it will either have a drain to daylight or if that is not possible it will have a sump pump to pull the water away from the barn perimeter. This is part of the IDOA regulations for sites with perimeter tiles as well as quarterly monitoring of the water quality from the perimeter tile.

**Public Concern:** The question about depth to groundwater and the response provided by FSA ignores the fact that a dozen households (up to 50 people) drink the shallow groundwater portion of the Mahomet Sole Source Aquifer. If the USEPA and FSA wanted to know the depth to groundwater, all they had to do was knock on the doors of Peterville homes and ask. They did not.

It is important to remember that in June 2021 the neighboring community had no idea that Josh Fanter had applied for a loan from FSA or that an environmental assessment was in process. However, the community had numerous communications with Brad Beaver of IDOA about the nearby town of Peterville and that those people relied upon the shallow groundwater for their drinking water supply. In fact, the community are still trying to get the IDOA to admit that Peterville qualifies as a populated area as defined by the LMFA. If the IDOA had acknowledged Peterville as a populated area – the proposed location for the Fanter Farm hog facility would have to be rejected as it would violate state setbacks.

On May 13, 2021, Hugh McHarry sent a letter to Brad Beaver IDOA about the populated area regulation as follows:

“As you are aware, siting regulations for CAFOs in Illinois require a set back of a half mile from any populated area. The legislation defines a populated as ten houses. Set back maps accompanying the above referenced CAFO clearly indicate the Gino Santanna Residence and the James Farwell Residence are less than a half mile from the CAFO. Both are within the contiguous populated area of Peterville, Illinois. An overwhelming majority of Peterville residents confirmed that these two residences are indeed within Peterville. Additions to the 1868 Peterville Plat also indicate that other parts of the Peterville as now platted are within a half mile of the referenced proposed CAFO.

Peterville was platted in 1868 and has been a contiguous populated area ever since, having grown outside the original 1868 plat. The settlement has had a school, church, blacksmith shop, store, dance hall, and other established social, cultural, and economic institutions. Though some outliers also consider themselves to be part of Peterville, those within number 41 people. They mostly live in well kept middle classes. Three residents are on oxygen and three others report respiratory problems. 8 Peterville residents are age 8 or younger and one Peterville resident is pregnant with another child. James Farwell reported that a prominent local realtor, Darrell Sarff, estimated that his home value would drop in half if the CAFO is allowed to be built. He said the home value represents most of his family's total capital. This is likely true for a number of other residents."

State definition of populated area in LMFA:

*"Populated area" means any area where at least 10 inhabited non-farm residences are located or where at least 50 persons frequent a common place of assembly or a non-farm business at least once per week.*

[510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

State setback distance from a livestock management facility **Section 900.202 (c)(4):**

*4) For a livestock management facility or waste handling facility serving 50 or greater but less than 1,000 animal units, the minimum setback distance shall be 1/4 mile from the nearest occupied residence and 1/2 mile from the nearest populated area.*

**Public Concern:** The FSA intends on providing a loan to build a hog facility at a location that violates state law with respect to setbacks from populated areas.

On June 23, 2021, the email discussion between USEPA and FSA regarding depth to groundwater continued (started June 15, 2021- items in red represent information from Frank and West consultants and/or Dr. Ted Funk paraphrased by John Gehrke) as follows:

**Regarding depth to groundwater –**

Question: The soil boring does not say anything about moisture or groundwater, so I'm guessing it likely was dry. **Can the engineer/geologist confirm there was no apparent groundwater by the end of boring at 13 ft bgs?**

Response: **On the day that I was there, there was no groundwater in the boring.**

Question: From the information yesterday, static water levels in nearby wells range include 8 ft (Kruse farm installed by Albrecht, located ~0.5 mi W-NW of the barn site) and 35 ft (Fanter farm installed by Dowell, located ~0.25mi N- NW of the barn site). I didn't see static water levels on the other well logs, such as the Friend farm installed by Henry in 1997 which I think is the closest to the barn site.

Response: **I will have to respond to this one – just left it in as an FYI**

**Public Concern:** The LMFA requires the applicant to determine if aquifer materials exist with five feet of the intended bottom of the swine manure pit – not necessarily the depth to groundwater. 510 ILCS 77/13 (b)(3) reads as follows:<sup>9</sup>

- (3) A new non-lagoon livestock waste handling facility constructed in an area where aquifer material is present within 5 feet of the bottom of the facility shall be designed to ensure the structural integrity of the containment structure and to prevent seepage of the stored material to groundwater. Footings and underlying structure support shall be incorporated into the design standards of the storage structure in accordance with the requirements of Section 4.1 of the American Society of Agricultural Engineers (ASAE) EP 393.2 or future updates.


