

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

**"FACILITY PLANNING AREA RESEARCH"**

**Final Program Evaluation**

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## Foreword

We are pleased to present this “Program Evaluation” to the Illinois EPA (IEPA) and the citizens of Illinois. It has been a unique pleasure to get familiar with the people, the processes, and the policies of your great state.

This is not a typical program evaluation.

We do not present detailed reference materials by which the reader can trace the history and intent of the Facility Planning Area (FPA) Process. This program evaluation does not examine the efficacy or efficiency of the FPA process against any measurable criteria. Nor does it provide concrete policy suggestions or means for improvement. None of the above was within our charge from a programmatic standpoint.

Rather, our point of departure was that public policy in this arena is, in some sense, shaped by both perceptions and politics. For that reason, we started this analysis by interviewing dozens of interested parties (“Stakeholders”) throughout the state and in the federal government. We then reviewed the elements of ten other state programs chosen because of some commonality with Illinois demographics, culture, or economics.

This program evaluation recounts where the various interest groups seem to be with regard to the FPA process. Taking that in conjunction with the state-by-state review, we developed our best counsel for constructing a road map for IEPA. A road map that will help move the state away from what is commonly regarded as a dysfunctional program and toward something that better protects and preserves water quality throughout the state.

We are grateful for the opportunity to serve the people of Illinois and wish the new Administration the best of luck in their efforts.

Sincerely,

Adam R. Saslow  
President  
Consensus Solutions, Incorporated

## **I. Executive Summary**

Originally, IEPA's role in facilities planning was directed by §208 of the federal Clean Water Act (CWA). The FPA process was created largely to satisfy the requirements of the federal Construction Grants Program Under Title II of the CWA. The goals were essentially twofold:

1. To protect federal investments in wastewater treatment capacity from being duplicated in neighboring communities
2. To prevent the overextension of the service envelope beyond the needs dictated by the 20-year growth horizon.

Neither the federal program nor any similar state program exist today though IEPA now administers a federal loan program – the State Revolving Fund (SRF) - in which local government entities borrow money at a fixed rate of interest which is then paid back to the IEPA.

The need for FPAs and the FPA process has been questioned for nearly ten years. Though the program remains in place today, it is viewed as either inefficient or ineffective in most stakeholder quadrants. Further, while originally established as a tool to assure appropriate expenditure of federal tax dollars (and secondarily offer some protections to water quality), FPA amendments have, in recent times, become the focal point of local disputes regarding the disposition and future control of new development. IEPA oftentimes finds itself having to resolve these disputes, resulting in a rather significant annual commitment of staff resources.

Still faced with questions ranging from how to improve the program through how to eliminate the program, IEPA contracted with Consensus Solutions, Incorporated – an Atlanta based dispute resolution firm – to provide counsel on the future direction of FPAs and the FPA process. Our analysis yielded the following counsel and recommendations:

Reference #	Recommendation
VII.A.1	<p>IEPA should develop a Memorandum of Agreement (MOA) that extends beyond the current cooperative agreement and thereby formalize a process relationship with IDNR and IDA. This MOA should specifically detail the framework in which counsel is provided (the specific datum<sup>1</sup> that is considered and the weight of the datum in the decision-making process) as well and the terms under which these agencies might utilize existing authorities (if even applicable) and obtain veto power over an application’s approval.<sup>2</sup> Efforts should be made to include the Department of Commerce and Economic Opportunity (DCEO) within this mechanism.</p> <p>Such a relationship might take the form of a decision committee in which each state agency had a voice in the approval or denial of an FPA amendment. We would argue that the regional commissions should function on such a committee in an <i>ex officio</i> capacity.</p>
VII.A.2	<p>This MOA should be distributed to each and every Designated Management Agency (DMA) and the decision criteria should be transparent to all potential affected parties.</p>

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<sup>1</sup> The Openlands Project Report suggested that IEPA consider excluding from development any “environmentally sensitive areas.” This is clearly an area where IDNR would be able to provide significant insight and support. Other state programs seem to deal with this as one of many core values of similar programs. Further, our interviews indicated that such provision would be acceptable to a great many stakeholders. Though challenging despite the broad agreement we have noted, our strong counsel would be to see such measures adopted immediately. Further, Openlands urged that IEPA adopt regulations that formally require IDNR to provide input on the effects that FPA amendments will have on sensitive habitats, aquatic life, and threatened or endangered species. Again, we feel that the MOA might specifically address how such information would be factored into the FPA process. Finally, Openlands indicated that such a modification in policy might be quickly implemented and thereby fit neatly into the quick fix category. Consensus Solutions remains neutral on that element.

<sup>2</sup>

<b>Reference #</b>	<b>Recommendation</b>
<b>VII.B.1</b>	IEPA should adopt a hands off approach with regard to Type I conflicts. IEPA should develop a policy requiring that all FPA Applications contain signed declarations from all principally affected local entities that state agreement to the proposed amendments to the IWQP. An amendment application should be immediately rejected without such an affidavit.
<b>VII.B.2</b>	Regarding “Type II conflicts, ” IEPA should develop strict guidance for determining appeals. The state needs to very specifically identify the criteria upon which appeals need to be decided and the relative weighting of each element.
<b>VII.B.3</b>	Regarding “Type II conflicts, ” IEPA should develop a progression of appeal: <ul style="list-style-type: none"> <li>• Parties go first through a mediation process guided by a third party (non government) dispute resolution professional</li> <li>• If unresolved, parties then submit to an arbitration process guided by a different third party dispute resolution professional</li> </ul>
<b>VII.B.4</b>	IEPA should allocate monies to the extension of a grant (to an academic institution) or a contract (to a private entity) with the capacity to serve as an unbiased arbitrator of Type II disputes.
<b>VII.C.1</b>	IEPA should embark on a process that utilizes existing resources to develop a statewide watershed management approach to protecting and preserving water quality in the seven major water basins across Illinois.
<b>VII.C.2</b>	This approach should be developed with significant stakeholder input through a formalized collaborative process.



<b>Reference #</b>	<b>Recommendation</b>
<b>VII.C.3</b>	<p>The watershed approach should be phased in over a two to five year period during which time there must be accountability for meeting specific and agreed upon milestones. We suggest the following structure:</p> <ul style="list-style-type: none"> <li>▪ A Basin-wide Management Advisory Group (B-MAG) with balanced stakeholder representation from across the state; and,</li> <li>▪ A local Watershed Steering Committee for each of the seven basins.</li> </ul>
<b>VII.C.4</b>	<p>The FPAs and ultimately the FPA process should be phased out <u>only</u> as watershed policies come online and enforcement mechanisms (and resources) put in place. This will provide the proper incentives for parties to move forward aggressively in the establishment of the system and at the same time offer at least the current protections enforceable by IEPA and through the courts.</p>

Our state-by-state analysis yielded the following summary results:

STATE	RESPONSIBLE AGENCY	SQUARE MILES	2000 STATE POPULATION (Rank)	SATISFIED WITH PROCESS?	FPA AS A PLANNING TOOL?	FPA AS A GROWTH MGMT. TOOL?	ADDRESSES NON-POINT SOURCE?	# OF STAFF (in FTE)	ANNUAL BUDGET (2002)	# OF PLANNING AREAS	# OF APPLICATIONS (2002)
<b>IL</b>	IEPA	55,584	12,419,293 (6)	No	Yes	Yes	No	< 1.25	Unknown	Approx. 1,000	55
<b>CT</b>	CT DEP	4,845	3,405,565 (28)	Yes	Some coord. with Planning Agencies	No	No	6	\$250,000	169	Unknown
<b>FL</b>	FL DEP	53,927	15,982,378 (4)	Yes	Some linkages	No	Some coord. with Water Mgmt Dists.	None	Unknown	Unknown (local implementation)	Unknown (local implementation)
<b>GA</b>	GA DNR/EPD	57,906	8,186,453 (10)	Yes	No	No	Some linkages to NPDES permitting	None	Unknown	159	50
<b>MD</b>	M DE	9,775	5,296,486 (19)	Yes	Yes	Yes	Not directly	1.5	\$100,000	165	Unknown
<b>MN</b>	MPCA	79,610	4,919,479 (20)	Generally	No	No	No	<1.0	<\$80,000	55	700
<b>NJ</b>	NJ DEP	7,417	8,414,350 (9)	Generally	No	Yes	Yes	Unknown	Unknown	12	<100

STATE	RESPONSIBLE AGENCY	SQUARE MILES	2000 STATE POPULATION (Rank)	SATISFIED WITH PROCESS?	FPA AS A PLANNING TOOL?	FPA AS A GROWTH MGMT. TOOL?	ADDRESSES NON-POINT SOURCE?	# OF STAFF (in FTE)	ANNUAL BUDGET (2002)	# OF PLANNING AREAS	# OF APPLICATIONS (2002)
<b>NC</b>	NC DENR	48,711	8,049,313 (11)	Yes	No	Indirectly	No	Unknown	Unknown	300	<500
<b>OH</b>	OH EPA	40,958	11,353,140 (7)	No	No	No	No	0.75	\$100,000	Unknown	
<b>SC</b>	SC DHEC	30,109	4,012,012 (26)	Yes	No	No	Slightly	<0.75	Unknown	Unknown	
<b>WI</b>	WI DNR	54,310	5,363,675 (18)	Generally	Not really	Indirectly	Yes	10	Unknown	75	

## **II. Introduction and Background**

In October of 2001, the Openlands Project wrote that the “Illinois facility planning area (FPA) process is one of the state’s most important, but least understood, planning procedures.”<sup>3</sup>

While our Program Evaluation offers no conclusions about the importance of the FPA process within the environmental protection framework (vis-à-vis other programs and laws), our interviews suggest that the statement is absolutely correct with regard to the level of understanding of this program’s mandates and efficacy.

### ***Requirements Under the Clean Water Act.***

The FPA process was built specifically to fulfill the requirements of the Construction Grants Program under Title II of the Clean Water Act.<sup>4</sup> The last year that funds were formally appropriated was 1990, though the program seemed to end many years earlier. It was intended to protect state and federal investments in municipal wastewater treatment facilities (constructed with federal grant funds) by insuring that the projects were designed to provide waste water treatment to a specific 20-year service area (or FPA) in the most economically and environmentally sound manner. The statute specifically mandates that the state evaluate the “economic, social and environmental impacts” of implementing the plan in accordance with 40 CFR §130.6(b)(c)(6) 40 CFR §35.917. Facility plans for wastewater transportation and treatment are also reviewed for consistency with the Illinois Water Quality Management Plan (WQMP).

Neither the federal program nor similar state program exist today though IEPA now administers a federal loan program – the State Revolving Fund (SRF) - in which local government entities borrow money at a fixed rate of interest which is then paid back to the IEPA. The loan program still maintains a moderate level of facility planning review. However, the emphasis of the planning review is to confirm that loan funded projects are technically appropriate and affordable, and to verify that projects comply with federal and state environmental law and

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<sup>3</sup> Openlands Project, *Protecting Illinois Environment Through A Stronger Facility Planning Area Process*, p.1 (October, 2001.)

<sup>4</sup> § 208(b)(2)(e)

regulation. Given the fact that communities are required to repay the loans, IEPA's emphasis on protecting the state's investment is no longer as compelling. The FPA process does give local sewer authorities (such as municipalities or sanitary districts) the assurance that the wastewater infrastructure investments they have already made will remain safe from intrusion and competition that would prevent them from recouping capital costs. If municipalities could not recoup their costs through the connection fees and base of customers they had planned on, it would be harmful not only to the municipality but also potentially harmful to the environment, since operation and maintenance of the wastewater treatment facility might suffer. Regardless, although IEPA still needs to review projects to ensure that the SRF funds will be used to construct needed wastewater infrastructure and to prioritize compliance projects, the focus on defining a planning area beyond a projected service area is not necessary.

### ***The Illinois FPA Program***

The Illinois WQMP was adopted in November of 1982. Activities required under §106, §201 (facility plans), §205(j) (water quality management plans), §208 (waste treatment management planning), and §303 (continuing planning) of the Clean Water Act were consolidated into an integrated process, which required the development and maintenance of the WQMP. The purpose of the WQMP is to coordinate the three area-wide wastewater management plans (covering 19 counties) with the state plan (covering the remaining 83 counties). The WQMP is composed of:

- ❑ The four preceding wastewater management plans;
- ❑ All approved facilities plans; and,
- ❑ All wastewater National Pollutant Discharge Elimination System (NPDES) permits excluding industrial process, thermal, stormwater and non-contact cooling water NPDES permits as specified in §2.324 of the WQMP.

The WQMP addresses control of pollution sources, maintenance of stream use and water quality standards, protection of groundwater resources, and control of hydrologic modifications. In addition to the assurance of sound economical and environmental decision-making, the WQMP is also intended to serve as a tool to protect the federal and state

investment in pollution control facilities. The wastewater treatment needs and the FPA's for a service area are identified in the WQMP. The original WQMP has been frequently amended to reflect specific changes in various program elements as well as FPAs.

Originally, IEPA's role in facilities planning was directed by §208 of the federal Clean Water Act. The FPA process was created largely to satisfy the requirements of the federal Construction Grants Program. The goals were essentially twofold:

3. To protect federal investments in wastewater treatment capacity from being duplicated in neighboring communities
4. To prevent the overextension of the service envelope beyond the needs dictated by the 20-year growth horizon.

**FPAs are defined as the area considered for possible wastewater treatment service (the “service envelope”) within a twenty year planning period as specified in 40 CFR 35.2030(b)(3). Exceptions are those areas where the designated management agencies (DMAs) have defined an area to be serviced by on-site treatment over the next twenty years. A DMA is a public, quasi-public, or private enterprise designated for and engaging in planning, collection, transport, treatment, or sludge disposal of sewage. Approved by IEPA, an FPA is an area in which a DMA has the right to plan, design, construct, own, and operate sewer facilities (wastewater treatment plants, interceptors, collection systems, etc.) and to apply for federal and/or state funds and permits associated with the construction of these wastewater facilities.**

IEPA designates FPAs large enough to take advantage of economies of scale, efficiencies possible in regional planning, or decentralized or individual on-site systems. In theory, FPAs are sized to ensure that the most cost-effective means of achieving the established water quality goals can be implemented (focused on appropriate wastewater treatment as the key strategy), and that an adequate evaluation of environmental impacts can be made. Facilities planning consist of those necessary plans and studies that directly relate to treatment works needed to comply with the enforceable requirements of the Clean Water Act. Facilities planning define and quantify the appropriate size of wastewater facilities. FPA amendment requests may be initiated by either IEPA; a facility planning authority; a DMA; or, if within the counties under

their jurisdiction, by one of the three identified State of Illinois area-wide water quality planning agencies: Northeastern Illinois Planning Commission (NIPC); Southwestern Illinois Metropolitan & Regional Planning Commission (SIMAPC) and Greater Egypt Regional Planning & Development Commission (GERPDC).

### ***Reason for the Program Evaluation***

The need for FPAs and the FPA process has been questioned for nearly ten years. Though the program remains in place today, it is viewed as either inefficient or ineffective in most stakeholder quadrants. Further, while originally established as a tool to assure appropriate expenditure of federal tax dollars (and secondarily offer some protections to water quality), FPA amendments have, in recent times, become the focal point of local disputes regarding the disposition and future control of new development. IEPA oftentimes finds itself having to resolve these disputes, resulting in a rather significant annual commitment of staff resources.

For these and several other reasons,<sup>5</sup> IEPA proposed to end the FPA process in 1998. At that time, the Administration suggested that because US EPA's Construction Grants Program had been eliminated, there was no longer a need to maintain the FPA process. Several constituencies successfully argued that the process was still an integral component of the current water quality protection framework as well as other ongoing activities including the Illinois Growth Task Force. The matter was studied for some time culminating in FPA reform legislation that stalled in the Illinois Senate in 2001. On February 4<sup>th</sup>, 2002, IEPA convened a "Stakeholder Workgroup" to discuss the goals of the program within the context of how it might be improved. A second meeting was held four weeks later, reportedly to discuss specific feedback on the merits and shortcomings of the existing program. In September 2002 IEPA issued its Facilities Planning Area Position Paper and its recommendations to eliminate FPA and the FPA process. Again, there was a significant response from the varied interest groups. In October of 2002, IEPA once again convened the stakeholders and with this feedback, moved to maintain the program in its current form. Most recently, State Representative Ricca Slone

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<sup>5</sup> Including challenges from no-growth advocates, the difficulty, and length of administrative hearings where disputes are recorded and concerns with the nexus between the FPA process and other state programs and policies (Letter from Mr. James B. Park, Chief, Bureau of Water, IEPA (May 4, 1998)).

introduced a bill that would require IEPA to propose rules and procedures for facility planning area amendments under the Facility Planning Area Rules Act. This bill, proposed on 2/7/03, was passed by the House on 3/19/03 and by the Senate on 5/9/03.

Still faced with questions ranging from how to improve the program through how to eliminate the program, IEPA contracted with Consensus Solutions, Incorporated – an Atlanta based dispute resolution firm – to provide counsel on the future direction of FPAs and the FPA process.



### **III. Methodology**

This Program Evaluation (loosely defined) includes three distinct elements:

- ❑ An Assessment Of Perspectives Within The State Of Illinois On The Efficacy And Future Of The FPA Program;
- ❑ A Comparative Survey Of Similar Programs In Ten Peer States;
- ❑ Counsel On The Development Of A System For Resolving “Border Battles” Within The FPA process;

Adam R. Saslow, President of Consensus Solutions, Incorporated conducted this Program Evaluation and was the principal investigator. Consensus Solutions Analyst, Kerstin Ohlander, assisted him. A more descriptive summary of the methodology used to approach these three elements appears below.

