

FY 2022/2023 PERFORMANCE PARTNERSHIP AGREEMENT

BETWEEN

ILLINOIS EPA AND U.S. EPA REGION 5

We are pleased to execute our nineteenth Performance Partnership Agreement. This Agreement sets forth our mutual agenda for continued environmental progress and our expectations for the state/federal relationship.

The execution of this Agreement demonstrates our continuing commitment to environmental improvement that is both cost-effective and responsive to public concerns, and to finding better ways to accomplish our regulatory objectives.

Entered into on this day 9/28/2021



John J. Kim
Director
Illinois EPA

Cheryl L. Newton
Acting Regional Administrator
U.S. EPA Region 5

I. GENERAL PURPOSE AND CONTEXT

The Federal Fiscal Year 2022-2023 (FY22/23) Performance Partnership Agreement (Agreement) sets forth the mutual understandings reached regarding our state/federal relationship. The parties to this Agreement are the Illinois Environmental Protection Agency (Illinois EPA) and Region 5 of the United States Environmental Protection Agency (Region 5).

A. State/Federal Environmental Partnership

This Agreement is designed to be consistent with the "environmental partnership" as described in the National Environmental Performance Partnership System (NEPPS). The parties concur with the principles that are enumerated in the NEPPS and are proceeding in accordance with the framework shown therein.

B. Relationship of Agreement to Grants

Illinois EPA will operate under a Performance Partnership Grant (PPG) in FY22/23. In past grant cycles, attachments to this Agreement served as specific workplans of goals, outcomes, strategies, and measures for programs funded through the PPG. Beginning with this FY22/23 grant cycle, the Illinois EPA and Region 5 have agreed to extract this Agreement from the PPG. This allows high level regional discussion items to be independent of the specific detailed workplans under the PPG.

Illinois EPA operates under a PPG to gain more flexibility in use of federal funds, to reduce the administrative burden of having numerous, specific categorical grants/work plans, and to continue some key resource investments in priority activities. To best achieve the administrative benefits of a PPG, fewer grant actions and awards are desirable. However, where an issue is identified in a single media program, Region 5 will move to award the remaining resources while seeking to resolve the issue. Both agencies commit to timely identification and appropriate level of engagement on all such issues.

The parties also recognize that some specific project grants will continue in effect and operate in concert with this Agreement. The FY22/23 federal PPG to Illinois EPA includes the following programs for which this Agreement serves as the program commitment:

1. Air pollution control program (Clean Air Act, Sec. 105)
2. Toxic Substances Control Act compliance assurance
3. Hazardous waste management program
4. Underground injection control program
5. Water pollution control program (Clean Water Act, Sec. 106)
6. Public water system supervision program

Non-PPG activity covered in the Agreement includes components from the following sources:

1. Title V permitting and compliance activities under the Clean Air Act amendments
2. Nonpoint source pollution control program (Clean Water Act, Sec. 319/Total Maximum Daily Load)

II. JOINT PRIORITIES

Joint priorities represent a subset of environmental program responsibilities that Illinois EPA and Region 5 agree represent investment priorities. Examples of Joint Priorities are as follows:

1. The program area is an important, newly developed initiative that requires the attention of both Illinois EPA and Region 5 to adequately develop and implement.
2. The program area is at risk of functioning inadequately, creating a significant vulnerability to the integrity of environmental protection.
3. The program area represents a long-term strategic investment opportunity.
4. The program area offers the opportunity to demonstrate innovations to promote environmental improvements or enable efficiency enhancements.

Illinois EPA and Region 5 have currently identified the following Joint Priorities:

- Ensure Illinois EPA's Public Water Supply Supervision (PWSS) Primacy Program maintains adequate numbers of staff to effectively oversee all Public Water Supply (PWS) Systems in Illinois.
- U.S. EPA will provide training and technical assistance related to lead in drinking water issues.
- EPA and Illinois EPA will continue their review of unacceptable risks at Resource Conservation and Recovery Act Corrective Action sites, post remedy construction. This risk investigation will not only help determine if site remedies in the long-term stewardship stage are still protective, it will also serve as a model for other states.
- Continue to develop strategies and approaches to reduce the Leaking Underground Storage Tank (LUST) backlog in Illinois. The agencies will work together to study data and plan actions to address various classes of LUST sites.