The soil investigation report prepared by Frank and West (consultants to Josh Fanter) and includes this statement:

“One (1) soil boring was advanced at the site to evaluate the presence or non-presence of aquifer material. The location of the soil boring is identified on the plot plan provided in Attachment C. The soil boring was completed to a depth of thirteen (13) feet below ground surface (bgs). Aquifer material was found to be present within 5' of the bottom of the proposed facility.”

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<sup>9</sup> See: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1720&ChapterID=41>

The soil boring was performed by Frank and West Environmental Engineers, Inc. on March 10, 2021, as shown in the header of the Field Boring Log (Figure 5):

 <b>Frank &amp; West</b> Environmental Engineers, Inc. 1023 S 2nd Street Springfield, IL 62704 Phone: 217/679-7361 Fax: 217/679-8362		<b>FIELD BORING LOG</b> PAGE 1   OF 1		
SITE FILE NO. 21-113B1		COUNTY MASON	BORING NO. 1	WELL NO.
SITE NAME FANTER FARMS		SURF. ELEV. 0'		TOTAL DEPTH 13'
FED. ID. NO.		AUGER DEPTH 13'		ROTARY DEPTH
QUADRANGLE NW 1/4 OF NE 1/4 SEC.3		T.20N R. 8W	DATE: START 03/10/21 FINISH 03/10/21	

**Figure 5** – Field Boring Log for Fanter Farms submitted to IDOA.

**Public Concern:** The soil boring log did not include information about the surface elevation in terms of ‘above mean sea level’ which would allow for comparisons to other water wells in the area.

From Google Earth, we can estimate the surface elevation at the area where the Fanter Farms soil boring was taken as 506 to 509 feet above mean sea level. The surface elevations at the two nearest homes directly west range between 502 and 504 feet above mean sea level.

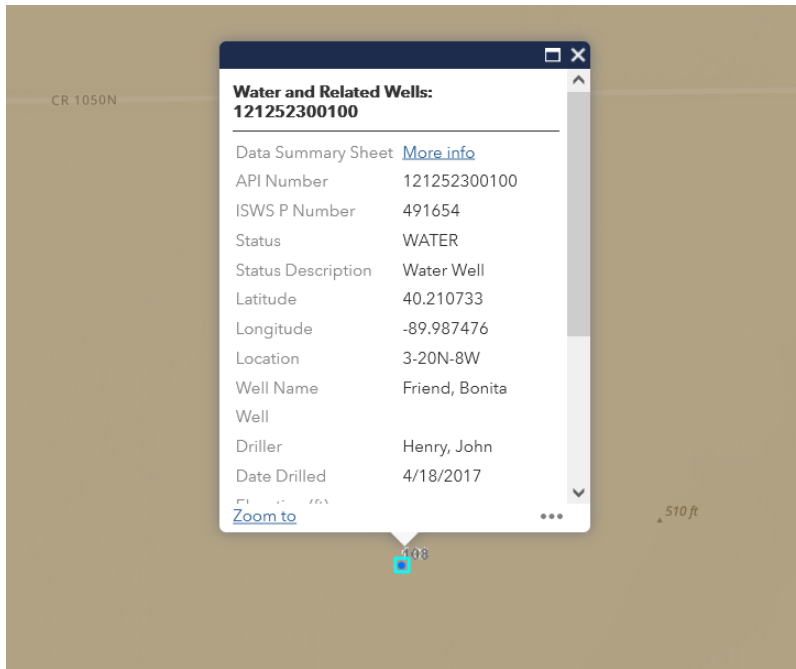
The response provided by FSA to USEPA related to depth to groundwater only mentions static water levels for wells west and northwest of the proposed hog facility. The response does not include the source for that information. Surely the USEPA Sole Source Aquifer personnel know that shallow groundwater fluctuates rapidly due to changes in recharge and withdrawal. A static water level measured when the water well was drilled does not provide a complete picture of how the water level fluctuates during the lifetime of the well. No one mentioned the surface elevation of the wells or whether the static water level was correlated to mean sea level or just depth below ground surface.

In an email on June 22, 2021, the FSA sent Valerie Bosscher a document called ‘Well Depths for Section 3 Kilbourne Township’ which included well data downloaded from the Illinois State Geological Survey Illinois Water Well Interactive Map system.<sup>10</sup>

The important thing to remember when restricting yourself to looking only at water well information using the IWWIM system is that the data comes from well driller’s logs on file with the State. The types of wells in and around T20N R8W Section 3 Mason County Illinois included in the IWWIM system are all deeper wells (50 to 100 feet) that produce water at rates useful for irrigation (1600 gallons per minute – See Figures 6 and 7), not domestic use.