#### ***Characterization of Perspectives Within Illinois***

Mr. Saslow began this element with only the list of participants from last year’s Stakeholder Process. In the opening weeks, he spoke with several participants, many of whom provided additional contacts.<sup>6</sup> Consensus Solutions often refers to this as a “snowballing process” by which neutrals (e.g., facilitators or mediators) gain valuable information for identifying the real and perceived leaders in the affected communities.

Ultimately, Mr. Saslow conducted well over 25 in-person interviews on site in Springfield, IL and in Chicago, IL and dozens of others by telephone. He received several position papers and e-mail correspondence as well. All interviews and written materials were introduced and treated as confidential communications in the sense that this report and subsequent briefings of governmental officials would never associate individual statements with particular people and only on very rare occasions with the organizations they represent.

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<sup>6</sup> It is important to note that no one suggested contacts within industry or a chamber of commerce.

Mr. Saslow used an Interview Guide (please reference Appendix 2) as a way of ensuring some degree of consistency across the many discussions. This was a structural tool (not a script) used to define the main elements needed to rise in every conversation.

The first objective within each interview was to have the interviewee relate their understanding of the original goals of the FPA program as well as the goals that the current program may achieve. Beyond that, participants were asked to evaluate the:

- ❑ Efficacy of the program in broad terms and then more narrowly;
- ❑ Roles of various government entities; and,
- ❑ Barriers to success and other concerns as well as alternative solutions and incentives for public policy.

Through this process we are, typically, able to assess the interviewee's relative interest in taking part in any future dialogue as well as their suitability for participation. In many cases, the tenor of the interview was one in which Mr. Saslow played "Devil's Advocate" and questioned the depth of the interviewees commitment to the positions related. In that way, Mr. Saslow was able to develop impressions concerning the relative degrees of knowledge of the interviewees as well as the potential for meaningful and mutually agreeable outcomes.

The section of this report, labeled "*Stakeholder Issues*," is our evaluation of the proverbial lay of the land on the current state and the future of the FPA process. The chapter summarizes the more broadly held controversies and perspectives.

### ***Comparative Survey of States***

Consensus Solutions staff worked with IEPA to develop selection criteria for choosing ten among the other 49 states for review. Broadly speaking, the selection was made where similarities existed between Illinois and other states along one or more of the following

criteria: mix of urban and agricultural land use, economic growth, size, bureaucratic structure, geographic proximity, culture or urban/rural tensions.<sup>7</sup> The following ten states were selected:

- ❑ Connecticut
- ❑ Florida
- ❑ Georgia
- ❑ Maryland
- ❑ New Jersey
- ❑ North Carolina
- ❑ South Carolina
- ❑ Ohio
- ❑ Virginia
- ❑ Wisconsin

The information collected from Virginia was insufficient and so we replaced the data with that which was subsequently collected from Minnesota.

Mr. Saslow also designed the “Interview Guide” (see Appendix 2), again used as a tool to obtain consistent data from each interviewee. Ms. Ohlander conducted hour-long interviews with representatives from each state regarding:

- ❑ State Involvement In The Wastewater Treatment Planning Process,
- ❑ Wastewater Treatment Planning Issues Related To Growth And Water Quality Protection,
- ❑ Commitment of Supporting Resources.

Information for each state was summarized in identical tables for comparative purposes. These tables are presented in the section entitled, “*State by State Comparative Analysis.*” As a generous offering and in the spirit of quality control, several states reviewed their own synopses before the publication of this report.

The reader should note that these tables represent snapshots on the state of public policy in April 2003. As such, what may be reflected herein may be outdated as early as the first printing of this report. For example, the General Assembly in the state of Georgia is currently debating

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<sup>7</sup> MD, NJ, and WI were selected specifically because they appeared in the Openlands report.

the merits and construct of water quality legislation. Similarly, efforts in New Jersey to affect “Smart Growth” policies are changing day to day as the political dynamics in that state shift.

### ***Resolving Conflict***

Consensus Solutions relied on the data collected above to better understand the controversies swirling around the border battles as FPAs are expanded or augmented. We reflected upon the resource commitments made by all parties and the efficacy of the resolution process.

As dispute resolution professionals, we simply looked at the circumstances and evaluated the efficacy (admittedly from the less than robust perspective of anecdotal experience). Our work in this area appears in the chapter labeled “*Evaluating the Use of Alternative Dispute Resolution (ADR) in Resolving Existing and Future Conflicts.*”

### ***Recommendations***

The recommendations within draw upon the interviews, documents provided during the process and the best wisdom and experience of Mr. Saslow and Ms. Ohlander in dealing with water quality and land use issues and other environmental policy debates. These appear in the section labeled, “*Recommendations.*”

#### **IV. Stakeholder Issues**

This section provides a summary of key issues raised during the course of our interviews. The issues raised are not the personal opinions of Consensus Solutions nor are they the opinions of the State of Illinois.

We also highlight areas where opportunities exist for agreement. We presume that the issues raised were of the highest degree of concern for the parties we contacted and that as such they present the elements of highest priority for those with the greatest stake in the program's future.

Our classifications and categorizations for these issues are purely our own.

##### ***IEPA's Recent Efforts***

Almost all stakeholders applaud IEPA's efforts to bring stakeholders together in a collaborative dialogue. Last year's good faith effort to collect information was viewed in a very positive light and IEPA's willingness to periodically adjust their thinking was also received quite well across the state.

Further, the external community views this Program Evaluation process to be an extremely positive development. We have received numerous requests to consider additional input and information and there seems to be a great deal of interest in the final report. Together, these factors indicate a strong willingness on the part of all affected parties to be a part of the policy discussions.

That said, while last year's dialogue did effectively open the discussions, the meetings were viewed by many to be less than successful from the standpoint of progress.<sup>8</sup> Representation across affected parties was considered imbalanced. The level of knowledge across constituencies was viewed as highly variant. Finally, according to many, there was a fair amount

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<sup>8</sup> Though many parties did note that there was a great deal of value in the sharing of positions via dialogue.

of posturing and grandstanding resulting in little flow or constructive dialogue. Some characterized the meetings as loud and contentious.

Stepping back from these broad generalizations, we view the dissatisfaction in these processes as stemming from two disparate sources:

1. The informality of the 2002 meetings. These events had comparatively little structure and were open to all. IEPA was thrust into the roles of stakeholder, technical and legal resource, and process guide. This is a very difficult set of roles to play simultaneously.
2. The somewhat “schizophrenic” character of the state. Chicagoans and others in the northeastern part of Illinois exist in an entirely different socio-political arena. Further, economics as well as the state of the environment are not homogenous across Illinois.

These continue to pose very significant hurdles for IEPA.

First, a road map to the future (whether it includes a new and improved FPA process or not) must involve a process by which IEPA serves largely as a resource – not necessarily as a stakeholder and certainly not as a process guide. Yet, in this economic climate where budget resources are scarce, acquiring the skill set for neutral process guidance may be difficult.

Second, resolving the disparities between the northeastern part of the state and the rest of Illinois will be a constant source of struggle for IEPA on this and other public policy matters. A “one size fits all” strategy is not likely to yield the desired results in determining the future of the FPA process, maintaining or improving water quality and/or managing growth.

### ***Views of the Current FPA process***

As IEPA reported in September 2002, this program is perceived to have a multitude of goals. It is our firm belief that much of the FPA controversy in Illinois swirls around the misperceptions of the statutory requirements and what goals the program is intended to serve.

Interviewees perceive a range of FPA process mandates associated with CWA §208 including requirements that IEPA:

1. Ensure appropriate/sufficient wastewater treatment capacity for area served now and consistent with 20 year population projections;
2. Ensure that public monies are not used to construct multiple facilities that serve the same service envelope;
3. Protect investments in existing and future infrastructure;
4. Ensure wastewater treatment is accomplished in a way that minimizes environmental impact;
5. Provide citizens with the best utility service in the most environmentally sound way utilizing cost effectiveness, engineering, and “reasonableness.”
6. Balance the needs of the citizens of Illinois against water quality protection;
7. Promote compact, contiguous growth;
8. Protect water quality;
9. Eliminate package plants and the proliferation of septic systems; and,
10. Minimize the effects of urbanization and non-point source stormwater runoff impacts on receiving water.

In fact, according to US EPA staff, only numbers (1) and (2) out of the ten perceived mandates listed above were elemental goals for the facility planning process. We believe that the inflated perceptions of what this program is intended to do has made the FPA process less of a substantive debate and more of a symbolic one as reflective of the perceived interests in protecting and preserving the entirety of the environmental condition in Illinois.

Essentially, there is confusion as to whether this process is supposed to be a tool that aids in the management of:

- Wastewater Treatment Facility Planning;
- Water Quality; or,
- Growth.

Yet when interviewed, participants in this process freely admitted that regardless of the goals perceived, the FPA process falls short of its mark. Despite this sentiment, many indicated that the FPA is an indispensable part of the environmental protection fabric as it is one of “the only tools that forces consideration of economics (via population growth) and its impact on water

quality.” Others indicate that while it was “little more than a speed bump,” it is a process that at least forces a slowing down of the growth process. Finally, another significant proportion of interviewees feel that while the process does little to change the inevitable, it does force local governments and state personnel (IEPA, Illinois Department of Agriculture (IDA) and Illinois Department of Natural Resources (IDNR)) to talk and in those discussions oftentimes smarter environmental policies (e.g., adoption of local ordinances, “smarter” growth and the protection of sensitive areas) are the end result.

Interestingly, when the failures of the program were noted, nearly every participant was asked if there was any program in another state that governed a particularly effective facility-planning process. In Illinois, awareness of analogous programs is extraordinarily low. A small minority of interviewees pointed to Wisconsin but could not necessarily articulate the attributes that were important. Further, several interviewees pointed to the “uniqueness” of Illinois in terms of its land use mix (Chicago’s urban core and the 6 collar counties versus the strong agrarian economy in the rest of the state), its structure of government (more local governmental units than any state in the nation) and its strong “home rule” ethic.

### ***The Future of the FPA***

It is very clear that the various communities are polarized on this issue. More than most environmental policy debates, the parties seem to have distilled this to either a “Yes” or “No” perspective – again a manifestation of the symbolic nature of this program. Still, when pressed, most of those interviewed recognized that there was a great deal of gray in the debate and a genuine willingness to explore the development and use of tools that can be used to achieve the multitude of goals noted above.

### ***Should the FPA process continue?***

In some quadrants the answer to the question “where is the ‘value-added’ by the FPA process” is “there is no value added by the FPA process.” Many local government entities believe that the FPA process is labor intensive, politically charged, and costly in time of financial and human capital. While some in this quadrant will concede the benefit of the dialogue involved, the cost



of engagement is viewed as inordinately, and in many cases unjustifiably, high. This sentiment is most often expressed by local government outside the Chicago and its western suburbs.

However, there is a continuum on this “value-added” question. Interestingly, local governments in northeastern Illinois and west (though not really south) of Chicago seem split in the perception of value. Many view the FPA process as that necessary “speed-bump” for considering the impacts of growth. The cross constituency dialogue that is in some ways “forced” by the speed bump is viewed as extremely beneficial. NIPC, a leading proponent of the value of the program, readily touts the:

- ❑ Utilization of model ordinances;
- ❑ Avoidance of leapfrogged growth;
- ❑ Prevention of duplicative investments in infrastructure; and the
- ❑ Protection of sensitive lands.

Many in both the environmental community and the smart growth community (there are subtle differences between the two) have indicated that the FPA process is one of a few critically important tools on the regulatory palate. Those in the agricultural community share similar sentiments. There is some degree of fear that without the FPA process, “chaos” will prevail. In the environmental community the belief is that “water quality will severely degrade due to the impacts of increased wastewater effluent in the state’s rivers and streams.” In the smart growth community, the belief is that “unmitigated growth” will adversely impact air quality, water quality, state and local economics and more generally the quality of life in high growth regions. Those in the farming quadrant believe that elimination of the FPA process “will result in leapfrogging development of cities and strip annexation.” While there is some evidence to suggest that the FPA does provide some value in holding the line against these assaults, most of the discussions from the environmental and smart growth communities focus not on the FPA’s achievements, but rather on the greater strength of the FPA process if properly reformed.

Beyond the “value-added” question, a second more operational question is of concern. How can the skill sets and authorities be better matched to create a program that best marries economic development, environmental protection, political realities and at the same time achieves one or more of the articulated goals?

Several respondents including those that are supportive of the FPA process, did note the disconnect between the nature of the program (planning) and the skill set of the agency responsible for the program (regulatory and technical at IEPA) adding to the notion of symbol over substance. Even in the three regions where a planning entity has some degree of involvement (but not clearly delegated decision-making authority), the power that they have to enforce the program is marginal at best. The realities and perceptions surrounding this issue, distilled down to “Roles and Responsibilities” are critically important if the FPA process is maintained and, if so, by necessity, reformed.

### *Roles and Responsibilities*

#### *What Is The Current Role Of IEPA and How Is It Perceived?*

IEPA administers the entirety of the FPA process by approving or denying expansions to the boundaries of a DMA’s facility planning area. The staff in the Bureau of Water also permits expansions in the capacity offered by a wastewater treatment facility itself. Finally, IEPA often is the *de facto* arbitrator concerning border disputes when conflicting communities cannot agree in the boundaries for an FPA.

IEPA possesses a rich base of engineering and hydrological expertise. IEPA staff understands the complexities of water quality management and the effects of both point sources and non-point source stormwater runoff. Of course, IEPA staff have mastery over federal and state regulations and the enforcement mechanisms afforded by delegating authorities. They are respected by most of the external community. Unfortunately, like most state agencies, IEPA activities are severely strained by budgetary realities.<sup>9</sup> Resources are not available to do all that the agencies feel they need to do including scientific analysis, establishing and enforcing public policy.

Despite the technical and regulatory expertise, participants agree that IEPA has no role to play in local land use issues. Though it may be desirable according to some participants, Illinois’ political environment is such that state involvement in local land use planning is a non-starter.

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<sup>9</sup> Several sources project an 18-month state budget deficit of more than \$3 billion ([Illinois Issues](#), *Executive Decisions*, January, 2003, Volume XXIX, No. 1, p.17).

Still, in order to address water quality concerns, some participants indicated that the IEPA has already been delegated the full slate of more effective authorities under the Clean Water Act, Safe Drinking Water Act and Clean Air Act (CAA). These place a powerful set of regulatory tools at the state's disposal including NPDES Phase I and Phase II permitting and the state's new anti-degradation policies, management of the SRF, the TMDL program and opportunities to develop and enforce stronger sedimentation and erosion control regulations. Further, IEPA also has other tools that might be used to control growth including a voice in transportation planning via the State Implementation Plan of the CAA as well as tools that impact the availability of drinking water.

*What Is The Current Role Of Illinois Department of Natural Resources (IDNR) and How Is It Perceived?*

Current FPA processes do not mandate consideration of the IDNR counsel in the ultimate determination of the FPA application. State law mandates "Consultations," though the counsel itself is not always adhered to. Oftentimes, IDNR was unaware of the final determination – the loop is not always closed with key staff.<sup>10</sup> While again, the general view is that the state should not be involved in land use decisions, there is the perception that IDNR can and should bring much needed information to the decision making process.

IDNR possesses unique expertise in ecological management issues. They can use a wide array of tools to map sensitive areas and home in on vibrant ecological habitats in a proactive manner.

Because they do not have regulatory tools at their disposal (except those afforded under the Endangered Species Act), their greatest value is in the sharing of data and information. Indications are that IDNR can offer proactive screening on lands across the state and the majority of stakeholders would be supportive of such involvement.

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<sup>10</sup> Though not raised again until the section on conflict management, there is a general perception that FPA decisions are made in a "black box" and that oftentimes people do not know what goes into the decision making process or why certain decisions are made. In some instances, state government entities indicated that they did not even know the outcomes of certain applications, as IEPA did "not regularly close the loop."

*What Is The Current Role Of Illinois Department of Agriculture (IDA) and How Is It Perceived?*

When an FPA amendment is submitted to IEPA, IDA has the opportunity to review the amendment for its potential impact on farmland conversion. In doing so, IDA examines the land's soil quality, existing and proposed land uses, proximity of the land to other development and its proximity to the town's corporate boundaries, zoning, presence of other utilities roads and other commitments already made to develop the land.

Like IDNR, consideration of IDA commentary is mandated by a cooperative working agreement but IEPA may still act of its own accord. Like IDNR, the feedback loop is not always closed. These are problems noted by many of the interviewed parties.

Many of the interviewees placed similar values on the involvement of IDA as they did IDNR. While IDNR offers skills and tools in wildlife management, ecological and habitat related issues, IDA (and specifically the Bureau of Land and Water Resources) offers valuable insight on the protection of Illinois' rich agrarian culture through the Farmland Preservation Program.

*What Is The Role Of The Three Regional Planning Commissions Currently Delegated FPA process Authorities and How Is It Perceived?*

This is, perhaps, among the most politically charged questions of the entire issue. It exists at the nexus of environment and land use planning, public sector economics and political influence.

