

# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## IN THE MATTER OF: 2011 ANNUAL HEARING ON BUREAU OF WATER PROGRAMS

### RESPONSIVENESS SUMMARY

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**Final May 15, 2012**

## **PUBLIC HEARING of September 21, 2011**

The Illinois Environmental Protection Agency (Illinois EPA or Agency) conducted a public hearing at 1:30 p.m. on Wednesday, September 21, 2011, in the Illinois EPA Sangamo Room, located at 1021 North Grand Avenue East, Springfield, Illinois. The purpose of this hearing was to provide an opportunity for the public to comment on the following program areas managed by the Bureau of Water (BOW).

### **I. Revolving Loan Programs: Waste Water and Drinking Water**

Pursuant to the provisions of the federal Clean Water Act (33 U.S.C. 1381) and Safe Drinking Water Act (42 U.S.C. 300j-2), the Agency is required to prepare an intended use plan prior to the receipt of the grant from the U.S. EPA to capitalize the Water Revolving Loan Fund. The hearing provided an opportunity for public comment on at least the following topics relative to the fund:

1. list of projects scored for priority;
2. criteria and method for the distribution of funds;
3. criteria and method established for the selection of projects; and
4. description of the short and long term goals of the fund.

### **II. Section 319(h) Financial Assistance for Nonpoint Source Pollution Control**

Pursuant to the provisions of the Clean Water Act Section 319(h), the Agency implements a grant program to work cooperatively with local units of government and other organizations toward our mutual goal of protecting the quality of water in the state of Illinois by controlling nonpoint source pollution. The hearing provided the opportunity for public comment on the federal fiscal year 2013 grant priorities. The Agency also used the hearing process to obtain public comments on the Nonpoint Source Management Plan, Version 1.1.

### **III. Water Quality Management Plan**

The Water Quality Management Plan (WQMP) identifies the state's goals and objectives pertaining to water quality protection. The WQMP is updated annually to provide for public notice and input into revisions in accordance with 33 U.S.C. 1256, 1288 and 1313.

## **PUBLIC HEARING AND HEARING RECORD**

Illinois EPA Hearing Officer Dean Studer opened the hearing on September 21, 2011, at 1:30 p.m.

Geoff Andres, Illinois EPA Manager of the Infrastructure Financial Assistance Section, discussed the revolving fund loan programs for wastewater and drinking water.

Amy Walkenbach, Manager, Watershed Management Section, discussed the Illinois Water Quality Management Plan and also the priorities for the Clean Water Act Section 319(h) Nonpoint Source Pollution Control Grants Program for federal fiscal year 2013.

Questions and comments were received from attendees.

Hearing Officer Dean Studer closed the hearing at approximately 2:50 p.m.

Agency staff were available before and after the hearing to meet with interested participants.

The 12 non-Agency persons in attendance at the September 21, 2011, hearing represented: interested citizens, Sierra Club, Illinois Environmental Regulatory Group, Illinois Department of Natural Resources, Citizens Against Longwall Mining, Prairie Rivers Network, City of Aurora, Illinois Farm Bureau and Benton & Associates.

The transcript of the public hearing was posted on the Agency website on October 4, 2011.

The hearing record remained open for written comments postmarked through midnight October 21, 2011. Written post-hearing comments were received from Prairie Rivers Network and were entered into the hearing record as Exhibit 6.

## **SUPPLEMENTAL INTENDED USE PLANS FOR WATER POLLUTION CONTROL AND PUBLIC WATER SUPPLY LOAN PROGRAMS**

Subsequent to the public hearing on September 21, 2011, the Illinois EPA issued supplements to the Intended Use Plan documents for both the Water Pollution Control (WPC) and Public Water Supply (PWS) Loan Programs. These supplements were added to the Hearing Record as Exhibit 8 (WPC) and Exhibit 9 (PWS). The supplements were posted on the Illinois EPA webpage and can be viewed online at:

<http://www.epa.state.il.us/water/financial-assistance/state-revolving-fund.html>

# COMMENTS/QUESTIONS RECEIVED

## I. Revolving Loan Programs

1. Part of the Green Project Reserve involves water conservation, energy efficiency and system sustainability. Please explain what is meant by system sustainability. (T 39-42)