<sup>10</sup> See: <https://isgs.illinois.edu/ilwater>

From what we can tell, the IWWIM mapping data does not include information about the location and depth of the shallow sand point wells that are used by the nearly 50 residents in Peterville.



**Figure 6** – Irrigation Well directly south of proposed hog facility in T20N R8W Section 3.

Page 1 ILLINOIS STATE GEOLOGICAL SURVEY		
Irrigation Well	Top	Bottom
topsoil	0	4
fine sand	4	38
medium sand	38	68
medium gravel	68	108
<b>Total Depth</b>		<b>108</b>
Casing: 16" PVC from -1' to 78' 16" SCREEN from 78' to 108'		
Screen: 30' of 16" diameter .05 slot		
Grout: BENTONITE from 0 to 60.		
Grout: MINUS 1/8 from 60 to 108.		
Permanent pump installed at 70' on April 22, 2017, with a capacity of 1600 gpm		
Owner Address: 11582 Peterville Rd. Havana, IL		
Location source: Location from permit		

**Figure 7** – Details for the irrigation well in Section 3



**4. Concrete thickness for manure pit floor.** In an email dated July 15, 2021, FSA sends the project engineer's answer to Valerie Bosscher's question about concrete floor thickness as follows:

In follow up to the email string below, as well as our conversation on 6/25, I'm following up on a couple of items:

Question: Were you able to find out more about concrete floor thickness (4-inch vs. 5-inch) from NRCS? I am also reaching out to R5 EPA folks on this.

Response: My understanding in talking with NRCS and with Ted Funk is that the 4" meets Illinois law and there is no history of problems with the 4" floor. The 5" meets the "national standard" i.e. (ACI) Manual of Concrete Practices 318 requirements. NRCS EQIP standards require the floor to be thick enough for the rebar to have 2" cover on the top and 3" cover on the bottom. That would mean the floor thickness would need to be 5" plus the thickness of the rebar (most likely 5.5" thick). Again, the 4" thickness meets Illinois requirements.

In an email dated June 23, 2021, FSA sends a response to a similar question about concrete floor thickness as follows:

**A few follow-up questions regarding the plan drawings:**

Question: **Is 4-inch concrete commonly specified for manure pit floors in Illinois?** In Indiana, R5 SSA Program has reviewed 2 swine barn projects for USDA-FSA, and both barns/pits had 5 inch steel-reinforced concrete floors (not counting the footers); the minimum specified is 5 inches for the steel-reinforced concrete floor slab under certain vulnerable conditions (e.g. karst, shallow bedrock, and certain other soil types) and the barns above the Sole Source Aquifer (SSA) specified 5-inch floors even though the Indiana code conditions were not actually triggered by those 2 swine operations we reviewed.

Response: 4" floor thickness is the most common design in Illinois. Typically, only projects that receive funding through the NRCS EQIP program utilize a 5" thick floor. They are correct that Indiana requires a 5" thick floor. However, Illinois does not.

**Public Concern:** Why would the FSA approve a loan to construct a hog farm in Illinois over a shallow Sole Source Aquifer that does not meet the national standard published by the American Concrete Institute (ACI)? If Josh Fanter had proposed to construct the hog farm in Indiana, he would have had to have a 5 inch thick concrete floor. Why would the USEPA consider two different thicknesses of concrete as equal protection?



The Indiana Department of Environmental Management (IDEM) rules for animal feeding operations (AFO) includes several requirements for concrete manure storage:<sup>11</sup>

**327 IAC 19-7-1 (c)(6)** Soil and water table information from test holes for proposed manure storage facilities that are conducted by a soil scientist registered under the Indiana board of registration for soil scientists, a professional geologist certified in Indiana under IC 25-17.6, or a professional engineer registered in Indiana. The number of test holes must be sufficient to adequately characterize the seasonal water table and soil. Test holes for concrete manure storage facilities must be at least two (2) feet below the base of the structure.

**327 IAC 19-12-4 (d)** All liquid manure storage facilities must be constructed according to the Indiana NRCS Conservation Practice Standard Code 313: Waste Storage Facility, October 2016\*\*. Construction of all liquid manure storage facilities approved after the effective date of this article must be certified upon completion by a registered professional engineer on a form provided by the department. The engineer's certification must be kept in the operating record and submitted with the affidavit required by subsection (s).