Currently four entities are responsible for the administration of facility planning areas in the state (three regional commissions and IEPA throughout the remainder of IL). The three regional commissions ensure that a multitude of (though not necessarily the same) factors are considered in the decision making process and ultimately provide non-binding recommendations to IEPA. Each regional commission is under contract to IEPA and thus its authorities do not appear to be directly related to delegating state statutes. IEPA makes decisions without the benefit of a regional planning commission when a local government entity requesting an FPA change does not fall within the bounds of an existing regional commission.

The perception is that each of the four is administering the program with a different set of standards and rules.<sup>11</sup> For example, only NIPC charges a Water Quality Amendment Review Fee for processing an FPA amendment.<sup>12</sup> Generally, this lack of standardization and consistency is problematic. For those areas in which IEPA administers the program directly, there is the perception that the Agency is too detached from the area to make “the right” decisions.

Even if the entities administered the process consistently, the public is primarily concerned with the ultimate decision. The weighting of the criteria used to develop FPA decisions is poorly understood and that lack of understanding taints the entirety of the process. One interviewee exclaimed, “it’s easy to navigate actually, the party with the highest paid engineers and attorneys wins.” While we have seen no evidence to support this view, it is sometimes said that, “perception is reality.”

Regardless of constituency, most participants will readily agree that land use planning has the potential to be most effective at a regional level. Land use planning at the state level conflicts with cultural values concerning home rule. Land use planning at the local level presents the potential for a variety of social ills. Illinois has a well-established network of regional commissions and councils that effectively cover the entirety of the state. In most cases, these entities employ a wealth of planning expertise as well as intimate knowledge of the local culture, natural resources and geography of their areas. This, in concert with the culture of home rule, creates an imperative for the state to use these institutions more effectively and, potentially, in a statewide manner (by creating parallel programs throughout the network of regional councils). Many feel that better utilization of these regional entities is critical if the FPA process is to continue.

#### *What Is The Role Of Local Government and How Is It Perceived?*

Currently, local governments (here defined as DMA’s, cities, counties and sanitary sewer districts among other entities) are responsible for petitioning IEPA for expansions in the FPA or

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<sup>11</sup> NIPC processes are well documented in the Water Quality Management Plan Amendment Process and Procedures Guide (4<sup>th</sup> Printing & Update, June 1996 and reprinted in 2002).

<sup>12</sup> The terms “amendment” and “application” are used interchangeably.

expansions in wastewater treatment capacity at the plant level. Local governments prepare all of the background material for the request (sometimes including alternative options) as well as various engineering and legal rationales. The price of preparing an FPA amendment can reach \$500,000 or more. Most often, these amendments are given an endorsement by the regional commission and approved by IEPA. Occasionally, they are far more controversial and pit local government against neighboring local government and, sometimes, local government against regional government and even the state. In these instances, local government entities often face questions as to whether the policies advocated are for the good of the community or for some other reason.

It is worthwhile to note a commonly expressed though sometimes forgotten sentiment. Local government officials live in the towns, cities, and counties in which they work. They drink the same water, recreate in the same places, and travel in the same traffic as the citizens around them. Their tax dollars pay for the same public services that they procure. More than anyone perhaps, they see the effects of the policies that they create. Clearly, they have a vested interest in the look and feel of the places in which they work, play, and live.

Still, what are sometimes lacking are larger perspectives and certainly a larger talent pool from which to draw the expertise needed to make intelligent, fully informed, public policy decisions. In many regions of the state, the perception is that economy and environment is a zero-sum game. This is not unique to one constituent group either. Many participants in the environmental, smart growth and local government communities intimated that there are few if any instances where local economics leveraged environmental protection or where environmental protection leveraged growth. Yet around the United States it is recognized in many areas that there can be great synergies resulting from the simultaneous management of environment and growth.

### ***Summary***

Taken in totality, what we have learned in our stakeholder assessment is that the interested parties are polarized on what has become an issue grounded in symbolism and emotion. When these underpinnings are removed, we found that the parties believe that the status quo is

inefficient and largely ineffective. The need for change is commonly recognized leaving IEPA with a choice really only between:

1. Reforming the FPA Process and providing far greater clarity on goals, process, roles and responsibilities; and
2. Developing a new policy framework.

To continue on the current path would be viewed as a continued drain on precious resources at local, regional, and state levels of government. To move to a new framework present both political risks to IEPA as well as tangible threats to the environment as well as economic growth.

The data collected suggests to us that a series of “quick fixes” might be implemented followed by a commitment by IEPA to move deliberately but with haste toward a new framework – by pilot testing this framework in the very near term.

**v. State by State Comparative Analysis**

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<b>II. State Involvement in the Wastewater Treatment Planning Process</b>	
<b>Responsible Entities</b>	CT DEP works with 169 different government-controlled municipalities to manage wastewater treatment. The state municipal sewage system statutes grant the municipalities specific related rights under state law.
<b>Level of State Involvement</b>	<p>As the CT infrastructure ages, many municipal wastewater plants are now seeking financial assistance to build and maintain plants. In 1991, new legislation was passed that stipulated all state grants in excess of \$100,000 must be consistent with the CT Conservation and Development Policies Plan (CDPP). This key document is a guide for development in the state and brings into play a multitude of policies related to economic opportunities, energy resources, transportation, housing, water supply, food production, environmental quality, and natural and cultural resources.</p> <p>Through the mechanism of the CDPP, the agency is becoming much more specific about facilities planning. CT DEP requires municipalities to demonstrate exactly where sewer service is going to be extended for the next 20 years. The agency spends a significant amount of time working out inconsistencies between the municipalities' service area maps and the defined areas in the CDPP.</p>
<b>Process for Providing Additional Capacity</b>	Each municipality decides how much additional capacity they desire for their own planning needs. One municipality is not authorized to go into another municipality to build sewers. To do so they would need to request and draw up an inter-municipality agreement. The municipalities have the responsibility to work out these agreements.
<b>Process Established</b>	The statutes related to the current process go back to 1967.



Satisfaction with Process	State statutes dictate the process and in general CT DEP is satisfied with it. They are not actively pursuing changes at this point and no interest groups have proposed changes.
Conflict Resolution	Conflicts are resolved within each municipality and each municipality controls where they build their own service envelope. Conflicts may arise over such issues as the cost for a percentage capacity of a neighbor’s treatment plant. If the communities are unable to resolve the conflict and both request assistance from the state, the agency can be called upon as an informal mediator.

<b>III. Issues Related to Growth and Water Quality Protection</b>	
Important Criteria for Expansion Requests	Consistency with the state CDPP.
Land Use Issues Related to the Approval Process	CT DEP works with the local Water Pollution Control Authorities and ensures that they are communicating with the planning commission, economic development, the governing body of the town, and possibly the regional health district.
Directing Growth with the Planning Process	CT DEP does not use sewer capacity planning to direct growth. Municipalities, however, do so by preventing the extension of sewer lines. In some areas where population is more seasonal than consistently stable, this strategy is working but other areas are growing even without sanitary sewers.
State Regulations Protecting Sensitive Areas	The state does not provide service to prime agricultural land and other environmentally sensitive areas.

<p>Extension Beyond Service Area Boundaries</p>	<p>CT DEP checks applications for inconsistencies and approves them if they are consistent with the state plan. If there are inconsistencies the municipality must modify their pollution control plan with CT DEP. The agency believes there needs to be a major effort to encourage the towns to develop a town plan, town zoning plan and wastewater plan that is consistent with the state plan. Boards involved in the various planning efforts may not communicate with each other and inconsistencies may therefore arise. There is discussion about state zoning and land use controls to eliminate these problems, however, the communities get upset and there is continued debate regarding who makes the decisions. CT DEP also does a technical review for any sewer extension to ensure that it is designed correctly.</p>
<p>Nonpoint Source Pollution</p>	<p>They do not use the §208 capacity planning process to address nonpoint source pollution. CT DEP addresses impacts of nonpoint source pollution through a variety of policies including the use of best management practices and a stormwater discharge program.</p>

<p><b>IV. Resources Allocated and Applications Processed</b></p>	
<p>2002 Staff Resources</p>	<p>CT DEP has 10 people that work on technical plans, enforcement issues and wastewater certification issues for the entire state. Six people are dedicated to area wide wastewater planning. They assist with planning, design review, state financing, change orders and disputes. The equivalent of 3 people are dedicated strictly to planning.</p>
<p>2002 Budget Resources</p>	<p>Approximately \$250,000 supports FTE and extramural activities related strictly to sewer capacity planning</p>
<p>Planning Areas or Sanitary Districts Serving the State</p>	<p>169 municipalities</p>
<p>2002 Applications</p>	<p>CT DEP did not provide data on this issue. Nevertheless, some applications take up to 4 years depending on their complexity. CT DEP tracks projects by whether they are in the planning, design or construction phase.</p>

**Florida**

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**Department of Environmental Protection**

**(DEP)**

Bureau of Facilities Funding

2600 Blairstone Rd.

Tallahassee, FL 32399

**II. State Involvement in the Wastewater Treatment Planning Process**

Level of State Involvement	The state is not involved in the wastewater treatment planning process. Planning is done at the local level and the state only becomes involved if the community requests state or federal funding. The Bureau of Water Facilities Funding (BWFF) then determines if the facility or sewer project is financially feasible, can be implemented, is cost effective and can be permitted. The BWFF is within DEP and is part of the Division of Water Resource Management.
Responsible Entities	Local communities are responsible for wastewater treatment planning.
Process for Providing Additional Capacity	The various FL DEP district offices monitor the treatment plants and issue permits. There are regional councils that were originally set up by the state and one of their roles was to look at local population projections for planning purposes. However, the state is not in contact with these regional councils.
Process Established	1989 for the SRF program
Satisfaction with Process	FL is satisfied with the process, however, if the state did not have to meet the National Environmental Policy Act requirements, the state would simplify the planning process further and be more satisfied.
Conflict Resolution	The BWFF does not engage in the resolution of conflicts regarding wastewater treatment planning. Conflict resolution is strictly a local issue. <sup>13</sup>

<sup>13</sup> It is important to note that Florida State University houses the Florida Conflict Resolution Consortium.

<b>III. Issues Related to Growth and Water Quality Protection</b>	
<b>Service Areas</b>	The FL DEP requested that local communities define their §208 service area themselves. It is not clear whether communities are following the original or even modified §208 planning areas.
<b>Important Criteria for Expansion Requests</b>	Important criteria for expansion requests are as follows: (1) planning cost-effective, environmentally and financially sound facilities; (2) providing for public participation in the planning process; (3) establishing how the loan will be repaid; (4) acquiring the necessary project sites; (5) designing facilities consistent with the planning requirements; and, (6) obtaining the necessary permit(s) to enable construction.
<b>Land Use Issues Related to the Approval Process</b>	Every community in the state is required to prepare a community comprehensive planning document that includes their goals and objectives for land use, wastewater sewers and other zoning issues. The FL DEP Inter-Government Coordination Office approves the comprehensive plans and implementation of the plan is the responsibility of the local authority unless the land is state owned. The state does not enforce against communities; however, the local government must produce an acceptable facility-planning document to receive SRF funds.
<b>Directing Growth with the Planning Process</b>	FL DEP does not use the wastewater treatment planning process as a tool to control growth.
<b>State Regulations Protecting Sensitive Areas</b>	The FL DEP district offices handle environmental concerns for sensitive areas within their boundaries.
<b>Extension Beyond Service Area Boundaries</b>	If a facility has the expansion capacity they may be able to extend the service envelope based on local rules and regulations. However, any time a community would like to build a new facility they must seek approval from the State on a revision to the NPDES permit.
<b>Nonpoint Source Pollution</b>	Water management districts are involved in stormwater management and are responsible for reviewing development impacts. If state or federal funding is involved in building or expanding a facility or extending sewer lines, the central office will complete a review of the project. If private funding is used, it becomes a local determination.

<b>IV. Resources Allocated and Applications Processed</b>	
Dedicated Staff Resources	There are no specific state resources dedicated to area wide wastewater treatment planning.
2002 Budget Resources	Florida was unable to provide data in this area.
Planning Areas or Sanitary Districts Serving the State	Unknown, processed by each district office.
Number of Applications Processed in 2002	Unknown, processed by each district office.

<b>Georgia</b>	
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<b>II. State Involvement in the Wastewater Treatment Planning Process</b>	
<b>Level of State Involvement</b>	A bill was introduced that calls for a statewide water and wastewater treatment plan to be developed by GA DNR/EPD. Because of a change in Governor in 2002, a large budget deficit and many competing demands, the bill did not pass during this legislative session. If the bill had passed, this would have been DNR's first attempt at doing a statewide water plan.
<b>Responsible Entities</b>	Cities, counties, water sewage authorities and private entities are responsible for wastewater treatment planning.
<b>Process for Providing Additional Capacity</b>	All counties and cities were required to develop service area agreements otherwise they would lose the ability to have new permits issued by the state. Private systems have more options as to where they are placed and are expected to meet best available treatment practices.
<b>Process Established</b>	In 1997, the legislature passed <i>House Bill 49</i> requiring counties and cities to create service area agreements. Counties and cities had 2 years following the approval of the bill to create service area agreements and have them approved by the Department of Community Affairs (DCA).
<b>Satisfaction with Process</b>	GA DNR/EPD is satisfied with the current process. The agency's role is to review designs and issue permits. They do not have the authority to change the process since it was a legislative action.
<b>Conflict Resolution</b>	People who wish to protest facilities "in their backyard" have the option of taking the issue to court. The agency uses environmental criteria strictly to evaluate applications according to water quality standards mandated by the state. Applicants contesting the outcome of the evaluation can appeal to an administrative law judge or to a superior court.

<b>III. Issues Related to Growth and Water Quality Protection</b>	
Service Areas	Service areas are determined by the state service delivery act.
Important Criteria for Expansion Requests	Typically, the agency’s role is to verify whether an expansion request is technically feasible and meets water quality standards.
Growth Issues Related to the Approval Process	Land use planning is handled locally and this right is carefully guarded.
Directing Growth with the Planning Process	Land use planning is definitely not the agency’s role.
State Regulations Protecting Sensitive Areas	GA DNR is a leader in watershed management strategies and basin-wide planning. Planning is done on a five-year cycle and at that time each watershed is reviewed with respect to water quality standards.
Extension Beyond Service Area Boundaries	The agency does not approve expansions of service areas. Local governments and the DCA have this responsibility.
Nonpoint Source Pollution	GA EPD has issued Phase I stormwater permits and is in the process of issuing Phase II permits. For any new wastewater treatment facility or any facility with a capacity greater than 1 million gallons that is requesting an expansion, the agency requires the local government to complete a watershed assessment and a plan to protect the water from non-point source runoff impacts.

<b>IV. Resources Allocated and Applications Processed</b>	
Dedicated Staff Resources	The agency does not do area wide wastewater treatment planning, however, they do basin wide watershed management planning. The group that does basin wide plans is comprised of 20 staff.

2002 Budget Resources	Georgia was unable to provide data in this area.
Planning Areas or Sanitary Districts Serving the State	Each county (there are 159 counties in the state <sup>14</sup> ) has a service agreement with all the government entities within it.
Number of Applications Processed in 2002	The agency processed 50 applications for expansion of wastewater treatment plants last year. It can take anywhere from a month to 6 months to issue the permit.

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<sup>14</sup> [http://www.naco.org/Template.cfm?Section=Find\\_a\\_County&Template=/cfiles/counties/state.cfm&state.cfm](http://www.naco.org/Template.cfm?Section=Find_a_County&Template=/cfiles/counties/state.cfm&state.cfm)



<b>Maryland</b>	
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<b>II. State Involvement in the Wastewater Treatment Planning Process</b>	
Level of State Involvement	The state has water and sewer planning authority.
Responsible Entities	There are approximately 1000 dischargers in the state, 650 are industrial and 350 discharge municipal waste. Approximately 165 are publicly owned treatment works consisting of city governments, counties, or some unit of local government.
Process for Providing Additional Capacity	State law requires each of the cities and 23 counties <sup>15</sup> to develop a 10-year water and sewer plan. This plan must be updated every three years and can be amended between updates. While the state has significant authority for zoning and the comprehensive plans, it is respectful of local authority and does not dictate land use.
Process Established	The current wastewater treatment capacity planning process has been in place for at least 25 years. Authority was granted in the 1970s and strengthened over time.
Satisfaction with Process	The agency is very satisfied with the process. The process is so well integrated that people consider it a way of life.
Conflict Resolution	State owned facilities with disputes, including wastewater treatment plants, prisons, and state parks would bring them directly to the state. Municipal wastewater plants and owner-operated plants would go to the county to resolve the dispute.

<sup>15</sup> [http://www.naco.org/Template.cfm?Section=Find\\_a\\_County&Template=/cfiles/counties/state.cfm&state.cfm](http://www.naco.org/Template.cfm?Section=Find_a_County&Template=/cfiles/counties/state.cfm&state.cfm)

<b>III. Issues Related to Growth and Water Quality Protection</b>	
<b>Service Areas</b>	Service areas are fixed and require state approval through the water and sewer plan. Local governments set up their service areas through their county plans.
<b>Important Criteria for Expansion Requests</b>	Land use and zoning are the most important criteria for expansion requests. Zoning inconsistencies are the major reason that the state disallows projects. Regardless of land use, if there is a public health threat the agency would extend services to address the threat.
<b>Land Use Issues Related to the Approval Process</b>	For any state funded projects, the agency can restrict sewer access when a line goes through open space. If there is a public health threat and access is needed through a protected area the state can use the same technique to deny or limit future hook ups.
<b>Directing Growth with the Planning Process</b>	The state has a 1997 smart growth initiative that is based on the premise of not using state funding to support sprawl. A state critical areas law regulates all land within a thousand feet of the water's edge for tidal reaches for all water in Maryland. The critical areas law requires that counties designate the area into three zones: resource conservation, limited development, and intense development.
<b>State Regulations Protecting Sensitive Areas</b>	There are environmental reviews for all state funded projects. The permitting process also involves a review of the impacts on wetlands, floodplains and addresses such issues as soil sedimentation and erosion control.
<b>Extension Beyond Service Area Boundaries</b>	The agency does not permit sewer extensions beyond the service area boundary unless the county amends their plan to show a modified service area.
<b>Nonpoint Source Pollution</b>	The Department of Agriculture, the MDE and the Department of Natural Resources are collectively responsible for reducing nonpoint source pollution. There are a variety of programs that deal with load reduction goals and employing best management practices.