**We have two different aspects to the Green Project Reserve. While this requirement applies to both programs, the initial focus was mostly on the water pollution control side. On the drinking water side we had very few ideas being brought forth in terms of how to meet the Green Project Reserve requirement. System sustainability and capacity development are a couple of terms that are being thrown around out there and we are just now trying to explore ways that we can make these items applicable in our program. System sustainability is making sure that there is adequate infrastructure in place to keep the system operating into the future. For capacity development, we are looking at a variety of things. The main programmatic changes you'll see is on our priority scoring where we're going to be looking for and prioritizing capacity initiatives, water conservation planning, etc. We are also looking ways to help ensure that the smaller systems get the engineering expertise and the planning expertise to put rates in place that are going to allow them to make necessary improvements in the future. We are really trying to get an initiative together where we can get out there to assist in educating the small systems, teach them to do things like a rate survey and other items that they may need to make their system sustainable over the next 1,500 years. System sustainability is not particularly well-defined at this point. Now on the wastewater side, we have the priority scoring system on water pollution control which will likely be amended significantly within the next year. In spite of the fluctuation at the federal level regarding the thinking for Green Project Reserve, we are going forward with our plans at the state level to incorporate these concepts into our program.**

2. Will the Illinois EPA fund planning to help communities plan their future rate structure to ensure adequate finances for system reliability? (T 42-43)

**At this point we do not anticipate funding planning initiatives. However, if a community has done this, we do want to reward them for that and give them a priority in our program. At this point, we are still looking primarily at funding capital projects in our program and this is likely to be the case for at least the immediate future. Demand for capital projects at this time precludes us from funding more planning initiatives. For the time being, the focus of planning**

activities will be a cooperative effort with University of Illinois, Rural Water and USDA to educate some of the systems and less on direct planning grants.

## II. Water Quality Management Plan

3. Are watersheds listed as a priority for controlling nutrients equally eligible for 319 funding as watersheds listed as for planning and implementation? (T 47)

**It depends on the project type. They would become a higher priority dependent on the nutrient aspect of the project and the nutrient either reduction or nutrient planning aspect of a project. They would become either a greater priority if that is already a priority watershed or they would become a greater priority if they were part of the nonpriority watersheds.**

4. How do watersheds that are prioritized for planning and implementation this year fit into the five-year monitoring cycle? Does this mean that what is being monitored this year is a priority for planning grants in two years? Please explain what is done in each of the five years of the monitoring cycle. (T 44-46)

**It is a furthering of our rotating basin monitoring program, so it's an effort to monitor one year, do outreach the second year, do planning activities the third year, implementation activities the fourth year, and start over in the fifth year.**

5. Is the map contained in exhibit 5 correct? (T 45)

**No, the map has some watersheds labeled incorrectly. The map is the same as the color coded map that is contained in the draft 2010 Integrated Water Quality and 303(d) List Report on page 39 of 131. This report can be accessed at <http://www.epa.state.il.us/water/tmdl/303d-list.html>.**

6. Why is the Kaskaskia River basin not listed as a priority watershed for Section 319 funding? (T-56-57)

**Every one of the 33 watersheds that are part of our rotating intensive basin program, once every five years they will be a priority for planning and for implementation. So two years out of every five years, for instance, Kaskaskia will appear as a priority for planning and for implementation.**

### **III. Section 319(h) Financial Assistance – Nonpoint Source**

7. Within the Nonpoint Source Program plan there is a gap analysis and proposed milestone, where can I find that information? (T 43)

**These are posted on the web at:**

**<http://www.epa.state.il.us/water/watershed/index.html>.**

8. Has the Nonpoint Source Management Plan been updated since 2001? (T-48)

**Yes, and the updated plan is posted on the Agency's webpage at**

**<http://www.epa.state.il.us/water/watershed/publications/2011-nps-program-1.1.pdf>.**

9. When are comments on the Nonpoint Source Management Plan due and how are they to be submitted? (T 48-49)

**The Agency is accepting comments on this year's Nonpoint Source Management Plan as part of this proceeding. Comments are due on October 21, 2011 and can be submitted by mail to: Hearing Officer Dean Studer, Re: Annual Program Plan, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P. O. Box 19276, Springfield, Illinois 62794-9276. Comment can be e-mailed to [epa.publichearingcom@illinois.gov](mailto:epa.publichearingcom@illinois.gov) and specifying "BOW 2011 Annual Hearing" in the subject line.**