(e) In addition to subsection (d), all concrete manure storage facilities must be constructed according to:

(1) Indiana NRCS Construction Specification, Concrete Construction, May 2015\*\*\*; and

(2) either:

(A) MWPS-36: Rectangular Concrete Manure Storages, Second Edition, 2005\*\*\*\*; or

(B) TR-9: Circular Concrete Manure Tanks, March 1998\*\*\*\*.

The Indiana-NRCS Conservation Practice Standard 313 includes the following direction:<sup>12</sup>

**Liquid Tight** Where liquid tightness is required to provide an additional level of protection for geologic concerns, groundwater resources and risk factors as described in the Agricultural Waste Management Field Handbook (AWMFH), Chapter 10, building code requirements must be one of the following:

- Structural Engineering, NRCS National Engineering Manual (NEM) Part 536, Structural Engineering.
- Requirements for Environmental Concrete Structures, Slabs-on-Soil, American Concrete Institute (ACI) 350 Appendix H.

**Public Concern:** Did the USEPA compare Indiana and Illinois Conservation Practice Standards for Waste Storage Facility (CPS 313), or did they rely upon John Gehrke's contention that the answers in 'red' were from the design engineer and no other

<sup>11</sup> See: <http://iac.iga.in.gov/iac/T03270/A00190.PDF?>

<sup>12</sup> See: [https://www.in.gov/idem/cfo/files/guidance\\_standards\\_code\\_313.pdf](https://www.in.gov/idem/cfo/files/guidance_standards_code_313.pdf)

authority or citation was needed to determine this was factually correct or appropriate for protection of the shallow Mahomet Sole Source Aquifer?

The Illinois-NRCS Conservation Practice Standard Code 313 includes the following direction [highlighted emphasis added]:<sup>13</sup>

### **General Criteria Applicable to All Purposes**

#### **Laws and Regulations**

Plan, design, and construct the waste storage facility to meet all Federal, State, and local laws and regulations, including the Illinois Livestock Management Facilities Act and provisions of 35 Ill. Adm. Code Subtitle E, State of Illinois Administrative Code. Where there is a conflict between NRCS policy and the Illinois regulations, the more conservative interpretation will be used.

#### **Structural Design**

Design structures with reinforced concrete, steel, wood, or masonry materials in accordance with NRCS-NEM, Part 536, Structural Engineering. Account for all items that will influence the performance of the structure, including loading assumptions, durability, serviceability, material properties and construction quality. Ensure that the material used for a fabricated structure is compatible with the waste product to be stored.

#### **Sensitive Environmental Settings**

Where liquid storage is to be provided in sensitive environmental settings (i.e., tanks in areas with shallow wells in surface aquifers, high-risk karst topography, or other site-specific concerns), design the storage structure as a reinforced concrete hydraulic or environmental structure according to NRCS NEM, Part 536, Structural Design. Alternatively, use a flexible liner membrane, designed, and constructed in accordance with standard engineering and industry practice, to provide secondary liquid containment for structures constructed with other methods described in NRCS NEM, Part 536, Structural Design.

Note: There is a typo – should read NRCS-NEH, Part 536, Structural Engineering NEH is the acronym for National Engineering Handbook

The NRCS National Engineering Handbook Part 536 includes this information about concrete used in waste storage structures:<sup>14</sup>

### **536.20 Design Criteria for Reinforced Concrete Structures**

A. Design reinforced concrete structures, not classified as hydraulic or environmental in section 536.21 of this subpart, in accordance with the applicable provisions of the current American Concrete Institute (ACI) Building Code Requirements for Structural Concrete (ACI 318).

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<sup>13</sup> See: <https://efotg.sc.egov.usda.gov/api/CPSFile/5468/> or here: <https://efotg.sc.egov.usda.gov/#/state/IL>

<sup>14</sup> See: <https://directives.sc.egov.usda.gov/41175.wba>

**Public Concern:** The Illinois NRCS Conservation Practice Standard for Waste Storage Facilities (CPS 313) references the NRCS National Engineering Handbook which in turn references the ACI 318 standard for structural concrete.

The Illinois-NRCS Standard 313 requires the most conservative approach to concrete waste structure design. If the USEPA wanted to recommend the most protective measures for the design of a concrete manure structure, then they should have at a minimum required the 5 inch thick concrete floor. By their own admission, there is no consistency between USEPA recommendations for Indiana and Illinois hog facility concrete floor thicknesses when built over Sole Source Aquifers.