**IV. Resources Allocated and Applications Processed**

<p>Dedicated Staff Resources</p>	<p>The equivalent of 1.5 FTEs are dedicated to water and sewer planning for the agency. The estimate does not include the § 208 process, which is handled by multiple programs throughout this agency. The agency also has a TMDL modeling group and a permitting group.</p>
<p>2002 Budget Resources</p>	<p>Staff salaries for 1.5 FTEs equate to approximately \$100,000.</p>
<p>Planning Areas or Sanitary Districts Serving the State</p>	<p>Approximately 90% of all municipal governments have their own treatment systems. There are 165 wastewater treatment plants serving Maryland’s 23 counties plus the city of Baltimore.</p>
<p>Number of Applications Processed in 2002</p>	<p>Volume is unknown. By law the agency has 90 days to review plans for expansion. The agency has the option of requesting an additional 90-day extension to complete the review. Comprehensive or major updates to a water and sewer plan may need the full 180 days. The vast majority of submitted plans are routine amendments and minor modifications and acted on within 90 days.</p>

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**II. State Involvement in the Wastewater Treatment Planning Process**

Level of State Involvement	Wastewater treatment planning is a local issue and the state simply provides boundaries, within state statutes/rules, for the planning process to operate. The state facilitates the execution of the plan. The state might be a little more involved as they get their basin plans in place (Three out of 8-9 plans are completed). These plans will serve as a guideline to help municipalities be more consistent in their planning, but will not give the agency any more authority.
Responsible Entities	Industrial facilities, municipalities, and some sanitary districts are responsible for wastewater treatment. The Metropolitan Council is a quasi-state agency responsible for the St. Paul-Minneapolis area (1/2 of wastewater generated within the state). Sanitary districts are governed by their own Board of Managers.
Process for Providing Additional Capacity	When new wastewater treatment facilities (WWTFs) are proposed, or additional capacity is requested for existing WWTFs the state will determine permit effluent limits, based on water quality standards, to protect water quality as part of the permitting process.
Process Established	This process has been in place since the agency was established in the 1970s.
Satisfaction with Process	MPCA is generally satisfied with the process. Occasionally, MPCA encounters situations where they would prefer the local entity consider different approaches in their planning, and may recommend and encourage alternate solutions.

Conflict Resolution	<p>If there is a problem regarding a “permitting decision,” the agency will resolve it directly with the applicant, and other outside interested parties, within boundaries of state statutes/rules.</p> <p>There are times when the citizens’ board that oversees the agency will request that the staff to do more research on an issue. The board can also direct the staff to go to a contested hearing. Any decision by the board can be taken to an administrative law judge.</p>
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<b>III. Issues Related to Growth and Water Quality Protection</b>	
Service Areas	The agency is generally not involved in approving service areas. The state can assist and comment on formation of the service area, however, they have no legal authority and do not dictate where the boundaries fall.
Important Criteria for Expansion Requests	For new or expanded discharges, a mandatory environmental review occurs for hydraulic increases greater than 50,000 gpd and 50% expansion. For sewer extension, a design hydraulic flow of 1 mgd or more will require an environmental review. This environmental review focuses on how the requested changes might impact the environment as well as the operation of the facility. There is also public notice of the plan and possibly a review of the plan in front of the citizen’s board.
Land Use Issues Related to the Approval Process	Land use issues related to wastewater treatment planning are strictly a local issue. The agency may comment on local planning issues and/or recommend consideration of options not fully addresses in the plan.
Directing Growth with the Planning Process	The state does not use the wastewater treatment planning process to direct growth.
State Regulations Protecting Sensitive Areas	The state has the MN Continuing Planning Process, which is required under section §303(e) of the Clean Water Act. The state incorporated these planning requirements into their basin plans. Water quality is protected through the permitting process and Outstanding Resource Waters (ORW) are also protected.

<p>Extension Beyond Service Area Boundaries</p>	<p>Some entity with taxation authority would be responsible for the legal formation of the service area boundaries. If the entity would like to go outside of this boundary, there is a legal process for them to amend it.</p>
<p>Nonpoint Source Pollution</p>	<p>Nonpoint source pollution is generally handled through basin management planning. This agency will be focusing more directly on impaired waters in the near future.</p>

**IV. Resources Allocated and Applications Processed**

<p>Dedicated Staff Resources</p>	<p>0.75 – 1.00 FTE is focused on wastewater treatment planning for the state as part of the overall basin planning effort.</p>
<p>2002 Budget Resources</p>	<p>\$60-80,000 is dedicated to staff resources for wastewater treatment planning.</p>
<p>Planning Areas or Sanitary Districts Serving the State</p>	<p>There are 55 sanitary districts or other forms of cooperative agreements between governing bodies serving the state.</p>
<p>Number of Applications Processed in 2002</p>	<p>The agency receives approximately 700 requests per year for sewer extensions. Permits are issued within a few weeks if there are no problems. If there are compliance problems, it may take up to a month, depending on what steps are necessary to resolve the issue. Approximately 10-25 permit requests are denied each year.</p>

<b>New Jersey</b>	
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<b>II. State Involvement in the Wastewater Treatment Planning Process</b>	
<b>Level of State Involvement</b>	The Division of Water Quality within DEP administers the wastewater and treatment planning process and the Bureau of Evaluation and Management works in concert with them.
<b>Responsible Entities</b>	Municipal Utility Authorities (MUAs) and sewage commissions are responsible for wastewater treatment capacity planning.
<b>Process for Providing Additional Capacity</b>	<p>A municipality submits an application to amend the existing wastewater management plan, which in turn requires amending the water quality management plan. The request must then go through an environmental analysis and a public notice process. There are also anti-degradation requirements for all applications for additional capacity, and these are clearly spelled out in the regulations (capacity assurance requirement).</p> <p>The municipality has to demonstrate that they are not increasing pollutant loading for a water body. They can receive additional capacity, but cannot increase concentrations of particular pollutants. There is a monitoring requirement local governments must fulfill and an extrapolation is done from this.</p> <p>The agency checks that an application has gone through the designated planning agency. The Northeast Water Quality Management Plan does not have this requirement and they can come directly to the state. For a small site-specific plan, a builder has to get approval from whoever the local authority is (e.g., city, county or other).</p>

<p>Process Established</p>	<p>The current process has been in place since 1985 although it was not until 1990 that NJ defined boundaries for Sewer Service Areas.</p>
<p>Satisfaction with Process</p>	<p>Changes in the process are ongoing. Currently, the environmental analyses are written as guidelines, not rules, but the agency is working to change them into regulations. The program might go under a large overhaul, but it is not clear yet. At a minimum there will be clarification of the rules.</p> <p>When changes are suggested, the department seriously considers all sides and then the Commissioner has to weigh the competing interests. Environmental stakeholders are very supportive of proposed changes, however the builders are not. Dischargers are also supportive to an extent because changes would address nonpoint source issues and help them.</p>
<p>Conflict Resolution</p>	<p>The agency addresses this at the planning level. The public has an opportunity to offer their input during the public notice phase.</p>

**III. Issues Related to Growth and Water Quality Protection**

<p>Service Areas</p>	<p>There are 12 water quality management plans and each of these plans has a wastewater management plan(s). In some cases this relates to an entire municipality, in other cases this may relate to multiple municipalities or parts of municipalities.</p>
<p>Important Criteria for Expansion Requests</p>	<p>Capacity is the most important criteria for expansion and this is tied to doing anti-degradation analyses as articulated in the statutes. The environmental analyses address the following issues: riparian corridors, nonpoint source loading, threatened and endangered species, build out, and consumptive water use.</p> <p>An application could be denied because the applicant has passed the deadline for submission of additional information or if the anti-degradation analysis shows an increase in pollutant loading as it relates to surface water quality standards.</p>



<p>Land Use Issues Related to the Approval Process</p>	<p>The various environmental analyses conducted by the department address land use planning. The agency wants to address problems at the planning stage so the developer can change their site design. NJ is a strong home rule state and DEP therefore tries to encourage municipalities to zone intelligently and in accordance with the carrying capacity of the land. For example, the agency is encouraging the municipalities to be attentive to buffers. DEP has just proposed a stormwater regulation that has a 300-foot buffer in it. If this were passed new zoning would have to match this.</p>
<p>Directing Growth with the Planning Process</p>	<p>The agency does control growth through the wastewater planning process and this is balanced with local authority under the Municipal Land Use Law. The agency would rather move in the direction of having the local authorities direct and control growth. There are very few municipalities that are stricter than the state, but there are some.</p> <p>Currently, DEP is pursuing growth controls under the “BIG Map” Initiative though current progress has stalled because of polarization in affected communities.</p>
<p>State Regulations Protecting Sensitive Areas</p>	<p>State water quality management planning rules N.J.A.C. 7:15, 1-7, 9 protect sensitive areas. There proposed groundwater standards, surface water quality standards and proposed stormwater rules.</p> <p>The department is also grappling with how to set ecological flow goals. There are instances where regulations may be good enough to protect water quality, but are not strong enough for ecological protection. Open space protection, defined as “smart growth” by the state is heavily funded and a very high priority in NJ. Both the last governor and the current governor supported this issue.</p>
<p>Extension Beyond Service Area Boundaries</p>	<p>Expansion beyond a service area is permissible if the municipality goes through an amendment process. In the case of one municipality expanding into the area of another, New Jersey requires approval of the other municipality first. If there is common agreement between entities, and if there is existing infrastructure, the process simply involves a revision. There is still a public process, but a smaller version of the amendment. Whenever someone opens the door we can trigger the environmental analysis.</p>

<p><b>Nonpoint Source Pollution</b></p>	<p>The state is very concerned about nonpoint source pollution. Every 6 years a full update for every aspect of the wastewater management plans is due, including environmental analyses for all portions of undeveloped areas. The agency has never enforced this, but they are moving in that direction. The priority is to plan on a larger scale and have all the analysis applied to undeveloped land.</p> <p>The Commissioner is requiring a comprehensive update for 2-3 projects currently under review. There is a case where a highly controversial project does not have a wastewater management plan. New Jersey could have required a site-specific plan, but is requiring them to do a credible municipal plan. This is the first case where a wastewater management plan will have all the environmental requirements in it for the entire municipality.</p>
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<p><b>IV. Resources Allocated and Applications Processed</b></p>	
<p><b>Dedicated Staff Resources</b></p>	<p>Approximately, 1/3 of the staff (22 FTE) is dedicated to wastewater planning.</p>
<p><b>2002 Budget Resources</b></p>	<p>Staff salaries dedicated to wastewater treatment planning equate to about \$1 million for the Division of Watershed Management.</p>
<p><b>Planning Areas or Sanitary Districts Serving the State</b></p>	<p>The agency does not use sanitary districts. There are 12 water quality management plans serving the state.</p>
<p><b>Number of Applications Processed in 2002</b></p>	<p>The agency processed 100 applications in 2002. Almost anyone can submit an application if they have the approval from their wastewater management authority. Ten wastewater management plans are administered by designated planning agencies.</p> <p>If the agency has a complete application including analyses, an approval or denial could happen in 6-9 months. In some cases the process could take as long as 4-5 years. Out of 100 applications maybe 2-3 are contested and 2-3 denied each year.</p>

**North Carolina**

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**II. State Involvement in the Wastewater Treatment Planning Process**

<p>Level of State Involvement</p>	<p>The state has two regulatory tools for reviewing the impacts of wastewater treatment facility expansion. The first tool is the State Environmental Policy Act (SEPA), which requires the municipalities to review environmental impacts of wastewater treatment facilities. For facilities that do not fall under SEPA, the second tool available is an engineering alternatives analysis (EAA). The EAA analysis looks at engineering feasibility, environmental feasibility, and cost. According to NC DENR, the EAA is the best process for making decisions regarding wastewater treatment capacity.</p>
<p>Responsible Entities</p>	<p>A city, county or sanitary district may be responsible for wastewater treatment. Typically, the responsible party is a local government such as a city and county. History and politics play a role in determining who is responsible and home rule is a dominant cultural trait. Many towns like to be able to control their own destiny.</p>
<p>Process for Providing Additional Capacity</p>	<p>The agency requires the responsible party to provide an estimate of building costs versus connecting to an existing facility. If a facility accepts public money and they are requesting a 500,000-gallon (or greater) expansion they automatically fall under the SEPA process. If the expansion request is less than 500,000 gallons, the applicant is not required to review all environmental impacts, however, they are still subjected to an EAA.</p>
<p>Process Established</p>	<p>The EAA process has been used for 30 years. The EAA process is established in federal and state law (North Carolina Administrative Code, Title 15A 2B .0201 – Anti-degradation Policy); however, the law did not articulate what alternatives to evaluate. In 1997/98 a detailed EAA guidance document was finalized, which provided information for facilities needing to prepare such documents.</p>

Satisfaction with Process	The agency established a process that most of the regulated community considers reasonable. The agency has become much more confident about their process since they articulated their expectations in the EAA guidance document.
Conflict Resolution	There is no formally documented conflict resolution process. The agency tries not to get in the middle of disputes between municipalities. They have been involved on an ad hoc basis and it does not happen often.

<b>III. Issues Related to Growth and Water Quality Protection</b>	
Service Areas	<p>Some service areas are fixed based on geography and some are fixed based on flow. Flow is limited in all individual NPDES permits. Those limits are based on flows justified through the SEPA/EAA process.</p> <p>If a facility exceeds 80% flow or design capacity in a given year, they are required to look at fixing inflow-infiltration problems (groundwater that is seeping through pipes) and/or expansion. If they exceed 90% of design capacity in a given year, the service envelope is fixed and not allowed to expand.</p>
Important Criteria for Expansion Requests	Flow is the most important criteria given that the ultimate goal is to ensure that treatment facilities are not asked to treat more than their capacity. One of the most important aspects of the EAA is having the local government justify the flow a municipality is requesting. The agency does not want to be in a situation where they are over allocating and consequently will only permit what a municipality might need the capacity 20 years hence - but not beyond (NC DENR does not allow flow banking).
Land Use Issues Related to the Approval Process	The agency leaves land use planning to the municipalities. Most towns in the state have growth management plans and the towns do use land use planning to justify flow. The agency is evaluating whether this flow justification reasonable.
Directing Growth with the Planning Process	The planning process directs growth implicitly. The agency is not trying to curb or direct growth, but by default it happens based upon both water quality and water quantity. For example, if a receiving stream is not able receive any more wastewater this will have an impact on growth.

<p>State Regulations Protecting Sensitive Areas</p>	<p>State water quality standards are based on stream classifications established according to designated uses. Waters classified as Outstanding Resource Waters (ORW) are afforded special protection as outlined in 2B .0225. Specifically as it relates to NPDES permitting, no new or expanded discharges are allowed in waters classified ORW. Specific stormwater requirements for ORWs are detailed in 2H .1007. The state does analyses and biological monitoring to determine whether a river is meeting its designated uses. If not, the agency is required to list it on the §303(d) list and needs to develop a TMDL.</p>
<p>Extension Beyond Service Area Boundaries</p>	<p>The extension of sewer lines beyond service area boundaries generally does not happen.</p>
<p>Nonpoint Source Pollution</p>	<p>The agency has a basin-wide management process for the state’s 17 river basins. Basin planning is an overall process to determine what the agency needs to do to maintain or improve water quality. The basin plans are reviewed on a rolling 5-year cycle. North Carolina has a very large non-point source program covering wetlands, agriculture, hog farms, and stormwater.</p>

**IV. Resources Allocated and Applications Processed**

<p>Dedicated Staff Resources</p>	<p>The agency has 4 basin planners for the state and most of their time is dedicated to non-point source issues. There are 11 NPDES permit writers and who also review facility blueprints. There are 250 staff in the water quality section, includes our biologists, modelers, wetlands restoration, etc. that all contribute to planning in some facet.</p>
<p>2002 Budget Resources</p>	<p>The Water Quality Section’s budget is \$15 million. No more specific information was available.</p>
<p>Planning Areas or Sanitary Districts Serving the State</p>	<p>There are 300 municipal facilities or sanitary districts (including towns and cities) in the state. Towns may join coalitions and pay an annual membership fee for someone to handle in-stream monitoring. The coalitions often act together on policy matters, almost like a trade organization.</p>

<p>Number of Applications Processed in 2002</p>	<p>The agency processes renewal applications, new applications, applications for modifications, and applications for Authorization to Construct permits. They also process various other requests made by the regulated community such as review of 201 facility plans, and speculative limit requests. The 2002 quantities are as follows:</p> <ul style="list-style-type: none"><li>New permit applications: 11</li><li>Requests for speculative limits: 9</li><li>201 facility plan reviews: 23</li><li>Permit modifications: 46</li><li>Authorizations to Construct: 56</li><li>Permit Renewals: 317</li></ul>
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**Ohio**

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**II. State Involvement in the Wastewater Treatment Planning Process**

Level of State Involvement	The state takes a hands-off approach to wastewater treatment planning. They leave this responsibility to the local authorities.
Responsible Entities	The state has a strong home rule ethic and cities and villages, country sewer districts or rural sewer district (like a sanitary district) are responsible for wastewater treatment planning.
Process for Providing Additional Capacity	Capacity is allocated on a first come first serve basis. Municipalities can expand without state permission. Ohio EPA may look at old CWA §208 plans and deny a project if there is a very obvious conflict. However, the §208 plans are not very specific so very often the agency grants the expansion.  At times the municipality will need approval of the area-wide planning agency, but this depends on how the original §208 plan was written. There are 23-28 area wide planning agencies responsible for writing the §208 plans. The plans were updated every other year until 1993. In 2001 and 2002, the state did two updates and will probably do an additional one this year. The agency is now getting back into a pattern of updating the plans and reviewing them for consistency. Once the plans are updates, the governor certifies the plans and they are sent to US EPA Region V.
Process Established	Ohio was unable to provide information in this area.
Satisfaction with Process	The current wastewater treatment planning process is challenging for a variety of reasons. Administration rather than public policy is the main driver for the process. Changes to the program are not high on the agenda given the state's dire budget situation.
Conflict Resolution	Area-wide plans cover all the major metropolitan areas of the state. They have a detailed and published dispute <sup>55</sup> resolution system. Conflict is handled by the local jurisdictions or appealed to an area wide planning agency.