**Comments on next year's Nonpoint Source Management Plan will be accepted through July 1, 2012. Comments for the 2012 update should be sent to Amy Walkenbach, Manager, Watershed Management Section, Illinois EPA, 1021 North Grand Avenue East, P. O. Box 19276, Springfield, Illinois 62794-9276. Comments can also be e-mailed to [amy.walkenbach@illinois.gov](mailto:amy.walkenbach@illinois.gov) and should specify "Comments for 2012 Update to Nonpoint Source Management Plan.**

10. For projects proposed for funding through Section 319 grants in a 303(d)-listed watershed, what is the basis for determining if the project gets funding? (T 49-50)

**We look to make sure that the practice that is proposed addresses the pollutants or at least one or more of the pollutants identified as causing the impairment, so if it is something that is not going to address pollutants, we will not fund it.**

11. Please explain the review process for projects that are funded through the 319 program? (T 50-51)

**We have both internal and external reviewers. Our sister agencies all participate and provide comments to us on the projects. Our regional office staff provide comments, often times very site specific comments, to the applications in their region. We have an internal review process that has at least one, if not two, very in-depth reviews, and then conversations with an in-house team to then develop our priorities.**

12. If a proposed 319 project is not in an impaired watershed does it get a lower priority for funding than a proposed project in an impaired watershed? (T 51-52)

**If it is impaired but a TMDL that has not been developed, it has the same priority as one that has a TMDL. Now, if it doesn't have a TMDL but has a watershed-based plan, it would receive a higher priority than the one with an impairment but no TMDL. "Healthy" watersheds, those that have no impairments listed are eligible for receiving 319 funds. They are a very low priority for us, but if it is an unassessed watershed that impairments can be surmised relatively easily even without the data, then we would prioritize that as an impaired watershed, not a healthy watershed.**

13. Given the Agency's new focus on nutrients, will Agency prioritizations change for rural watersheds versus more urban watersheds? (T-51-52)

**No. The nutrient focus is going to be a broad based programmatic priority. It's going to be a Bureau of Water focus. In 319, we really try to stay away from urban versus rural and judge our projects, our applications, the competitive applications, based on their ability to improve water quality. In the end, if we end up with all urban projects, that might be the case, or if we end up with all agricultural projects, that might be the case, but if we're all ag, and too, you have an urban and an ag project both coming out, we would go then with the urban so we'd get some more balance.**

14. Can it be expected that the six watersheds that have been identified by the Illinois EPA as priority watersheds for nutrient controls will appear on the priority list every year and other watersheds with a listed nutrient impairment and a completed TMDL will be added to the list? (T-58-59)

**We anticipate that these six watersheds will be our nutrient priorities as long as nutrients are a priority. We anticipate adding other watersheds in the future that are more free flowing watersheds, in other words, stream watersheds and not impoundment watersheds, but by having a TMDL on a nutrient does not necessarily mean you will be added to this list. What we want to do is add different types of watersheds as we add them, but we don't want to end up with the entire state being our priority.**

15. Segments of the Fox River are listed for nutrient impairments. I have been working with others on a computer model that is going to help us identify where we are getting the highest loading of nutrients into the watershed so that we can prioritize where we should be putting our efforts for nutrient controls. Will these efforts improve our funding priority? (T-59)

**Yes, and I see that in our next iteration that the stream watersheds we are to be adding to the priority list are going to be those Chicagoland urban stream watersheds. We don't want to put them on a priority list until we have as much of the science together as we can get, and those watersheds are much more difficult systems to understand.**

#### **IV. Comments on Illinois EPA Nonpoint Source Management Program, Version 1.1**

16. The plan should contain an objective to revise 35 Ill. Adm. Code Parts 506 and 560 to reduce livestock waste pollution from operations without an NPDES permit. (E-6)

**This comment will be considered as we finalize the Program. However, without a full understanding of the implications that this revision would have, we cannot currently commit to such a revision.**

17. The plan should be revised to clearly indicate that projects addressing headwater problems will be a priority for 319 funding. (E-6)

**We will examine ways to make this clearer in our final Program. The way we prioritize projects though was intended to prioritize non-main stem waters through our project selection process. See "Level Two – Watershed Scale Management Activities" "Step Two." This is where we prioritize non-main stem waters.**