## 5. Unidentified EPA CAFO experts.

In an email dated July 17, 2021, Valerie Bosscher informs John Gehrke FSA that she is working with “EPA CAFO experts” as follows:

**From:** Bosscher, Valerie <[bosscher.valerie@epa.gov](mailto:bosscher.valerie@epa.gov)>  
**Sent:** Saturday, July 17, 2021 3:01 PM  
**To:** Gehrke, John - FSA, Springfield, IL <[john.gehrke@usda.gov](mailto:john.gehrke@usda.gov)>  
**Subject:** [External Email]EPA next steps - Illinois USDA FSA Assistance

John,

Thank you for the information. I am coordinating with EPA CAFO experts and our management to try to move this as quickly as possible.

By way of update, here are our anticipated next steps:

- By ~7/21 - route R5 draft response letter for management review/sign-off
- Next week (pending availability of key staff) – management review of the letter; coordination with IEPA staff on our intended approach (e.g., recommend BMPs beyond regulatory minimum similar to what we discussed before)
- by the last week of July – target date for response letter to USDA-FSA

Thank you for your patience.

Val

**Public Concern:** Not only does this email refer to unidentified EPA CAFO experts, but it also refers to unidentified staff at Illinois EPA (IEPA). This email shows that USEPA was working with the Illinois EPA (IEPA) on how to deal with recommended BMPs that go beyond regulatory minimums.

This email conversation occurred *two weeks* after the public had submitted public comments on the draft Environmental Assessment.

## 6. USGS/IEPA Groundwater study near Topeka, Illinois (seven miles north of proposed hog farm)

In a July 28, 2021, email from Valerie Bosscher to John Gehrke there was reference made to a study conducted by the USGS and the Illinois EPA as follows:

**From:** Bosscher, Valerie <[bosscher.valerie@epa.gov](mailto:bosscher.valerie@epa.gov)>  
**Sent:** Wednesday, July 28, 2021 3:25 PM  
**To:** Gehrke, John - FSA, Springfield, IL <[john.gehrke@usda.gov](mailto:john.gehrke@usda.gov)>  
**Subject:** RE: [External Email]EPA next steps - Illinois USDA FSA Assistance

Hi John,

We continue to make progress, but we may not be able to make my earlier goal of the end of the month. I might be able to get my management sign-off to respond to you this week, but it appears more likely this will be next week.

We had a call with IEPA today to get their input on recommended BMPs to protect groundwater, similar to what you and I previously discussed. You may be interested in the background (e.g., local hydrogeology and existing nitrate data) and findings from a study conducted by the state, within 10 miles of the proposed swine operation.

- *Use of Real-Time Sensors to Temporally Characterize Water Quality in Groundwater and Surface Water in Mason County, Illinois, 2017–19:*  
<https://pubs.er.usgs.gov/publication/sir20205108>

I heard back from my colleagues and don't anticipate having any further comments regarding the 4-inch concrete (with rebar) versus 5-inch concrete (with steel mesh /WWF).

Thanks,  
Val

The USGS/IEPA study "Use of Real-Time Sensors to Temporally Characterize Water Quality in Groundwater and Surface Water in Mason County, Illinois, 2017-19" focused on the following:<sup>15</sup>