<b>III. Issues Related to Growth and Water Quality Protection</b>	
<b>Service Areas</b>	Service areas are limited geographically and in scope and were originally set by the court. Area-wide planning agencies take care of wastewater treatment planning for every major metropolitan area except the central area of Ohio and this falls to the state and US EPA Region V. In this central area, the cities and counties map out the service areas and then the state approves them.
<b>Important Criteria for Expansion Requests</b>	In Central Ohio where the state has responsibility for planning, financial viability is the key criteria.
<b>Land Use Issues Related to the Approval Process</b>	The state assumes local authorities are handling land use issues. The department's role is to ensure there is evidence that any capacity expansion falls within conservative estimations of population growth. Other than this they are not involved in land use issues.
<b>Directing Growth with the Planning Process</b>	The state does not control growth directly or indirectly with the wastewater treatment planning process.
<b>State Regulations Protecting Sensitive Areas</b>	There are very limited state regulations protecting sensitive areas. Water classifications in the state's anti-degradation policy restrict the amount of pollution that can be put in certain waters. The state does not have consistent regulations regarding expansion. For example, there may be sewer lines on one side of the street by one provider and another set on the other side. If the municipality finds a way to finance it, the state approves. The state does not think this duplicative service is good idea, however, they do not have authority to prevent a more competitive marketplace.
<b>Extension Beyond Service Area Boundaries</b>	Extension beyond service area boundaries depends on the content of the §208 plan. The central Ohio §208 plan does not permit extensions. In other areas of the state expansion depends on the age and level of detail in the plan.
<b>Nonpoint Source Pollution</b>	Most of the state's effort is focused on the linkage between §319 grants and a new TMDL program. A few area wide planning agencies do evaluate nonpoint source pollution in the context of development.



<b>IV. Resources Allocated and Applications Processed</b>	
Dedicated Staff Resources	Approximately .75 FTE staff is dedicated to wastewater treatment planning.
2002 Budget Resources	2002 budget resources dedicated to wastewater treatment planning were approximately \$100,000.
Planning Areas or Sanitary Districts Serving the State	There are 6 area wide planning areas sanctioned under state law. They are multi-governmental bodies that also do highway planning.
Number of Applications Processed in 2002	Ohio was unable to provide information in this area.

**South Carolina**

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**II. State Involvement in the Wastewater Treatment Planning Process**

Level of State Involvement	<p>The state is involved in overall wastewater treatment planning through the process known as water quality management planning (§208). Six Councils of Government (COGs) implement §208 plans, which include wastewater treatment capacity planning, in 23 counties. DHEC does the §208 planning for the balance of the state. This is called the non-designated portion of the state.</p>
Responsible Entities	<p>COGs and SC DHEC are responsible for wastewater treatment planning.</p>
Process for Providing Additional Capacity	<p>The state has CWA §604(b) grants for the purpose of water quality planning. EPA, by law, will allocate 1% of §604(b) (State Revolving Fund) monies to states for water quality management purposes and this amounts to \$140,000 dollars in South Carolina.</p> <p>The state still relies on the §208 process for wastewater treatment planning. The department passes through EPA money to the six COGs to maintain their §208 plans. Plans are ultimately approved by the COG Board of Directors, and in the case of major amendments, sent to DHEC for concurrence and then forwarded to US EPA Region IV for final approval.</p> <p>When an applicant submits a permit application request to build a sewage treatment plant to the state (DHEC), the DHEC permitting engineer that reviews the application and will seek conformance with the §208 plan from the applicable COG or from DHEC. No NPDES permit can be issued if it is not in conformance with the §208 plan.</p>

<p>Process Established</p>	<p>This process has been in place since the late 1970s and early 1980s when the §208 plan was developed. The COG updated plans in 1997 and 1998.</p>
<p>Satisfaction with Process</p>	<p>The agency is satisfied with the current process and that decisions are being made at the local level. The agency does not plan to change the process, however, it is slightly modified from time to time. One of the advantages of the process is that local interests are included in the §208 planning.</p>
<p>Conflict Resolution</p>	<p>Each plan has local policies regarding conflict resolution. Developers (permit applicants) can request that a Plan be amended (an appeal) if his project conflicts with Plan. Plan amendment requests go before appropriate COG committee for decision. The committee makes a recommendation that goes to the COG Board. Historically the COG Board has accepted committee recommendations.</p>

**III. Issues Related to Growth and Water Quality Protection**

<p>Service Areas</p>	<p>Service areas typically encompass 3-6 counties and are fixed by law. However, there is a separate plan for the central part of the state and DHEC makes determinations for this plan, which encompasses 17 counties.</p>
<p>Important Criteria for Expansion Requests</p>	<p>SC DHEC did not provide additional information.</p>
<p>Land Use Issues Related to the Approval Process</p>	<p>Periodically, the COGs will update their plans to keep them current. Major updates of all six plans took place in 1997. Currently, the Central Midlands COG is preparing a major update of its Plan. Plans may evaluate land use as it relates to water quality. For example, a sensitive area such as a shellfish harvesting area could be designated as areas where no sewage could be discharged.</p>
<p>Directing Growth with the Planning Process</p>	<p>The state does not directly or indirectly attempts to control growth with the wastewater treatment planning process. The Plans note where growth is occurring and seek to deal with facility planning in growth areas.</p>

State Regulations Protecting Sensitive Areas	There are state regulations protecting wetlands and water quality standards. SC also administers the §401 certification program.
Extension Beyond Service Area Boundaries	Sewer line extensions beyond service area boundaries are granted all the time in §208 planning as long as this does not conflict with the service area of an adjacent management agency (publicly owned sewer provider).
Nonpoint Source Pollution	Grant money is given to the COGs to conduct specific projects to reduce nonpoint source pollution. The original §208 plans addressed only urban runoff nonpoint source pollution.

<b><i>IV. Resources Allocated and Applications Processed</i></b>	
Dedicated Staff Resources	Staff dedicated to wastewater treatment includes one staff at .25 FTE and two at .15 FTE. The agency grants money to the COGs and they use money to pay a staff member. There is 6-7 staff at the regional level that are paid for wastewater treatment planning.
2002 Budget Resources	No state dollars are dedicated to wastewater treatment planning. All funding comes from a federal §604(b) or §205(j) grant.
Planning Areas or Sanitary Districts Serving the State	For §208 purposes there are 7 planning areas serving the state.
Number of Applications Processed in 2002	Number of applications: unknown. If an application was submitted that was not in conformance it might take a week to process the denial. If the developer appealed the decision it could take a year for the whole process, but this does not happen frequently. Less than 5% of the applications are contested.

<b>Wisconsin</b>	
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<b>II. State Involvement in the Wastewater Treatment Planning Process</b>	
<b>Level of State Involvement</b>	The Department of Natural Resources performs plan reviews for proposed new or modified sewerage systems under authority of Chapter 281, Wis. State Statues. For certain areas of the state, regional planning agencies identify and make recommendations regarding sewer service area planning, but DNR has the ultimate statutory authority. The state has good working relationships with the regional planning commissions. DNR has contracts with the commissions and periodically goes over their procedures and methods.
<b>Responsible Entities</b>	The legal owner of the sewerage system is responsible for their wastewater treatment planning process. The facility may be owned by a city, village, town, county, special purpose district, private, or other non-municipal entities.
<b>Process for Providing Additional Capacity</b>	<p>There are defined sewer service areas for certain areas of the state (Chapter NR 121, Wis. Adm. Code). For designated areas there are regional planning agencies that develop-sewer service areas for sewage treatment plants. Sewer service areas and specific facility planning studies are approved by DNR. The state requires that all proposals for additional treatment plant capacity be necessary and cost effective (Chapter NR 110, Wis. Adm. Code). The state evaluates the proposals and then approves the proposed alternative that minimizes total resources costs, which includes all monetary costs incurred over a 20-year planning period plus consideration of-environmental and other non-monetary factors. If it were clearly more cost effective to tie into an existing system, then the agency would not approve a new treatment facility.</p> <p>For non-designated areas and communities with a population of 10,000 or less, sewer service areas are not identified by regional planning agencies but are identified within the normal NR 110 facilities planning review process.</p>

Process Established	For at least 20 years the fundamental process has basically remained unchanged.
Satisfaction with Process	The agency is satisfied with the process; however, there are always issues and concerns. The regional planning commissions are engaged in sewer service area and land use planning and they have a good record of working with communities to resolve issues. It is effective to have a regional planning agency doing all this work at the local level. The agency approves elements of their plan, but does not do all that work.
Conflict Resolution	The procedures incorporated in the sewer service area and treatment facility planning processes include aspects and elements intended to promote conflict resolution.

<b>III. Issues Related to Growth and Water Quality Protection</b>	
Service Areas	Designated areas and cities over 10,000 all have defined sewer service areas.
Important Criteria for Expansion Requests	The most important criteria for sewer service area expansion requests are cost effectiveness from a total land use planning perspective, including transportation and other infrastructure needs and community desires. New smart growth legislation was passed and communities are developing smart growth plans and sewer service plans.
Land Use Issues Related to the Approval Process	The state encourages smart growth plans, with one element being sewer infrastructure. The agency approves the sewer service element of the area wide quality management plans (Chapter NR 121, Wis. Adm. Code).
Directing Growth with the Planning Process	The agency may deny a proposal because it is not in conformance with the sewer service area plan. This is not meant to be the primary method for controlling growth. Regulations for sewer service area planning and smart growth plans are intended to promote sound land use planning at the local level that addresses water quality protection.

<p>State Regulations Protecting Sensitive Areas</p>	<p>Chapter NR 110, Wis. Adm. Code, require that facilities provide environmental impact considerations in their facility planning studies. The sewer service planning area process defines environmentally sensitive areas and offers guidance on protecting these areas. There are other regulations such as code NR 103 that address wetland protection and permits associated with construction that take into consideration impacts on rivers. The WEPA process also requires the agency to do environmental assessments. Also, “WDNR’s regulations (Chapter NR 121) state that areas ‘unsuitable for the installation of waste treatment systems because of physical or environmental constraints’ are to be excluded from sewer service areas. Wisconsin excludes these ‘environmentally sensitive areas’ – which include wetlands, shorelands, floodways and floodplains, steep slopes, highly erodible soils, and groundwater recharge areas – because developing them might harm water quality. Furthermore, sewer service area plans must establish buffers around these features.”</p>
<p>Extension Beyond Service Area Boundaries</p>	<p>The state does not allow sewer extensions to be installed beyond approved sewer service area boundaries. A sewer may be sized for a flow corresponding to its design service life, which may include projected service outside an existing sewer service area boundary.</p>
<p>Nonpoint Source Pollution</p>	<p>The agency considers environmental impacts through the facility planning process. In general the agency promotes that these impacts be considered as part of sound land use planning at a local level. There are regulations where there might be construction site permits required.</p>

<b>IV. Resources Allocated and Applications Processed</b>	
<b>Dedicated Staff Resources</b>	The agency has 10 FTE staff dedicated to plan reviews for wastewater facilities (non-industrial). This primarily relates to the state’s clean water fund program but does not include loan administration activities. There are also staff that work on the sewer service area planning areas process.
<b>2002 Budget Resources</b>	Wisconsin provided no additional information in this area.
<b>Planning Areas or Sanitary Districts Serving the State</b>	There are 700 permittees, including cities, villages, and sanitary districts that hold a permit for wastewater treatment. There are approximately 20 regional planning agencies with sewer service area responsibilities in the state.
<b>Number of Applications Processed in 2002</b>	The agency approves about 1000 sewer construction projects a year, but this does not always require a sewer service area expansion. Most of these construction projects already conform to a sewer service area plan. It takes two-weeks or less for a standard plan review of a submittal, (if there is a letter from a regional planning agency stating they are in conformance). There were approximately 75 applications for new or modified wastewater plant projects.

**VI. Evaluating the Use of Alternative Dispute Resolution (ADR) Models in Resolving Existing and Future Conflicts**

The notable increase in the volume of intergovernmental FPA disputes in recent years has placed a greater burden on IEPA. Significant staff resources are committed to the administration of the FPA process and IEPA has felt the strain due to reductions in both staffing and budget.

Two types of disputes commonly arise in the FPA process: We will use the following definitional structure:

- Type I: Local government to local government disputes (the “border wars” variety); and,
- Type II: Local government to IEPA (appeals of FPA decisions) disputes.



Increasingly, IEPA is called on to resolve the Type I conflicts though regardless of typology, these conflicts have resulted in significant costs to both the disputants and the state.

Essentially, the majority of the Type I conflicts stem from the bundling of the state's annexation policy with its water quality policies. Annexation of parcels of land into a new governmental structure shifts significant tax resources from one community into another. Growth tends to breed growth and so when a local government has the opportunity to acquire a parcel of land that will yield tax benefits, it will fight hard to make it happen. Oftentimes, breaches in the FPA process are raised by the disadvantaged party in order to stake a more robust claim on the parcel in question.

One participant indicated that a Type I conflict can cost the local government up to one half million dollars. In most cases, the disputants feel as though the direct expense involved in paying attorneys and engineers is well worthwhile. The state dedicates significant staff time to these disputes as well though most state officials would argue that these are not resources well spent. Even the pursuit of Type II disputes is viewed as an important "investment" for local communities. The perceptions are that these appeals are usually successful at some level.

Regardless of the typology, intergovernmental disputes concerning the FPA process are resolved through the application of Title 35 Subtitle C Chapter II Part 351 of the Illinois state code. This is an extremely labor-intensive process involving amendments, legal discovery, public hearings, fact finding and deliberation. According to §351.402, the agency shall, "after due consideration of the record" make decisions and "consider all facts and circumstances bearing upon the reasonableness of the request including but not limited to, the environmental effects and the cost effectiveness of achieving water quality goals." While the latter phraseology is fairly precise, the true burden on IEPA is more clearly associated with the phrase referencing "the record."<sup>16</sup> Unfortunately, the statute sheds no light on how these elements are to be weighted.

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<sup>16</sup> §351.401 defines the record as inclusive of "All pleadings, evidence received, matters in which official notice was taken, the hearing transcript including offers of proof, objections and rulings, any report opinion or decision by the Hearing Officer, memoranda or data submitted by the staff in their consideration of the proposed revision, written comments and recommendations of the designated area-wide WQM planning agency and the record supporting its recommendation.

Of course any individual with responsibility for resolving disputes as complex as FPA conflicts would consider the entirety of the record as well as verbal arguments. Thus, each one of these cases can consume vast amounts of time especially light of the competing demands faced by Agency staff. According to the Openlands report, a final order or other decision might, on average, take 247 days to issue.<sup>17</sup>

NIPC, Openlands and others view this as extraordinary. NIPC in particular has completed some initial research looking at different alternatives to the current dispute resolution process. Among the leading options are four models including the:

- ❑ Passage of State Legislation Establishing a Formalized Alternative Dispute Resolution Program;
- ❑ The Funding of a Dispute Resolution Center in a Leading Illinois University;
- ❑ The Support of a 501(c)(3) Organization Who's Mission and Mandate were to Serve this Function; and,
- ❑ Dedication of Resources within a State Agency to Provide this Function.

We see upsides and downsides to each but applaud the innovative thinking applied by different quadrants.

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<sup>17</sup> *Ibid.* Openlands Project, Appendix B.

## VII. Recommendations

It is important to note that we do not believe that anything more than marginal changes to the current FPA process can be made unilaterally by IEPA. A precedent of stakeholder engagement has been well established and the affected parties are heavily engaged. Further, the rich history of political activism and intergovernmental involvement and intervention is as strong today as in years past.

We also believe that marginal changes to the process are not going to completely fix the shortcomings in the FPA process or in any significant way satisfy the various constituencies. Long lasting positive change, in this case, can and should be made collaboratively with the participation of all relevant stakeholder groups. In fact, representatives of local government, homebuilding, smart growth, regional planning and environmental organizations all expressed genuine enthusiasm for continuing dialogue around water quality policy. Still, some short-term changes to the current FPA process would be beneficial if immediately implemented - as other more appropriate policies were developed in the mid- to longer-term.