18. The duties and responsibilities of the Watershed Contacts should be clarified to ensure that watershed groups are aware of their abilities to develop and implement plans to ensure that load allocations are achieved. Illinois EPA staff should also consider attending meetings of these groups to motivate these groups into following through with measures to achieve load allocations. (E-6)

**The duties and responsibilities will be developed as part of the pilot project development. It is certainly the intent in this proposed pilot that field staff be available to meet with watershed groups.**

19. The plan should include an objective for reducing atrazine contamination in groundwater and surface waters through active partnership with the Illinois Department of Agriculture, the University of Illinois Extension Offices, Soil and Water Conservation Districts, agricultural organizations and other appropriate group capable of reaching out to farmers and pesticide applicators. (E-6)

**It is the intent of the Illinois EPA, that the amount of water resources impacted by atrazine and other pesticides will be reduced through the implementation of the draft Illinois Nonpoint Source Management Program (Program). However, the Program is not designed to list all objectives appropriate to address all non-point source (NPS) problems in Illinois. Instead the Program identifies sources and causes of NPS and the partners and potential tools and techniques to combine to reduce NPS pollution in Illinois.**

**The key components of the proposed objective can be found within the draft Program. In Chapter 2, pesticide application is identified under sources for both agricultural and toxicants. It is also listed for impairing streams and lakes in Illinois. In Chapter 3, the Illinois Department of Agriculture, Extension, local soil and water conservation districts, the Association of Illinois Fertilizer and Chemical Association and others are identified as Program partners. Outreach and information activities are identified as appropriate tools to reach individual citizens for improved NPS pollution control and pest management is identified as “high” for a BMP abilities to reduce NPS pollution from Agricultural source.**

20. The plan should include a discussion of Keep it for the Crop by 2025 (KIC) including a discussion of Illinois EPA involvement with and monitoring of the program to ensure that progress is made. (E-6)

**The KIC program was not announced prior to the Draft Final NPS Program, it will be a part of future updates.**

21. The Illinois EPA should investigate rulemaking opportunities to significantly restrict harmful agricultural practices and further reduce nonpoint source pollution. (E-6)

**The Illinois EPA is open to exploring ways of improving the Program through specific rulemaking opportunities should these be presented for future updates. Please suggest specific rules to be implemented and submit them to us during the next Program review comment period.**

## Issues Outside the Scope of BOW Annual Hearing

22. Why does the Illinois EPA work to improve water quality in an area and then turn around and issue new NPDES permits and new 401 water quality certifications in these same areas? Canton Lake is an example of this—a draft 401 water quality certification and a draft NPDES permit have been issued for a new strip mine in the watershed of Canton Lake, the drinking water source for some 20,000 people. Another example is the Industry mine. The strip mine continues to get NPDES permits and new 401 water quality certifications in a watershed where Illinois EPA has committed a significant amount of resources to abate sedimentation and other water quality concerns despite the fact that the mine has had over 300 violations of its permit. (T 36-38)

**These specific issues involve individual permits and fall outside the scope of the Bureau of Water Annual Hearing but are considered in detail in the context of each respective proceeding. In general, Illinois EPA does not have the authority to deny an individual permit simply because it believes the project to be unsuited to a particular location. State law mandates Illinois EPA to issue permits when the applicant complies with the regulations for obtaining a permit. Furthermore, reasons and the specific regulations that would not be met if the permit had been issued must be listed in a denial letter. The applicant is then free to correct these items and reapply for a permit.**

23. The City of Hillsboro has applied for an NPDES to dump sewage into Middle Fork of Shoal Creek and Deer Run Mine is also dumping their pollutants from a slurry impoundment into the Middle Fork of Shoal Creek. Has IEPA taken into consideration of the cumulative effect of these two NPDES water permits? (T-53-54)

**As part of the permitting process, yes, the cumulative effects will be taken into consideration as they do the antidegradation analyses. It is not something I report on through this Water Quality Management Plan. I can't speak to the specifics of that study because that's not my area of expertise, but I do know that that will occur, and if you want more information on those studies or how that study is done, I can get you that information.**

24. How many miles of streams are there in Illinois? (T-33-34)

**The total miles of streams in Illinois is published biannually in the Integrated Report. The last Integrated Report is the draft 2010 the Illinois EPA, and is available on the Illinois EPA website at <http://www.epa.state.il.us/water/tmdl/303d-list.html>.**

25. Why has the number of stream miles as reported in the draft 2010 Integrated Water Quality Report dropped in comparison to previous Integrated Reports? (T-34-36)?