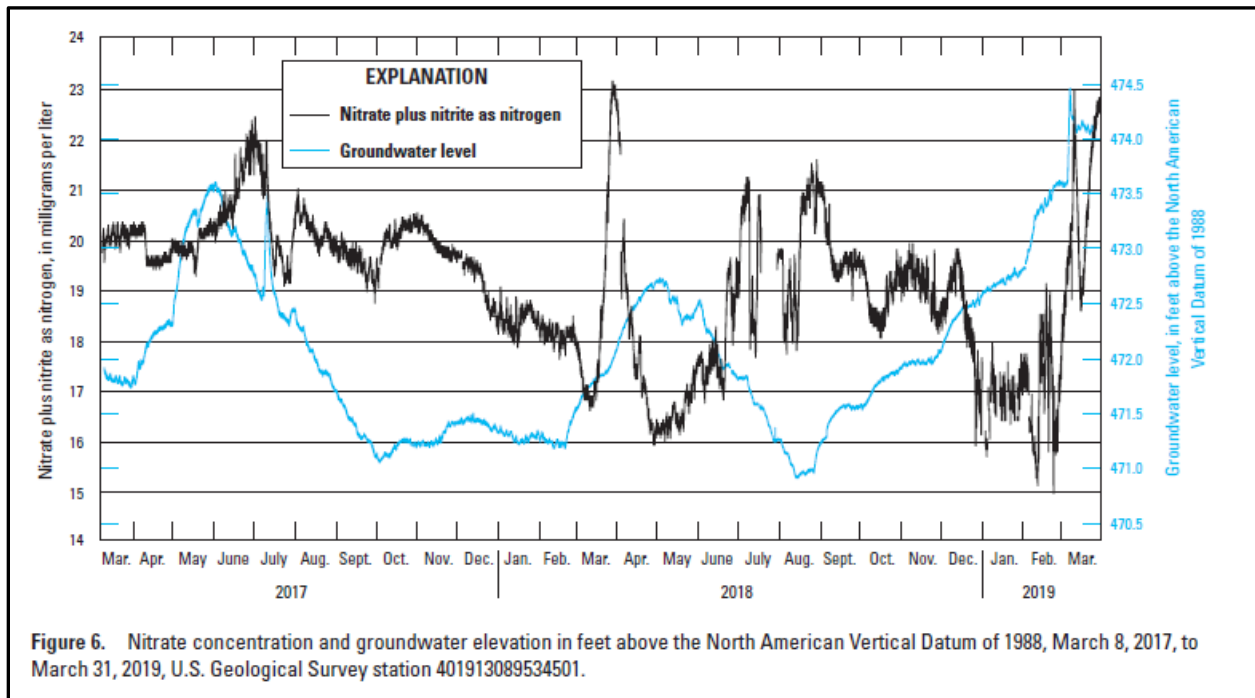
"The purpose of this report is to describe the findings from continuous data collection using real-time sensors (one reading every 15 minutes) in a groundwater well in a shallow glacial aquifer system in Mason County, Ill., and from instantaneous data (readings collected while onsite) collected in a nearby stream, Quiver Creek, and in the groundwater within the Quiver Creek floodplain, particularly to describe the fate and transport of nitrate as it moves through the shallow aquifer system, the floodplain, and potentially to surface water. Continuous data were analyzed with instantaneous data and discrete water-quality data collected by the USGS, and estimated irrigation use and precipitation data from the Imperial Valley Water Authority (IVWA)."

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<sup>15</sup> See: <https://pubs.er.usgs.gov/publication/sir20205108>

The study location near Topeka, Illinois is approximately seven miles north of the proposed Fanter Farms hog facility. The report included a graphical representation of the fluctuations of nitrates in the groundwater (see Figure 8). It should be noted that the nitrate concentration measured during the study (in groundwater) is consistently above the Safe Drinking Water standard of 10 mg/l nitrates maximum contaminant level.

Both the Topeka study location and the proposed Fanter Farms hog facility location have shallow groundwater overlain by sand, which means both sites have geological characteristics conducive to rapid infiltration of irrigation water, precipitation, and the land application of millions of gallons of liquid swine manure wastewater.



**Figure 8** – Chart of nitrate concentration in observation wells (page 12 of 38)

On page 12 of 38 of the study, the following nitrate fluctuation was observed by the USGS in the shallow groundwater:

“The two periods of greatest observed continuous nitrate concentrations were 23.2 and 22.4 mg/L on March 28, 2018, and March 11, 2019, respectively. On March 24–25, 2018, a total of 1.90 in. of rain was recorded at IVWA gage nine prior to the peak on March 28, 2018. Similarly, on March 9, 2019, 1.75 in. of rain was recorded prior to the observed peak on March 11, 2019. These elevated nitrate concentrations may be related to physical application where nitrate is directly flushed into the groundwater by precipitation and (or) snowmelt.”