Thus, the section contains three layers of recommendations and counsel. First, what we term “marginal changes” that might be implemented in the very near term appear under the heading “*Quick Fixes*.” Next, based upon our understanding of where common ground might lie, we offer a few directions that stakeholders might debate as fruitful for mid and longer-term policy changes. Our thinking in those areas appears under “*Policy Directions*.” Finally, we offer our best counsel on how to move forward in a collaborative manner – down a path that we feel will yield extraordinary results. These thoughts appear under the heading “*Recommended Approach*.”

### **Quick Fixes**

There are two improvements that would immediately improve the FPA process and could be implemented within a very short time horizon. We view these as “policy band-aids” that together, improve the transparency of the process and also serve to significantly reduce the administrative burden on IEPA staff. As such, personnel in the Bureau of Water should have a

bit more latitude to develop innovative public policy that better satisfies the many goals articulated by the various stakeholders.

*Interagency Relations*

Both inside and outside state government, there is the strong perception that talent, knowledge, and skills are underutilized in matters pertaining to the FPA process. As indicated, many participants feel that FPA decisions are made in something of a “black box.” Better utilization of the intellectual capital at IDNR and IDA will go far to ensuring that FPA decisions are based upon sound science as opposed to local politics or other leverage points. Further, by developing a formalized agreement and making that information available to the general public, IEPA can easily demonstrate the underpinnings of an objective and apolitical process.

Reference #	Recommendation
VII.A.1	<p>IEPA should develop a Memorandum of Agreement (MOA) that extends beyond the current cooperative agreement and thereby formalize a process relationship with IDNR and IDA. This MOA should specifically detail the framework in which counsel is provided (the specific datum<sup>18</sup> that is considered and the weight of the datum in the decision-making process) as well and the terms under which these agencies might utilize existing authorities (if even applicable) and obtain veto power over an application’s approval.<sup>19</sup> Efforts should be made to include the Department of Commerce and Economic Opportunity within this mechanism.</p> <p>Such a relationship might take the form of a decision committee in which each state agency had a voice in the approval or denial of an FPA amendment. We would argue that the regional commissions should function on such a committee in an <i>ex officio</i> capacity.</p>

<sup>18</sup> The Openlands Project Report suggested that IEPA consider excluding from development any “environmentally sensitive areas.” This is clearly an area where IDNR would be able to provide significant insight and support. Other state programs seem to deal with this as one of many core values of similar programs. Further, our interviews indicated that such provision would be acceptable to a great many stakeholders. Though challenging

Reference #	Recommendation
<b>VII.A.2</b>	This MOA should be distributed to each and every Designated Management Agency (DMA) and the decision criteria should be transparent to all potential affected parties.

### *Conflict Resolution*

No state in our evaluation was as deeply affected by border war controversies as IEPA. Many states completely avoid the morass of adjudicating these conflicts while some are involved at an infrequent and *ad hoc* level.

despite the broad agreement we have noted, our strong counsel would be to see such measures adopted immediately. Further, Openlands urged that IEPA adopt regulations that formally require IDNR to provide input on the effects that FPA amendments will have on sensitive habitats, aquatic life, and threatened or endangered species. Again, we feel that the MOA might specifically address how such information would be factored into the FPA process. Finally, Openlands indicated that such a modification in policy might be quickly implemented and thereby fit neatly into the quick fix category. Consensus Solutions remains neutral on that element.

<sup>19</sup> Counsel for IEPA indicates that do not believe that the Illinois EPA could cede its responsibility over planning as proposed as a quick fix. In Illinois, agencies created by legislative action, the IEPA, IDNR and the IDA for example, have only the authorities given to them by the General Assembly. They may enter into interagency agreements to carry out those authorities but cannot cede them to another agency, absent a legislative authorization to do so. This concept involves the unauthorized delegation of legislative authority. IEPA, pursuant to Section 4(m) of the Act, 415 ILCS 5/4(m), is the agency authorized to engage in the planning process for purposes of the Clean Water Act. The MOU, as IEPA interprets proposed in this Program Evaluation, seemed to suggest ceding authority to the IDNR to resolve disputes as to the FPA boundary change process. IDNR, IEPA and several other people at the table indicated that this was not a statutory option. Thus, absent legislative change, the Illinois EPA could not give its authority away and IDNR could not take it.

The Illinois EPA may, however, restructure and redefine the FPA process. Several instances exist in which IDNR and the Illinois EPA are working on MOUs regarding the consultation process with regard to endangered species. An MOU that specifically states the process in the FPA area is a viable project.

A subsidiary issue arose as to the Illinois EPA only entertaining boundary change applications when all parties had submitted an affidavit stating agreement. This would require a regulatory change to 35 Ill. Adm. Code 351. It is a very good concept but would not fall into the quick fix category.

While formalized procedures for conflict resolution do exist<sup>20</sup> in Illinois, they appear to be extremely burdensome to administer. Further, the procedures and requirements are poorly understood in the external community leaving stakeholders feeling as though the resolution of these matters is decided on something less than the merits of the case.

Overall, we find the statutory framework to be lacking and in need of major overhaul. Though the statute sheds some light on the elements that might be considered on an appeal, there is no guidance as to the relative weighting nor is their specificity in the ultimate components of the decision making factors.

Like in other states, we believe that local governments in Illinois have every incentive to work out their own disputes when the “hammer” is the withholding of an FPA approval. To those DMA’s that seek expansion, the incentive of expanded tax base and the promise of additional growth opportunities should drive dialogue that yields insight as to the true interests of neighboring communities. To those communities that feel encroachment, dialogue (an underlying benefit of the current FPA process) is more likely to result in win-win solutions than the state can provide by fiat.

To resolve these tension points, we suggest the following:

<b>Reference #</b>	<b>Recommendation</b>
<b>VII.B.1</b>	IEPA should adopt a hands off approach with regard to Type I conflicts. IEPA should develop a policy requiring that all FPA Applications contain signed declarations from all principally affected local entities that state agreement to the proposed amendments to the IWQP. An amendment application should be immediately rejected without such an affidavit.
<b>VII.B.2</b>	Regarding “Type II conflicts, ” IEPA should develop strict guidance for determining appeals. The state needs to very specifically identify the criteria upon which appeals need to be decided and the relative weighting

<sup>20</sup> These procedures and requirements pertain to disputes within the framework of the Illinois Water Quality Management Plan. FPAs are simply a component of the WQMP’s. Please reference Illinois Title 35, Subtitle C, Chapter II Part 35I Subparts A through E.

Reference #	Recommendation
	of each element.
<b>VII.B.3</b>	Regarding “Type II conflicts,” IEPA should develop a progression of appeal: <ul style="list-style-type: none"> <li>• Parties go first through a mediation process guided by a third party (non government) dispute resolution professional</li> <li>• If unresolved, parties then submit to an arbitration process guided by a different third party dispute resolution professional</li> </ul>
<b>VII.B.4</b>	IEPA should allocate monies to the extension of a grant (to an academic institution) or a contract (to a private entity) with the capacity to serve as an unbiased arbitrator of Type II disputes. <sup>21</sup>

The four recommendations above will immediately strengthen the existing FPA process by:

- ❑ Reducing the volume of conflicts addressed by IEPA;
- ❑ Creating a forcing function for constant contact and dialogue between and among neighboring and even overlapping jurisdictions;
- ❑ Eliminating the subjectivity of the dispute resolution process;
- ❑ Establishing transparency in the dispute resolutions process;
- ❑ Removing the appearance of bias in the ultimate decision; and,
- ❑ Adopting a cost neutral “pay for service” structure whereby disputants are invoiced by the neutral for services rendered.

In strengthening the entirety of the FPA process, we also believe that the state will be able to immediately re-allocate resources formerly dedicated to resolving FPA disputes and better focus them on water quality protection and natural resource management (in the case of the sister agencies).

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<sup>21</sup> A small cadre of interviewees indicated that the Illinois Pollution Control Board might have an adequate skill set for fulfilling this need. While that may be true and might result in some cost savings to IEPA, we do not feel that the optics are very strong when a State Board is asked to adjudicate a matter of the State’s interest.

### ***Policy Directions***

Our evaluation suggests that there are three alternatives to consider when contemplating the future of the FPA process:

1. Status Quo;
2. Reform The Existing Process; and,
3. Phase Out The Program and Replace it with Better Tools.

The status quo is not acceptable. There is no stakeholder – not state government nor local government nor environmental nor private sector – who would argue that the process works. Change must take place as far too many resources are expended to gain little more than the intangible benefits of dialogue and small gains in environmental protection.

Beyond the status quo and to look at the FPA metaphorically, the process is one analogous to when one needs to attach one board to another with a screw. In this case, some say that the state is trying to strengthen the ties between water quality protection (one board) and growth (another board) with public policy (the screw). In this metaphor, the screw is most effective in attaching the boards when a screwdriver is used.

We believe that the FPA process is a hammer. And while the state can clearly hammer that screw into the boards and attach them, it will be neither pretty nor will it be effective in the long term.

The FPA process cannot satisfy the objectives of all affected groups. For example, zoning and land use planning are commonly viewed as effective tools for local government (and government in general) management of growth – and tools that are far more effective than one-size-fits-all approaches implemented at the state or federal level. Water resources, however, are not static and move from one jurisdiction to another. A set of approaches is needed that standardizes the protection of the resource at scientifically justifiable levels and the safeguards that form public policy.

The FPA does neither especially well. We believe that reforming the existing process is tantamount to hammering the screw into the boards and is destined for long-term failure.



To extend the aforementioned analogy, the screwdriver in this case is a statewide watershed management program analogous to those found in North Carolina, Texas and in other states. We strongly advocate approach #3 and believe that IEPA must seize this moment in time to develop a holistic approach to water quality management.

Reference #	Recommendation
VII.C.1	IEPA should embark on a process that utilizes existing resources to develop a statewide watershed management approach to protecting and preserving water quality in the seven major water basins across Illinois. <sup>22</sup>
VII.C.2	This approach should be developed with significant stakeholder input through a formalized collaborative process.
VII.C.3	<p>The watershed approach should be phased in over a two to five year period during which time there must be accountability for meeting specific and agreed upon milestones. We suggest the following structure:</p> <ul style="list-style-type: none"> <li>▪ A Basin-wide Management Advisory Group with balanced stakeholder representation from across the state</li> <li>▪ A local Watershed Steering Committee for each of the seven basins.</li> </ul>
VII.C.4	The FPAs and ultimately the FPA process should be phased out <u>only</u> as watershed policies come online and enforcement mechanisms (and resources) put in place. This will provide the proper incentives for parties to move forward aggressively in the establishment of the system and at the same time offer at least the current protections enforceable by IEPA and through the courts.

Based on information gathered from stakeholders and from wastewater treatment planning programs in other key states, we feel the protection of water quality and the management of growth in the state of Illinois could be most effectively addressed through a watershed planning

<sup>22</sup> <http://www.epa.state.il.us/water/targeted-watershed/appendix.html>

approach.<sup>23</sup> We agree with IEPA<sup>24</sup> that “approving (or denying) an FPA amendment does not ensure either that the water quality standards will or will not violate anti-degradation criteria because the information needed to make that decision does not exist at the time the FPA decision is made.” Current water quality protection measures and existing models suggest that water quality will remain protected with adequate and consistent state support - and will continue to be over time – even if the FPA program is phased out.

Independent of the FPA program, state water quality is and will always be protected by the following:

- ❑ Implementation of Water Quality Management Plans;
- ❑ NPDES stormwater permit requirements;
- ❑ State wetland and floodplain protection measures;
- ❑ Federal wetland and floodplain protection measures; and,
- ❑ Cooperative Working Agreement with the Illinois Department of Agriculture to encourage agricultural land preservation.

The management of growth is another issue. While we do not feel that unmitigated growth is a sustainable or even a desirable outcome, we believe that there are far more effective tools that are readily available to the state and to local government than the FPA process.

All of the above can be realized by developing a watershed based management framework that is phased in by watershed as the FPA process is phased out.

Key benefits of a watershed approach include: involvement of local stakeholders, a direct link with point and non-point source impacts on receiving waters and the opportunity to better coordinate with other social and transportation policies. There is substantial evidence that states such as North Carolina and others are successfully using watershed approaches as the primary vehicle for protecting water quality. US EPA views watershed planning as the water quality regime of the coming decades and is incentivizing the development of such approaches

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<sup>23</sup> This does not necessarily call for an additional increment above and beyond existing protections.

<sup>24</sup> IEPA, “*Facilities Planning Areas Position Paper* - September 2002,” page 17.

via programs like the Watershed Initiative and other activities.<sup>25</sup> Given that Illinois is already using a watershed approach to address some aspects of water quality planning, it seems reasonable and timely for IEPA to commit to this framework as a holistic and effective way to protect water quality.

Our conversations with the various constituencies leads us to believe that there are opportunities to really leverage the expertise of external groups during this time of budgetary stress and environmental transition. This uplift has created a willingness to collaborate across ideological lines with the recognition that sea change (as we are proposing) does take time. There is an understanding that by changing the focus to the nuts and bolts of a new framework for water quality protection, that certain less valuable duties must be set aside. Many constituency groups will accommodate such a shift.

This may be a unique period in the history of environmental protection in Illinois and IEPA must be opportunistic now.

### ***Recommended Approach***

We do believe that a collaborative dialogue convened by the new Administration and committed to implementing a new framework for water quality management and land use planning will result in the right skill mix applied to solving the right policy issues.

#### ***“Sunsetting” of the Old, Informally Established “Stakeholder Group”***

This group, convened three times in 2002 and once in 2003, is largely responsible for getting interested parties and the State this far in the policy discussion, this fast. Their work and this program evaluation might, together, represent a point of departure for any upcoming dialogue. It is clear that the great majority of interests respect the progress made at some level.

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<sup>25</sup> See Memo from G. Tracy Mehan – US EPA Assistant Administrator – to Office Directors and Regional Water Division Directors, December 2, 2002 at <http://www.epa.gov/owow/watershed/memo.html>

We believe that the dialogue must continue with a more broadly representative yet focused group of stakeholders. By virtue of their knowledge and expertise, a subset of the old Stakeholder Group membership should be asked to participate in this new phase. Others may be invited to participate. There are several reasons for not requesting that the entirety of the committee be re-convened. Among them:

- This group was self selected;
- There was no attempt to balance the interests represented or their geographic origin within the state;
- This stakeholder group should be limited to those who are likely to be directly affected by public policy recommendations.<sup>26</sup>

Consensus Solutions recommends that the Director officially make the symbolic gesture of sun setting the old group with the gratitude of all residents of the State of Illinois. Their work was groundbreaking and this next Phase will be very well informed because of their progress.

### *The Core of the Basin-wide Management Advisory Group*

IEPA should issue a well-constructed charge to the reformulated stakeholder group. We find that generally speaking, the best results are achieved when participants represent key geographic regions (in this case, northeastern Illinois and then a distribution across the rest of the state) as well as when there is balance in the number of participants from the “major” interest groups.

A newly formed statewide watershed management initiative (which would address FPAs and the FPA process) would seem to affect nine major groups (“super-constituencies”) to the greatest degree:

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<sup>26</sup> Thus, legal counsel and also engineering expertise contracted by directly affected stakeholders should be asked to contribute to those in the stakeholder group in more of a supporting role. They are to be welcomed in an advisory capacity in support of named participants.

- ❑ Development and Realty;
- ❑ Agriculture;
- ❑ Industry;
- ❑ Environmental;
- ❑ Smart Growth Advocacy;
- ❑ Regional Government (including both Councils and Commissions);
- ❑ Sanitary Sewer Districts;
- ❑ Local Government; and,
- ❑ State Government (including IEPA, IDNR and IDA).

We recommend that approximately three seats be filled in each major group thereby providing for some critical mass to each in the dialogue. We also recommend that the dialogue be augmented by US EPA Region V (in an advisory capacity).

Collectively, this group could be viewed as highly representative of the diversity of interests and still be kept well beneath 30 individuals.

Regardless of the constituency, most every person contacted recognized that the current system is not terribly effective and also is extremely inefficient. While the communities are polarized as stated earlier and also well entrenched in their positions, it is clear that the issues that underlie these positions are not intractable. There is room for forging common ground if common goals can be developed and creative energies harnessed.

#### *“Filters” for Selecting Stakeholders*

As earlier referenced, The Stakeholder Group should be established with two elements of “balance” in mind: geography and constituency. First, recognizing that the economy and geography of Illinois lends itself to different causes, effects and, potentially, policy solutions, we suggest something approximating balance in residence between the Northeastern, Central and Southern regions. Second, recognizing that balance is an important element among particularly vocal interested constituencies, we suggest equity in numbers across the nine constituencies referenced above.

All “nominees” should be put through a screen of five criteria before an invitation is extended:

#### *Familiarity With Water Quality Issues*

Participants must come to the dialogue with at least a working knowledge of the many issues concerning the goals for establishing and the implications of watershed management policies and, to some degree, the WQMP. Completing and implementing a new paradigm for water quality protection in a two to three year period is far too ambitious a schedule to have to teach unfamiliar participants about the various inter-relationships.

#### *Rationality*

Principled, vocal, and even emotional individuals are truly welcome as participants. Also welcome are those with extreme political views. These same individuals must demonstrate a willingness to listen to other perspectives and factor new ideas into their own thinking as appropriate. “Just say no” posturing is not acceptable.