For the Drinking Water Program, Illinois EPA and Region 5 agree to collaborate on the following activities:

- Ensure Illinois EPA's PWSS Primacy Program maintains adequate number of staff to effectively oversee all PWSs in Illinois. Illinois EPA implements the PWSS Primacy Program for community water supply wells and ensures primacy requirements are met and adequate staff are available for the non-community program administered by the Illinois Department of Public Health.
- Over the period covered by this Agreement, the Illinois EPA-Bureau of Water, with support from Region 5 Ground Water and Drinking Water Branch, will develop a strategy to maintain a baseline core of individuals who have the technical expertise needed to implement PWS programs, particularly for the non-community program, ensuring safe drinking water for all Illinois residents.
- Region 5 and Illinois EPA will meet on a quarterly basis to discuss the progress of hiring new staff as well as the primacy agency's plan to maintain the baseline level of staff over the next 5 years.

For E-Enterprise Joint Priorities, Region 5 and Illinois EPA will work to collaboratively streamline and apply advanced technology across agencies and programs to make business processes more efficient and effective. E-Enterprise will be implemented by operating in a joint governance partnership to: 1) improve environmental protection through better program performance by streamlining and modernizing business processes and promoting the use of advanced information and monitoring technologies; and 2) enhance services to stakeholders and partners while reducing transaction costs and burdens for the regulated community and governmental agencies. Where applicable, Illinois EPA has identified E-Enterprise goals in the specific workplans.

Congress requires U.S. EPA to negotiate a fair share objective with each state for procurement dollars covering supplies, construction, equipment, and services. The current negotiated rates require, to the fullest extent possible, that at least 18 percent of federal funding for prime and subcontracts awarded in support of U.S. EPA programs be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals, including women and historically black colleges and universities, based on an assessment of the availability of qualified minority business enterprises (MBE) and women-owned businesses (WBE) in the relevant market. Accordingly, for any grant or cooperative agreement awarded in support of this Agreement, the parties agree to ensure that a fair share objective will be made available to MBEs and WBEs.

III. JOINT PLANNING AND EVALUATION PROCESS

40 Code of Federal Regulations (CFR) 35.115 requires the Illinois EPA and U.S. EPA to develop a process for jointly evaluating the workplan components and activities agreed to under this Agreement. The evaluation process will include:

1. A discussion of accomplishments as measured against workplan commitments;

2. A discussion of the cumulative effectiveness of the work performed under all workplan components;
3. A discussion of existing and potential problem areas; and
4. Suggestions for improvement, including, where feasible, schedules for making improvements.

The Region 5 Joint Evaluation process includes three main components:

1. Review of the Annual Performance Report;
2. Program evaluation activities including program meetings, conference calls, on-site visits, or advanced post-award monitoring activities defined under EPA Order 5700.6A2, "Policy on Compliance, Review and Monitoring"; and
3. Midterm Assessment Meeting (optional).

The Illinois EPA and Region 5 agree that evaluations will occur via the submission of the Annual Performance Report and in accordance with each program's post-award management process (e.g. meetings, conference calls, on-site reviews, etc.).

The Annual Performance Report will be submitted 90 calendar days after the annual reporting period for this Agreement and will meet the requirements of 2 CFR 200.328 and 40 CFR 35.115. Final financial and performance reports will also be submitted 90 calendar days after the end of the PPG/Agreement period per the closeout requirements of 2 CFR 200.343. The Illinois EPA will notify Region 5 if there are delays in meeting these deadlines.

Additionally, program meetings, conference calls, and other post-award management activities may be used to satisfy the Joint Evaluation requirements only if:

1. The activity covers the evaluation process requirements of 40 CFR 35.115; and
2. There is documentation summarizing the evaluation activity. Program documentation may include email/letter correspondence, meeting minutes, or a program report.

The Illinois EPA and Region 5 agree that all evaluation reports will be included in both agencies' files in accordance with 35.115(d). The evaluation process schedule is as follows:

<u>Actions</u>	<u>FY2022</u>	<u>FY2023</u>
Finalize FY22/23 Agreement	September 30, 2021	
Finalize Workplans	September 30, 2021	
Senior Management Mid-Course Meeting (if needed)	July 2022	
Mid-Course Updates to Workplans (if needed)	September 2022	
Illinois EPA Annual PPG Report	December 2022	December 2023
Region 5 Evaluation of Annual PPG Report	February 2023	February 2024

IV. ENFORCEMENT AND COMPLIANCE ASSURANCE

Compliance and enforcement activities to be accomplished during the term of the FY22/23 Agreement are included in the individual media program workplans. However, a summary of Region 5 and Illinois EPA roles in compliance and enforcement is helpful.

The following points serve as a foundation for the Region 5 and Illinois EPA relationships in respect to compliance and enforcement activities:

- Apply the most effective use of tools to encourage and maintain the compliance of sources of all sizes. This would include compliance assistance, administrative and/or civil enforcement, and criminal enforcement.
- Use joint up-front planning to coordinate priorities, maximize agency resources, avoid duplication of efforts, eliminate surprises, and institutionalize communication.