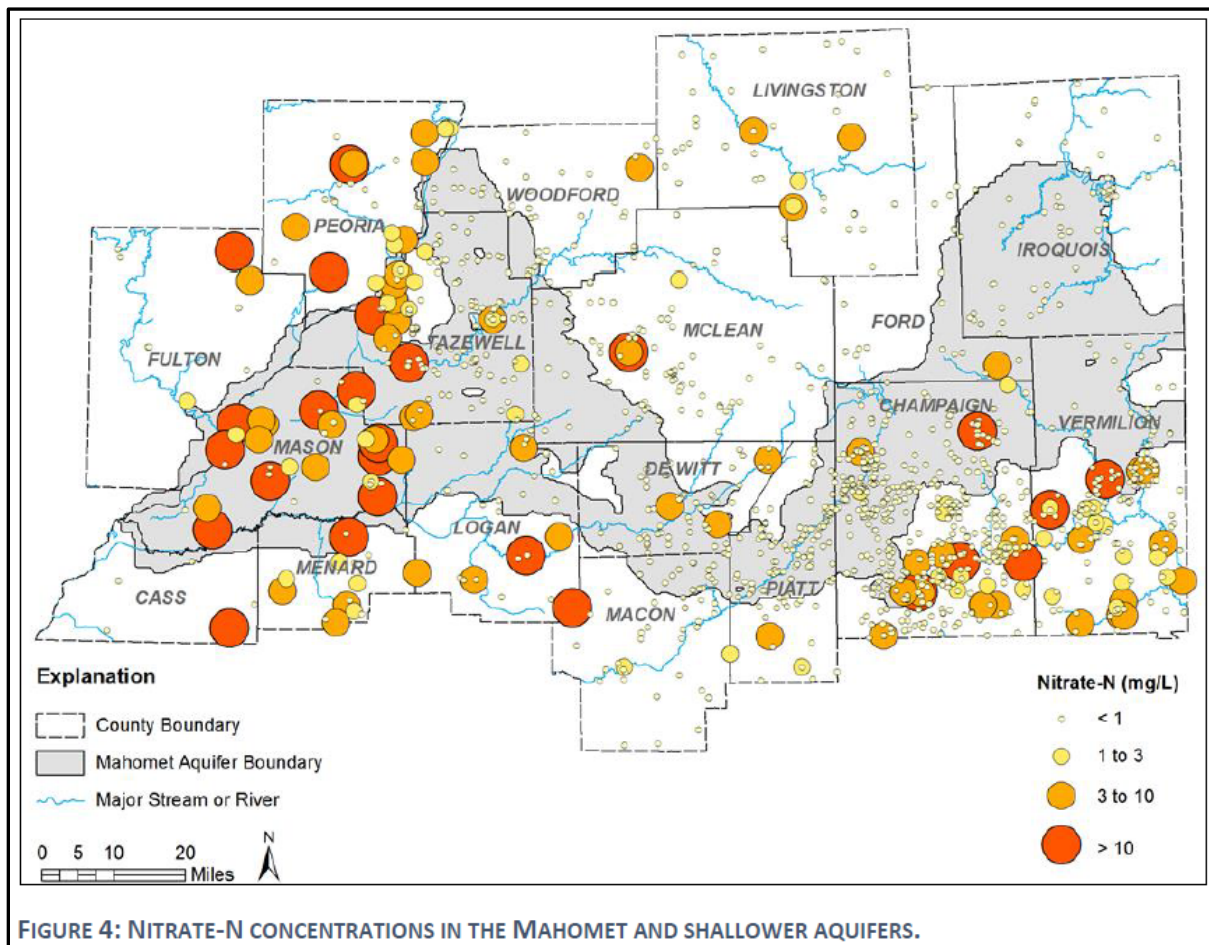
On page 24 of 38 of the study, the USGS asserts the following:

“The persistence of high nitrate concentrations in shallow groundwater has been well documented in the glacial aquifer of Mason County, Illinois.”

**Public Concern:** As of July 2021, both the USEPA and the FSA were made aware of the possibility of contamination of shallow groundwater by land application of fertilizers (Topeka study) and thus would be vulnerable to the land application of millions of gallons of liquid swine manure wastewater (during the lifetime of the hog facility).

Did either USEPA or FSA read the study? Did anyone understand the similarities between Topeka and Peterville shallow aquifer overlain by sand?

There is an important study of nitrates in the Mahomet Sole Source Aquifer that was done by the Mahomet Sole Source Aquifer Task Force.<sup>16</sup>



**Figure 9** – Graphic Mahomet Sole Source Aquifer Task Force Report page 17 of 79.

<sup>16</sup> See: <https://www2.illinois.gov/epa/topics/community-relations/sites/mahomet-aquifer-task-force/Documents/MAHOMET%20AQUIFER%20PROTECTION%20TASK%20FORCE%20FINDINGS%20AND%20RECOMMENDATIONS%202018.12.21.pdf>

## 6. Incorporating language proposed by USEPA into loan contract or NMP.

In an email thread dated August 5, 2021, John Gehrke references discussion with FSA legal counsel about incorporating USEPA recommendations into the loan approval:

**From:** Gehrke, John - FSA, Springfield, IL  
**Sent:** Thursday, August 5, 2021 9:49 AM  
**To:** Bosscher, Valerie <[bosscher.valerie@epa.gov](mailto:bosscher.valerie@epa.gov)>  
**Subject:** RE: [External Email]EPA next steps - Illinois USDA FSA Assistance

Val,  
I have followed up with our legal counsel about incorporating your comments into loan approval. I have not heard back yet.