#### *Representation of a Broader Constituency Group*

The interest in these policy outcomes is significant. Dozens of people are interested in participating. Yet constructive dialogue can only be managed in smaller numbers. Therefore, efforts must be made to limit the group size and select individuals who represent perspectives larger than just the individual.

#### *Recognized Leadership Role Around the State*

Under normal circumstances, we would recommend that participants be “accountable” to the larger interest referenced above. The nature of this debate does not lend itself to use of that metric as geography tends to define positions much more than constituency in some circles (e.g., local government). Further, and perhaps more importantly, as the state with the second

largest number of governmental entities, there is a culture of independence that dominates the landscape. For that reason, great pains should be taken to ascertain the leadership in various quadrants. The convenors must assemble a group of participants that allows all interested citizens to recognize themselves somewhere around the table.

### *Commitment*

Again, given the timeline for this dialogue, invited participants should be required to give their verbal commitment to the EPA Director herself. That commitment should indicate that the invitee would attend every one of the meetings and stay for the duration of the meeting. Though substitutes may be sent to monitor proceedings when designated participants cannot attend, they should not be permitted to engage in the dialogue itself. With this as a basis the group should be able to avoid some of the two steps forward one-step back trappings that occasionally pervade collaborative discussions.

Consensus Solutions recommends that a “Selection Committee” be formed and include the Chief of the Bureau of Water, the Director of EPA, a neutral process guide and others at the pleasure of the Director. This Selection Committee should extend invitations to those that best meet the criteria defined in this Evaluation.

### *Process Guidance*

We believe that IEPA should utilize the services of an external process guide viewed as neutral by all participants. This process guide should be familiar with (though not necessarily expert in) water quality issues. The process guide should have a proven track record as either or both a successful public policy facilitator and/or a successful public policy mediator.

The complexities surrounding these issues on technical issues, political dynamics and emotional commitment will make this an extremely thorny dialogue to manage. The guide must be familiar to the dialogue’s participants so as to enlist their trust. Finally, because of the multitude of dimensions in this public policy framework, the process guide must have the demonstrated

ability to “horse trade” within and outside of meetings. Skills in shuttle diplomacy will be paramount.

A traditional meeting facilitator should not manage such a dialogue. Public policy developed in a collaborative manner is far more complicated than agenda management and the recognition of speakers. The resolution of issues must be carefully choreographed and resolved at their own pace. Meetings have their own unique rhythm that often defies the best meeting planner. Successful public policy facilitation requires a leader sensitive to the natural dynamics among the group, the technical base of the participants and the ability to interpret and translate different languages instinctively.

It would not be appropriate for IEPA staff to function in this role. While technically and politically astute, IEPA is a stakeholder in this process. Similarly, IDNR and IDA are in analogous positions.

### *Process Structure*

Consensus Solutions recommends a multi-phase effort consistent with recommendation VIII.C.3. IEPA should immediately convene a Basin-wide Management Advisory Group (B-MAG) to oversee all efforts in each of the seven major watersheds of the state. This would be the precursor activity to the convening of locally based Watershed Management Steering Committees – first in a pilot project area and more comprehensively later.

Phase I represents all activities related to the successful “Kick-Off” of the B-MAG as the group overseeing the shift from a piecemeal approach to a basin-wide management approach in a single water basin. The first meeting will be designed to:

- Develop A Common Set Of Values Across All Stakeholder Groups;
- Expose The B-MAG Membership To Success Stories From Around The Nation;
- Adopt Ground rules For B-MAG Activities;
- Select A Single Basin For The Pilot Project;



- Identify and Leverage Local Basin-wide Stakeholders, Authorities And Political Entities; and,
- Define A Roadmap For The Development And Oversight Of The Pilot Project.

Phase II would involve all dialogue required to pull together a framework for piloting a basin-wide approach in a single watershed. Though it is premature to place a high degree of certainty on the number of stakeholder meetings required to develop a basin-wide framework for implementation by a local group, it is not out of the realm of possibility to anticipate a Phase II involving four additional meetings during which time the B-MAG addresses:

<b>MEETING #</b>	<b>TOPICAL MATERIAL</b>
<b>1</b>	<b>MONITORING, PERFORMANCE METRICS AND DEFINITIONS OF SUCCESS</b>
<b>2</b>	<b>NPDES PERMITS</b>
<b>3</b>	<b>NON-POINT SOURCE IMPACTS</b>
<b>4</b>	<b>FPA'S, GROWTH AND WATER QUALITY IMPACTS</b>

Clearly this roadmap would need to be well vetted with the B-MAG and much shuttle diplomacy would need to be undertaken to ensure productive one-day discussions. Yet regardless of the topical material, the goal would be the same – to develop a framework for a local group to use in order to tailor their own approaches to the unique factors appearing in the selected basin.

Subsequent Phases would be oversight oriented as a local group implements the vision of the B-MAG and brings successes, failures, and lessons learned to their attention and for application in other locales. Again, the goal of the entirety of the process is to develop complete and comprehensive watershed management and planning to the entirety of the state within the mid-to long term.

## **VIII. Conclusion**

After this intensive evaluation process, we find ourselves impressed by the level of interest in the FPA Program within the majority of stakeholder groups we contacted. The State of Illinois has demonstrated its genuine interest and commitment to both water quality protection and effective land use planning by convening several public hearings and meetings and the support for this evaluation. The majority of people interviewed had moderate to extensive experience in dealing with FPA issues and projects. The large number of suggestions made on possible policy alternatives and solutions to problems also impressed us.

We maintain that a facilitated dialogue, designed and managed by a neutral and objective party can successfully:

- ❑ Identify areas for policy/regulatory improvements;
- ❑ Develop non-regulatory solutions to the management and protection of water quality;
- ❑ Highlight incentives for effective land use planning; and,
- ❑ Provide a forum for building long lasting bridges across differences among interest groups.

We are confident that the State can make significant policy strides if the proper investments of time and effort are made in accordance with the counsel above.

## **Appendix I: Introductory Letter to Participants**

February 20, 2003

Dear FPA Stakeholder:

On behalf of Illinois EPA, let me thank you for your interest in the public policy concerning our Facility Planning Areas (FPA) process. The dialogue and written feedback from affected parties has been enlightening and the passion significant. These discussions over the past four years have challenged our Agency on how we can most effectively ensure clean water.

As an Agency, we continue to be concerned about the differing perspectives on the implementation of the FPA. Consensus on the State's specific direction remains unclear. We need to reach an agreement on some common recommendations for implementing the FPA in the very near future.

To that end, Illinois EPA has contracted with an independent, neutral facilitator who will evaluate the opportunities for resolving these thorny issues. Adam Saslow, President of Consensus Solutions, Incorporated in Atlanta, Georgia will be working to complete a "Program Evaluation" for the Agency – a short report detailing various perspectives in Illinois, comparative policies in other states and concluding with recommendations on how to synthesize the perspectives in a statewide implementation plan.

Beginning immediately and throughout the next month, Mr. Saslow will be interviewing a diverse group of stakeholders. I know he plans on contacting Illinois EPA, local government officials, and representatives of other government agencies, environmental and community organizations developers, and others. You are welcome to share your perspectives and discuss your interests and history with the FPA process as well as your ideas and concerns on the subject. Your participation is important and confidentiality will be preserved. Through these interviews, Mr. Saslow will be able to assess the likelihood of success of various means and techniques for resolving conflicts. Consensus Solutions will then suggest designs for a resolution structure that will move these issues toward some kind of closure.

If you would like to offer your perspectives and have not been contacted. I encourage you to contact Mr. Saslow at any time, [asaslow@c-solutions.org](mailto:asaslow@c-solutions.org) or 404/531-9940.

We look forward to your continued interest in these issues.

Sincerely,

Renee Cipriano  
Director

## **Appendix 2: Interview Guides**

### ***Interview Guide for Illinois Stakeholders***

#### ***A. Interviewee Information***

#### ***B. General Background***

- 1) What is your experience in Illinois' FPA Program
- 2) Have you participated in any of the I EPA FPA efforts to date?
- 3) What was your reaction?

#### ***C. Views on the Current FPA Program in IL and Beyond***

- 1) What is the mandate of the program, as you understand it?
- 2) What is your interpretation of the goals of the program are today?
- 3) Do you feel like the current program falls short of the statutory goals or goes beyond the goals? Where?
- 4) Are there other states that seem to achieve the right goals with the right program?

#### ***D. The Future of the FPA***

- 1) Should the FPA Program continue? If so... what do you think the goals of the program should be?
- 2) Generally, should I EPA be involved in land use planning? If so, how?
- 3) Currently the FPA is a planning program... does it need to evolve into a regulatory program? If so... what should it regulate? (Ex. Impacts of NPS effects)

- 4) Should applicants (e.g., cities, counties, sanitary districts, etc...) be required to present options analysis when requesting boundary changes or permits of various kinds?
- 5) What is the role of the FPA Agencies (e.g., NIPC, Greater Egypt Regional Planning and Development Commission, SW Illinois Metropolitan and Regional Planning Commission) and others)... and how should I EPA interact with them?
- 6) What is the role of I DNR?
- 7) Should FPA decisions incorporate an evaluation of the effects of changes to outstanding resource waters, critical habitats or other important resources?

#### **E. Resolving Conflicts**

- 1) Many have been concerned about the ways in which conflict is resolved. If you were responsible, what are the elements of a dispute resolutions system that you might consider?

#### **F. Moving forward**

- 1) How would you like to be apprised of this Program Evaluation
- 2) Who else do I need to talk to?

## ***Interview Guide for State By State Comparative Analysis***

### ***A. Interviewee Information***

#### ***B. Who is Responsible for Wastewater Treatment?***

- 1) What kind of local government entity is responsible for wastewater treatment in your state (e.g., city, county, sanitary district)
- 2) What is your process to decide on which among neighboring entities will treat wastewater when additional capacity is requested?
- 3) How long have you been using this process?
- 4) Are you satisfied with your process? Why?
- 5) Has your Agency considered changing the current process?
- 6) Have interest groups suggested changes to the process? If so, how was that suggestion handled?
- 7) How are conflicts over proposed development to be served by a wastewater agency resolved? What are the criteria for resolving them?

#### ***C. State Involvement in Wastewater Treatment Planning? (If no involvement, go to Section D)***

- 1) Do you have service areas that are fixed and require Agency approval to expand geographically?
- 2) What are the most important criteria used for state agency approval for geographic expansion to a service area? Bases for denial? What demonstration must the applicant make?
- 3) How is land use planning (growth) considered in your service area expansion approval process?

- 4) Does your agency use the wastewater treatment planning process as a tool to control or direct growth?
- 5) What state regulations or protocols support protection of sensitive areas or consistency of infrastructure planning with growth planning?
- 6) Do you permit sewer extensions beyond service area boundaries?

**D. *For States that DO NOT Require State Agency Approval of Wastewater Treatment Planning Activities***

- 1) How is an area wide wastewater management plan established and updated?
- 2) How are conflicts over providing service to a particular development resolved?

**E. *Non-Point Source Pollution***

- 1) How are non-point source impacts of development evaluated and managed? Are they considered as a part of the Section 208 process?

**F. *Data Points***

- 1) What staff resources (FTE) are dedicated to area wide wastewater treatment planning at the state environmental agency?
- 2) What budget resources (FY2002 dollars) are dedicated to area wide wastewater treatment planning at the state environmental agency?
- 3) How many planning areas or sanitary districts (circle one) serve the state?
- 4) How many applications for expansions or modifications were processed in 2002? By Whom (e.g., State, County, RPC, Contractors)? What is the average lag time in approving or denying an application? What percentage are ultimately contested or appealed?

### **Appendix 3: Glossary**

**Designated Management Agencies (DMA)** - A DMA is a public, quasi-public, or private enterprise designated for and engaging in planning, collection, transport, treatment, or sludge disposal of sewage. Any recipient of an NPDES permit is a DMA. A FPA may have more than one DMA. There should be a lead DMA with oversight authority that was identified in the WQMP Tabular Account. Other DMAs with authority over specific components of wastewater service (i.e., collection and transport) within the same FPA may also exist. Often the area in which this secondary DMA has authority is identified as a Sub-FPA of an FPA.

**Facility Planning Areas (FPA)** - FPAs are defined as the area considered for possible wastewater treatment service within a twenty-year planning period. Exceptions are those areas where the DMA has defined an area to be serviced by on-site treatment over the next twenty years. Approved by the Illinois EPA, a FPA is an area in which a DMA has the sole right to plan, design, construct, own, and operate sewer facilities (wastewater treatment plants, interceptors, collection systems, etc.) and to apply for federal and/or state funds and permits associated with the construction of these wastewater facilities.

**Illinois Water Quality Management Plan (WQMP)** – This document was prepared in November of 1982. §106, §205(j), §208, and §303 of the Clean Water Act were consolidated into an integrated process that required the development and maintenance of the WQMP. The purpose of the WQMP is to coordinate the three area wide water quality management plans (covering 19 counties) with the state plan (covering the remaining 83 counties). The WQMP is composed of the 4 preceding WQMPs plus all approved Facilities Plans and all wastewater National Pollutant Discharge Elimination System (NPDES) permits excluding industrial process, thermal, and non-contact cooling water NPDES permits. The WQMP addresses control of pollution sources, maintenance of stream use and water quality standards, protection of ground water resources, and control of hydrologic modifications. In addition to the assurance of sound economical and environmental decision-making, the WQMP is also intended to serve as a tool to protect the federal and state investment in pollution control facilities. The original WQMP has been frequently amended to reflect specific changes in various program elements.

**WQMP Amendments** – Changes to the WQMP can include: 1) changes to population projections for the twenty year planning period set forth in approved facilities plans; 2) changes in designated management agency status; 3) new or modified domestic sewage treatment works; and 4) changes to Facility Planning Area (FPA) boundaries.



## **Appendix 4: Comments on Program Evaluation**

The comments that follow are presented in accordance with the “ground rules” set on May 1<sup>st</sup>, 2003. Commentators were asked to:

- Offer their comments by May 10, 2003; and,
- Submit their comments on the Response Worksheet provided and in an electronic format

Because of the delay in the finalization of this report, Consensus Solutions has allowed for the inclusion of comments received up to and including June 30, 2003 but only if received in electronic form. Further, we softened on the use of the Response Worksheet and included all electronic submissions.

Readers should note that in some cases, the commentator’s “Suggested Fixes” were adopted into the text of this final report.

## *Response Worksheet*

### *Draft FPA Program Evaluation*

I am writing to nominate the Barrington Area Council of Governments (BACOG) to the new Stakeholder Group of the Illinois EPA. BACOG would be represented by Ms. Janet L. Agnoletti, Executive Director.

The BACOG Board believes we meet the criteria outlined in Mr. Saslow's report on "Facility Planning Area Research" (April 2003). In particular:

- The BACOG Executive Director is familiar with water quality issues, as evidenced by the BACOG letters of 9/30/02 and 10/7/02 submitted to the IEPA.
- BACOG represents an area of approximately 90 square miles in four counties (Lake, Cook, McHenry and Kane) and multiple townships. BACOG represents seven member municipalities and over 40,000 residents.
- BACOG is committed to serve. The Executive Board of BACOG met last night, May 27th, and discussed possible participation in the Stakeholder Group. It was the consensus of the Board to nominate BACOG to the Stakeholder Group, with full recognition of the time and travel commitment that would be required.
- Please note that the BACOG office was not aware of the old stakeholders group until summer 2002, at which time the Executive Director began to participate in the meetings, to submit comments, and to participate in interviews with Mr. Saslow.

Thank you for your consideration of this nomination of BACOG to the new Stakeholder Group. Please do not hesitate to call if you have any questions.

Janet L. Agnoletti, Executive Director  
Barrington Area Council of Governments (BACOG)  
218 W. Main Street  
Barrington, Illinois 60010  
Phone: (847) 381-7871  
FAX: (847) 381-7882



4/01/03

## CAMPAIGN FOR SENSIBLE GROWTH POLICY STATEMENT ON FACILITIES PLANNING AREA PROCESS

The Campaign for Sensible Growth, since its inception four years ago, has advocated the maintenance and reform of the state's Facility Planning Area (FPA) process under the direction of the Illinois Environmental Protection Agency (IEPA). We deem it imperative that the state work to protect and improve water quality in the Chicago region and throughout Illinois and provide better predictability and efficiency of the process to the development community.

Illinois can take steps to protect our water while continuing to support growth and development. We believe that the state has a clear authority under the federal Clean Water Act to oversee management of FPAs in order to ensure that when they are approved, they minimize environmental harm and protect both our region's and the state's rivers and streams.

We would suggest the following overall considerations:

- **The Facility Planning Area process should be retained and improved.** The Illinois Environmental Protection Agency (IEPA) is the agency that has the authority under the federal Clean Water Act to utilize an FPA process to protect water quality in the state. While the emphasis currently appears to be solely on what is being discharged from specific areas, the water runoff specifically attributable to an expansion of a FPA should be considered. While many streams and rivers in the state are improving in water quality, the FPA process should be retained to ensure that water quality is protected.
- Governor Rod Blagojevich has called for efficiencies, and streamlined and coordinated efforts in government. The bi-partisan legislative Illinois Growth Task Force in its 2002 report to the Illinois General Assembly also emphasized the need for coordinated state growth policies. **The FPA process is an integral component in providing a framework for expanding water and sewer systems.**

- **The fiscal health of local municipal water and sewer systems are in jeopardy if the process of facility planning areas is not utilized effectively.** The FPA process works to avoid duplications of effort and saves communities and developers the costs of unnecessary infrastructure. Efficient investments require strong local responsibility.