**Actually the total number of stream miles in Illinois as reported in the draft 2010 Integrated Water Quality Report as increased. This is because advances in technology have allowed the identification of streams that had previously been unidentified by our mapping capabilities. At the same time, the number of stream miles that have been monitored has remained relatively the same in recent years, so we have more stream miles and the same number of stream miles being monitored, resulting in an overall drop in the percentage of stream miles monitored.**

**Additional information on this can be obtained by attending and participating in the upcoming hearing for the 2012 Integrated Water Quality Report hearing or by contacting Gregg Good, Manager, Surface Water Monitoring Section at (217) 782-3362 or at [gregg.good@illinois.gov](mailto:gregg.good@illinois.gov).**

26. The Agency should do a better job of assessing and accounting for losses in head water and very small streams. (T 46-47)

**This is a topic that is not germane to this proceeding, but is an issue that should be discussed with Illinois EPA staff as we make preparations for the 2012 Integrated Report. Please contact Gregg Good, Manager, Surface Water Monitoring Section at (217) 782-3362 or at [gregg.good@illinois.gov](mailto:gregg.good@illinois.gov). Illinois EPA will also hold conduct public participation processes as the 2012 report is being prepared. Involvement in these processes is also encouraged.**

27. Why is the City of Hillsboro required to test for heavy metals semiannually in their NPDES permit while Deer Run Mine is only required to test for heavy metals during construction and only once during construction and not until the NPDES permit renewal? (T-54-55)

**Issues regarding the specific contents of individual NPDES permits are not a subject matter of this hearing. However additional information is available for these two NPDES permits from the permit writers. For the City of Hillsboro NPDES permit, the permit writer is Brant Fleming. Mr. Fleming can be reached at 217/782-0610. Questions regarding the Deer Run Mine NPDES permit should be directed to Larry Crislip in the Marion Regional Office at 618/993-7200.**

## AGENCY PREHEARING OUTREACH

Pursuant to the federal regulations for public participation in 40 CFR 25, the hearing was announced in state and multistate publications including:

- *The Breeze-Courier* (Taylorville) (state newspaper) on August 5, 12 and 19, 2011.

The public hearing notice was sent via first class mail to persons and groups on lists provided by:

- Bureau of Water, Division of Water Pollution Control;
- Illinois EPA list of persons who have requested to be informed of hearings;
- Office of Community Relations (all persons who registered for the 2010 BOW hearing).

The public hearing notice was posted on the Illinois EPA Internet Web Site at:

<http://www.epa.state.il.us/public-notices/general-notices.html#bow-annual-hearing>

The hearing notice was posted at the Springfield headquarters and in all Illinois EPA regional offices.

The Agency believes that an informed public is important in building support for responsible environmental decisions. For this reason, the Agency used both broad based and focused formats to contact organizations and individuals. The Agency has reached constituents who include the general public, state and multi-county agencies, public interest groups, planning departments, trade groups, agricultural interests, Chambers of Commerce, businesses, news media, elected officials, educators and environmental groups.

## Distribution of Annual Hearing Responsiveness Summary

Notification of the availability of the responsiveness summary was sent to all who registered at the hearing or provided written comments. The responsiveness summary was posted on the Agency's webpage on May 1X, 2012. Additional copies of this responsiveness summary are available from Dean Studer, Illinois EPA Office of Community Relations, e-mail [Dean.Studer@illinois.gov](mailto:Dean.Studer@illinois.gov), phone 217-558-8280.

## Bureau of Water Staff Who Can Answer Your Questions

Water Quality Management Plan .....	Amy Walkenbach...	217-782-3362
Revolving Loan Fund for Drinking and Waste Water ...	Geoff Andres .....	217-782-2027
Assistance for Nonpoint Source Pollution Control .....	Amy Walkenbach...	217-782-3362
Hearing Officer for September 21, 2011, Hearing .....	Dean Studer .....	217-558-8280

The public hearing notice, the hearing transcript and this responsiveness summary are available on the Illinois EPA website:

<http://www.epa.state.il.us/public-notices/2011/general-notices.html#bow-annual-hearing>

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