I did reach out to Indiana and how they handled theirs. They suggested incorporating recommendations into the nutrient management plan. The plan is not required for this size facility in Illinois. However, we could ask that a nutrient management plan be developed within the first 12 months and that plan incorporate the best management practices developed by EPA.

Is this helpful???

*John Gehrke*

**From:** Gehrke, John - FSA, Springfield, IL  
**Sent:** Friday, August 6, 2021 10:42 AM  
**To:** Bosscher, Valerie <[bosscher.valerie@epa.gov](mailto:bosscher.valerie@epa.gov)>  
**Subject:** RE: [External Email]EPA next steps - Illinois USDA FSA Assistance

Val,  
Our Office of The General Counsel (OGC) did not recommend making specific environmental requirements part of the official loan approval. The oversight could be a problem and we did not want to bind other states to inherit that burden.

IEPA indicated that they would continue to monitor the perimeter drain and we do supervisory loan visits both in the office and at the farm when possible.

I hope that incorporating the BMP's into a nutrient management plan will allow your management to draw a conclusion and allow us to complete our assessment. Thank you!

*John Gehrke*

**Public Concern:** These email conversations occurred over a month after the public had submitted their public comments on the draft Environmental Assessment. Neither John Gehrke nor Valerie Bosscher reached out to the Mason County Concerned Citizens, Hugh McHarry, or any other people that had submitted comments and/or were in email communication with the FSA throughout the timeframe. Neither agency asked the local community members what method of enforcing the USEPA recommendations



would be the most helpful for the public. In fact, the public was excluded from these deliberations between FSA and USEPA.

Now we know that the problems with enforcing the USEPA recommendations were recognized by both the FSA and the USEPA. The FSA did not want to put the USEPA requirements into the loan contract because that would set a precedent for future loans to build animal feeding operations. The FSA is the agency that suggested the solution of incorporating into a nutrient management plan. Surely both the FSA and USEPA understood that this nutrient management plan would not be part of a state permit and thus difficult for a state agency to enforce.

## 7. The “Good Faith Effort Clause”

In the August 10, 2021, email from Valerie Bosscher to John Gehrke, the USEPA proposes to include the ‘good faith effort clause’ as follows:

**From:** Bosscher, Valerie <bosscher.valerie@epa.gov>  
**Sent:** Tuesday, August 10, 2021 11:18 AM  
**To:** Gehrke, John - FSA, Springfield, IL <john.gehrke@usda.gov>  
**Cc:** Bauer, Candice <bauer.candice@epa.gov>  
**Subject:** RE: [External Email]EPA next steps - Illinois USDA FSA Assistance

John,  
Yes, we plan to respond. Our response letter is currently with my management for their concurrence.

In regards to your Friday update regarding USDA attorneys’ input, would FSA be open to requesting some sort of followup confirmation /intent from the farmer regarding BMPs recommended by EPA (to be communicated via the letter I mentioned above)?

I am proposing something along these lines to be included in our response letter to you:

*We request USDA-FSA, prior to loan approval, ask the applicant to confirm in writing their receipt, understanding, and intention to make good faith efforts to implement the recommendations in this letter. Subsequent implementation could be via incorporation of these best management practices into their anticipated nutrient management plan.*

I’m hoping this is a middle ground that addresses FSA (attorney) concerns as well as our (R5 SSA program /management) concerns. Your thoughts are appreciated.  
Thanks, Val

In response, John Gehrke wrote:

**From:** Gehrke, John - FSA, Springfield, IL <john.gehrke@usda.gov>  
**Sent:** Tuesday, August 10, 2021 1:37 PM  
**To:** Bosscher, Valerie  
**Cc:** Bauer, Candice  
**Subject:** RE: [External Email]EPA next steps - Illinois USDA FSA Assistance  
**Categories:** Record Saved - Shared

We do not see any conflict with the language you proposed. The first step is to incorporate any EPA requirements into the environmental evaluation.

*John Gehrke*

**Public Concern:** We would like to know if the USEPA asked Illinois EPA if they would incorporate the 5 pages of recommendations into an individual NPDES permit as a logical solution to the problem of enforcement. Did the IEPA refuse to do so?

It is our hope that an individual NPDES permit could include the submittal of the nutrient management plan (with all the USEPA recommendations) to the state for evaluation and approval. The submittal of the plan to the state would allow the local community access to that information and hopefully the opportunity to submit public comments on its efficacy and adherence to state and federal regulations, as well as to the 5 pages of USEPA recommendations to protect the Mahomet Sole Source Aquifer.