To improve the FPA process to make it work more smoothly, effectively and cost-efficiently, certain principles should guide reform. They include:

- **The FPA process should be based on ensuring strong and consistent protections for water quality and should be one element in an overall state and local planning process.** The FPA process should not be burdened by boundary disputes between communities (see below for alternative recommendation). With the passage of the Local Planning Technical Assistance Act, local communities will have greater incentives to plan for the future and work with their neighbors for increased consistency.
- **The FPA process must be consistent with, and supportive of, relevant sections of Section 208 of the Clean Water Act.** Section 208 incorporates a provision stating the “waste treatment management shall ... provide control or treatment of all point and nonpoint sources of pollution.” In this case, the State should focus on pollution issues directly related to proposed wastewater treatment plants. FPA reviews should protect the water resources of the state and take into account the relationship between land use decisions and infrastructure improvements and expansions. The FPA process should require local ordinances such as those required by the Northeastern Illinois Planning Commission that call for best management practices, including appropriate ordinances for soil erosion, floodplain protection, stream and wetland protection.
- **The FPA process needs to be clear and have reasonable time limits** to provide predictability to developers, municipalities, counties and other stakeholders.
- **Local boundary disputes must be dealt with outside of the FPA process** to keep the focus on water quality protection. The IEPA should suggest criteria for ways to settle land use issues outside of water quality. IEPA should investigate the use of tools such as dispute resolution to settle such issues.

Improvements are needed to make the process more efficient. Among the recommendations:

- **The FPA process should consider an analysis of how development enabled by a FPA expansion directly impacts water quality.** The process should also consider any existing pollution in the proposed service area from agriculture or other uses.
- **Antidegradation analysis should occur as early in the process as possible** (not at the end as is the case now). Both potential point and non-point source impacts of the proposed FPA should be considered.
  - Disposal of septage from onsite systems also should be addressed in an FPA review. When onsite systems are maintained, the solids that accumulate (septage) must be periodically pumped from the septic tank. Sometimes the septage is applied to nearby land and sometimes it is accepted at the local sewage treatment plant. An FPA expansion should require that all septage be accepted at the sewage treatment plants.
- **The applicant must demonstrate that local government(s) with jurisdiction has passed ordinances necessary to implement enforcement.** Currently, sanitary districts that have authority on sewage collection and treatment have little no control or authority over non-point source discharges.
- **The IEPA should require applicants seeking FPA expansions or plant expansions to seriously consider at least one alternative with strong environmental protections,** e.g. irrigation of treated effluent, polishing wetlands, or nutrient removal.
  - The environmental impacts of the different alternatives, not just the dollar price tag for the different methods, should be weighted as a factor in the selection of a treatment method or the granting of an expansion of an FPA boundary. Protection of natural resources cannot be judged by price alone.
- **Development served by sewer systems should not be allowed in wetlands and 100-year floodplains. Wisconsin totally excludes these in its approved sewer areas. .**

- **The Illinois Department of Natural Resources should be consulted regarding the impact of FPA and water plant expansions on sensitive habitats and species** (similar to existing consultations with the Illinois Department of Agriculture).
- **The State should coordinate the FPA process with other water quality programs.** This would ensure the state does not approve FPA amendments that lead to pollution increases that will undermine its efforts elsewhere. There should be strong follow-up enforcement to promises given in applications.
- **Disputes between applicants and other communities over municipal boundaries should be resolved outside of the FPA process.** The role of the IEPA is not to arbitrate disputes between municipalities. The issues of governmental disagreements should be negotiated or mediated. An alternative dispute resolution process should be available so that municipal boundary wars can be removed from the FPA process and the focus can instead be on water quality protection. The IEPA should determine clearly defined standards for determining which applications should be referred to mediation and which cases can be presented to the IEPA.
- **Analysis should be undertaken on ways to prioritize the use of state revolving loan financing to target rehabilitation of existing systems rather than primarily new plants.** The use and reuse of existing plants saves the costs of new and perhaps unnecessary infrastructure.

An improved FPA process could better protect water quality for our streams and rivers. Consideration of these issues and rethinking the process of facility planning will mean everyone can benefit from necessary changes.

**Response Worksheet***Draft FPA Program Evaluation*

NAME	ORGANIZATION	STREET	CITY/STATE	ZIP
Dennis L. Duffield	Illinois Association of Wastewater Agencies/ CITY OF JOLIET	921 E. Washington Street	Joliet, IL	60433

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**Stakeholder Issues Section: Comments and Concerns**

PAGE	COMMENT/CONCERN	SUGGESTED FIX
	Quick Fixes The meeting on May 1, 2003 again reviewed the same issues, disband and form a new group	Define Affected parties, Proceed with a new group of stakeholder reps

**State by State Comparative Analysis: Comments or Concerns**

PAGE	COMMENT/CONCERN	SUGGESTED FIX
	Hard to compare	I am sending you two charts that I prepared,

**Evaluating the Use of ADR: Comments or Concerns**

PAGE	COMMENT/CONCERN	SUGGESTED FIX
	Dispute resolution is only necessary because Criteria are not properly applied ADR could help if communities are forced to Meet with the mediator	Return to criteria in regulations  Proceed with study of ADR

**Other**

It is necessary for there to be a commitment to resolving the problem. At the May 1, 2003 meeting, many wanted to rehash the problems instead of focus on the solution. A smaller group focused on resolving the problem needs focused discussion of this issue so that specific language can be proposed.

May 9, 2003

Marcia Willhite, Bureau Chief  
Bureau of Water  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794

Dear Ms. Willhite:

On behalf of the Home Builders Association of Illinois I would like to thank you for our inclusion in the discussions with regard to the extension of the Facilities Planning Area program. Mark Harrison, our Executive Vice President, and Neil Malone, our Assistant Director of Governmental Affairs, Jerry Conrad and I truly enjoyed the opportunity to exchange ideas in relation to the future of this program.

As you know, the Facilities Planning Area (FPA) process was begun years ago as an attempt to maximize effectiveness and reduce redundancy with respect to infrastructure. Since the inception of the program, more and more the trend has been away from this original purpose of avoiding duplicity; and more and more toward slowing or stopping development through increased environmental regulation.

For this reason, the Home Builders Association of Illinois would be opposed to an expansion of the FPA program to include watershed management and control. As was clearly demonstrated by the numerous presentations, the housing industry is already subject to numerous layers of environmental regulation. The Home Builders Association of Illinois believes that to heap more bureaucracy on the process serves the best interest of no one. We fear that this approach will further complicate and delay the construction process with no significant environmental justification or efficiency benefit.

Again, we thank you for including our association in these ongoing discussions, and we look forward to continuing to work with you to resolve the future of the FPA program.

Sincerely,

Shawn Luesse, President  
Home Builders Association of Illinois



## Response Worksheet

### Draft FPA Program Evaluation

NAME	ORGANIZATION	STREET	CITY/STATE	ZIP
Mike Beaty/Division Manager, Division of Natural Resources	IL Department of Agriculture	State Fairgrounds P.O. Box 19281	Springfield, IL	62794-9281

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217/785-4233	217/524-4882	mbeaty@agr.state.il.us

#### \* Quick Fixes

The Illinois Department of Agriculture (IDOA) agrees that the Memorandum of Agreement approach could facilitate the interagency review process concerning FPA proposals. However, a formal mechanism of that nature currently exists pursuant to the IDOA-IEPA Cooperative Working Agreement, under the auspices of the Illinois Farmland Preservation Act. From an agricultural perspective, we believe that the degree of interagency coordination needed to improve the FPA review process can be accomplished via carefully crafted amendments to the working agreement. The IDOA will coordinate with the IEPA regarding the needed amendments.

#### \* Policy Directions

The IDOA does have concern with the concept of wastewater treatment planning through the watershed management scenario. Given the size of the watersheds identified within the Program Evaluation, the extent of the resources necessary at the local or regional levels to carry out that type of planning may not be in existence now or in the future. Further, we are not aware of many instances where watershed planning includes a growth management component. Until there is evidence that balanced growth would be an integral part of the watershed management process for wastewater treatment planning, the IDOA believes the current FPA process is more suitable for preventing sprawling development patterns in Illinois.

#### \* Recommended Approach

The IDOA concurs that a new “core group” should be established to address issues associated with FPA proposals. The Program Evaluation recommends the inclusion of agricultural organizations in the core group, as well as the Illinois Department of Agriculture. We fully support that recommendation.

April 30, 2003

Renee Cipriano  
Director  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
Springfield, IL 62794

Adam Saslow  
Consensus Solutions, Inc.  
90 West Wieuca Road, NE – Ste. 222  
Atlanta, GA 30342

Dear Director Cipriano and Mr. Saslow:

Because we believe that the Facility Plan Area Process (FPA) process is essential to the water quality of Illinois, and the enforcement of the FPA process by the Illinois Environmental Protection Agency (IEPA) is crucial, the Metropolitan Planning Council (MPC) has been pleased to continue to participate in a process regarding reforms. MPC has been involved in the process since the Illinois Environmental Protection Agency (IEPA) first announced its decision to end the program in 1998. Over the past several years, MPC, and the coalition that it co-leads, the Campaign for Sensible Growth, have worked to suggest reforms to the FPA process to better meet its objective of maintaining and improving water quality in Illinois.

MPC has reviewed the “Draft Final: FPA Program Evaluation” dated April 24, 2003. We find it to be a constructive document in the process by laying out the background to the issue, providing a very useful comparative survey of states, identifying major stakeholder issues and offering recommendations.

There are several comments that we have:

- I. Water quality is affected by both point and non-point source pollution. MPC sees no evidence in the paper for the broad statement that “current water quality protection measures and existing models suggest that water quality will remain protected through a variety of regulatory structures and will continue to be

over time – even if the FPA program is phased out.” (page 67) In fact, FPAs play a major role in determining the level of development (sewer versus non-sewer) and thereby impacting water quality through non-point source pollution. While far from perfect, the FPA process has resulted in improved regulation of nonpoint source pollution at the local level, even in cases of large expansions of FPAs. Therefore, recommendations for addressing a replacement process to FPA must continue to address the regulation of non-point source pollution.

2. The “quick fix” proposals identified in the recommendations are worth pursuing in the short-term. The development of memoranda of agreement with the Illinois Department of Natural Resources (IDNR) and the Illinois Environmental Protection Agency (IEPA) would be very useful. We would also suggest that the memorandum of agreement include the Department of Commerce and Economic Opportunity (DCEO), the state’s official planning agency – especially if the long-term prospects of this issue are dealt with at the watershed level. DCEO is currently working on ways to improve its support for local planning efforts in the state. Second, developing a conflict resolution procedure for local governments that are at odds over annexation issues would be very valuable – an issue that MPC and the Campaign for Sensible Growth are in strong support.
3. The document is not clear what substantive changes will need to be made by state government to develop a sufficient watershed management program in order to phase out the FPA process. MPC strongly believes that the watershed management system be identified to have enforcement mechanisms and be in place before the phase-out of the FPA process commences. IEPA will need to ensure that these processes are set up, even if it requires legislative changes and changes that impact other state agencies. Specifically, the paper does not define which regulatory mechanisms will be in place to ensure that watershed plans will actually be enforced both through state and local actions?

Thank you for the opportunity to review the draft and be part of the discussion. We continue to offer our assistance to work with IEPA to meet its objectives efficiently and improve the quality of our water in Illinois.

Sincerely,

Scott Goldstein  
Vice President of Policy and Planning

**Response Worksheet***Draft FPA Program Evaluation*

NAME	ORGANIZATION	STREET	CITY/STATE	ZIP
Richard Acker Regional Land Use Coordinator	Openlands Project	25 E. Washington St. Suite 1650	Chicago	60602

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**Introduction and Background Comments or Concerns**

PAGE	COMMENT/CONCERN	SUGGESTED FIX
13	The sentences beginning with “Given the fact that communities are required to repay the loans, the emphasis on protecting the state’s investment is no longer as compelling” and ending with “the focus on defining a planning area beyond a projected service area is not necessary” are inaccurate and incomplete. Local government investments deserve protection, as do earlier state and federal investments under the grants program.	“The FPA process gives local sewer authorities (such as municipalities or sanitary districts) the assurance that the wastewater infrastructure investments they have already made remain safe from intrusion and competition which would prevent them from recouping their initial costs. If municipalities could not recoup their costs through the connection fees and base of customers they had planned on, it would be harmful not only to the municipality but also potentially harmful to the environment, since operation and maintenance of the wastewater treatment facility might suffer. In addition, although new federal grants have ceased, the FPA process ensures the continued protection of previous federal grants made in the 1970s and 1980s.”
8-9	The description stating that “The FPA process was created large to satisfy the requirements of the federal Construction Grants Program” through the second of the two bullet points is too narrow, omitting other important reasons underlying the creation of the FPA process.	“The FPA process was created to satisfy the requirements of the federal construction grants program, as well as to fulfill the requirement in Section 208 of the Clean Water Act that the State evaluate the economic, social, and environmental impacts of implementing its waste treatment management plan. The program’s goals included:

PAGE	COMMENT/CONCERN	SUGGESTED FIX
		<ol style="list-style-type: none"> <li>1. To protect federal, state, and local investments in wastewater treatment capacity by preventing the duplication of wastewater infrastructure.</li> <li>2. To prevent the overextension of the service envelope beyond the needs dictated by the 20-year growth horizon.</li> <li>3. To balance economic, environmental, and social needs.”</li> </ol>
15	It is somewhat misleading to say that the reforming legislation in 2001 failed. It actually passed the House but was never voted on the Senate.	“The matter was studied for some time culminating in FPA reform legislation which stalled in the Illinois Senate in 2001.”
15	HB 1250 just passed the Senate today.	“This bill, proposed on 2/7/03, was passed by the House on 3/19/03 and by the Senate on 5/9/03.”

**State by State Comparative Analysis: Comments or Concerns**

PAGE	COMMENT/CONCERN	SUGGESTED FIX
56	The description of the Wisconsin program does not explain clearly enough that Wisconsin, under NR 121, excludes environmentally sensitive areas from its sewer service areas.	“WDNR’s regulations (Chapter NR 121) state that areas ‘unsuitable for the installation of waste treatment systems because of physical or environmental constraints’ are to be excluded from sewer service areas. Wisconsin excludes these ‘environmentally sensitive areas’ – which include wetlands, shorelands, floodways and floodplains, steep slopes, highly erodible soils, and groundwater recharge areas – because developing them might harm water quality. Furthermore, sewer service area plans must establish buffers around these features.”

**Other**

Openlands Project supports increased and formalized cooperation between IEPA, IDNR, and IDA on FPA amendments. Openlands agrees that the latter two agencies may not have veto power under current authority, but they nonetheless should have a key role in advising the IEPA on FPA decisions.

Openlands Project also supports the use of alternative dispute resolution in the FPA process to eliminate the “Type I” disputes. This could be accomplished in the way the report recommends or, if other stakeholders are concerned with that approach, with a different mechanism that allows the disputed FPA request to be submitted at the same time that dispute resolution is pursued.

In addition, on p. 60, the Report has a footnote explaining that Openlands’ recommendation to exclude environmentally sensitive areas from sewer development would be acceptable to a great many stakeholders and that the counsel of Consensus Solutions, Inc. would be to see such measures adopted immediately. As such, Openlands recommends that Consensus Solutions, Inc. consider “elevating” the idea to a “quick fix.” Such an approach could achieve considerable water quality protection in an administratively straightforward manner, offering certainty to all stakeholders up front. In addition, as shown by the example in Wisconsin (and possibly also Connecticut?), such an approach is entirely feasible.

## *Response Worksheet*

### *Draft FPA Program Evaluation*

#### **Contact Information**

Jack Darin

Sierra Club - Illinois Chapter

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The term “watershed approach” has frequently been put forward by people as an alternative to doing real regulating, so I am cautious about it. However, if indeed a “watershed approach” means looking at FPA expansions for their cumulative impact on a watershed, and for their consistency with other Agency standards and programs, such as TMDLs, then I’m all for it.

I was disappointed there were no “quick fix” recommendations pertaining to water quality, since that is the point of the process.

Sierra Club would be pleased to participate in a future stakeholder process.

**Response Worksheet***Draft FPA Program Evaluation*

<b>NAME</b>	<b>ORGANIZATION</b>	<b>STREET</b>	<b>CITY/STATE</b>	<b>ZIP</b>
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**Process/Methodology Comments or Concerns**

<b>PAGE</b>	<b>COMMENT/CONCERN</b>	<b>SUGGESTED FIX</b>
11	Persons interviewed are unknown and context in which they provide comments is unclear	Characterize persons by interest group, i.e., regulators POTWs, environmental community, etc

**Stakeholder Issues Section: Comments and Concerns**

<b>PAGE</b>	<b>COMMENT/CONCERN</b>	<b>SUGGESTED FIX</b>
13-14	Facilities Planning Area and Facilities Planning Process are being confused	Identifying FPA is State responsibility (40 CRF 35.917-2); Facility Planning requirement's are in 40 CFR35.917-1
13-14	Facilities Planning area definition being used to delay, manage growth	Some parties want facilities planning to occur before the area is identified, resulting in delay.

**State by State Comparative Analysis: Comments or Concerns**

<b>PAGE</b>	<b>COMMENT/CONCERN</b>	<b>SUGGESTED FIX</b>
31-62	Difficult to compare state processes because each state is listed on a different page	Require DMAs to update FPA limits periodically to eliminate boundary disputes when development occurs