- Manage for environmental results which support each Agency's environmental goals and objectives.
- Ensure that compliance and enforcement information is complete, accurate, and timely consistent with Region 5 and Illinois EPA policies.

Under this Agreement, Region 5 and Illinois EPA retain their authorities and responsibilities to conduct compliance assistance, compliance monitoring, and enforcement. These activities will be conducted in the spirit of cooperation and trust. Specific compliance and enforcement data needs will be discussed and shared per each Agency's applicable policies and regulations.

V. QUALITY MANAGEMENT PLAN

All data reported under this Agreement will be quality assured and the Illinois EPA will continue to operate in accordance with its current approved Quality Management Plan (QMP), effective through February 28, 2023. A revised and updated draft QMP will be submitted to Region 5 at least six months prior to the expiration of the current approved QMP. Region 5 will review the revised draft QMP and provide written comments to Illinois EPA. Once the revised QMP becomes effective, it will be updated as needed, and changes will be submitted to Region 5 for approval. In addition, Quality Assurance Project Plans (QAPPs) will be developed as needed in each Bureau for project specific initiatives.

Illinois EPA will continue to submit an annual letter to Region 5 by January 31, and will:

- Identify any minor revisions needed and/or incorporated into the QMP during the preceding year.
- Confirm that the QMP approved by Region 5 is still in effect.
- Provide complete signed electronic (i.e. pdf) copies of all QAPPs, self-approved by Illinois EPA under this Agreement during the preceding year.

VI. ENVIRONMENTAL JUSTICE

Illinois EPA and Region 5 agree that the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies are core Environmental Justice (EJ) principles. Illinois EPA is committed to protecting human health and the environment, and to promoting environmental equity to the extent it may do so legally and practicably.

Illinois EPA and Region 5 will work together on the following priorities to advance EJ:

- Build capacity to identify and evaluate disproportionate and cumulative impacts ("EJ analysis".)
- Work together with a community focus to find ways to drive investment in EJ areas of concern across Illinois.
- Review the role of permittees and local governments in mitigating facility impacts and engaging EJ stakeholders and develop and recommend best practices.
- Conduct joint planning and coordination to assure compliance in EJ areas of concern (including exercising flexibility in compliance monitoring strategies as appropriate).
- Collaborate in sector- and pollutant-focused projects and initiatives to advance EJ.
- Educate and train technical and legal staff across programs to more fully integrate EJ principles into permitting, compliance, and rulemaking activities.

II. DISPUTE RESOLUTION PROCESS

Illinois EPA and Region 5 will use an agreed upon dispute resolution process to handle the conflicts that may arise as we implement our environmental programs and will treat the resolution process as an opportunity to improve our joint efforts and not as an indication of failure.

A. Informal Dispute Resolution Guiding Principles

Illinois EPA and Region 5 will ensure that program operations:

- Recognize conflict as a normal part of the State/Federal relationship.
- Approach disagreement as a mutual problem requiring efforts from both agencies to resolve disputes.
- Approach the discussion as an opportunity to improve the product through joint efforts.
- Aim for resolution at the staff level, while keeping management briefed. Consider all issues raised but address them in a prioritized format, paying attention to time frames and/or deadlines, and escalate quickly when necessary to assure that sufficient time is allocated to the most significant issues.
- Promptly disclose underlying assumptions, frames of reference and other driving forces.
- Clearly differentiate positions and check understanding of content and process with all appropriate or affected parties to assure acceptance by all stakeholders.
- Document discussions to minimize future misunderstandings.

B. Formal Conflict Resolution

There are formalized programmatic conflict resolution procedures that need to be invoked if the informal route has failed to resolve all issues. 2 CFR 1500, Subpart E outlines the formal grant dispute procedures. There is also a National Pollutant Discharge Elimination System conflict resolution procedure. Generally, disputes should be resolved as quickly as possible but within two weeks of their arising at the staff level. When there is no resolution and the two weeks have passed, there should be a comparable escalation in each organization, accompanied by a statement of the issue and a one-page issue paper. A conference call between the parties should be held as soon as possible. Disputes that need to be raised to a higher level should again be raised in comparable fashion in each organization.

VIII. REPORTING

Information will continue to be reported to Region 5 and the National Data Systems. Programs authorized under Title 40 for which the Illinois EPA receives or wishes to receive reports or documents electronically must meet and comply with the Cross-Media Electronic Reporting Regulation (CROMERR), Part 3, Title 40 effective November 11, 2006. In accordance with the CROMERR regulation before the implementation of such reporting, the designated State program system must be approved by U.S. EPA.