

DRAFT MEETING SUMMARY (Version 3.1)

IL Basinwide Management Advisory Group (B-MAG)



US EPA – Chicago, IL
October 27, 2003

This document is not intended to be a meeting transcript, per se. It is a summary of key themes and some (though not all) of the background dialogue. The meeting summary's structure roughly parallels that of the meeting agenda but is not necessarily true to the temporal order of discussion.

ATTENDEES

From the B-MAG Membership¹

Janet Agnoletti	Mark Harrison	Cindy Skrukrud
Ken Alderson	Tom Heavisides	Julie Sullivan
Tom Brooks	Martin Jaffe	Ron Thomas
Terry Donohue	Alan Jirik	Beth Wentzel
Jerry Ducay	Shawn Luesse	Marcia Willhite
Dennis Duffield	Dennis McKenna	
Nancy Erickson	Alec Messina	Richard Acker for Joyce O'Keefe
Mike Fruth	Tom Muth	Frank Sampey for Sam Santell
Heather Hampton-Knodle	Tom Skelly	Ellen Shubart for Scott Goldstein

Bill Compton resigned from the B-MAG.

Adam R. Saslow (President of Consensus Solutions, Inc.) is the facilitator and Chris Davis of IEPA is the note taker for this process.

¹ B-MAG Members not in attendance included: Jonathan Goldman, Scott Goldstein, Joyce O'Keefe, Sam Santell, Dennis Schmidt, Mike Tryon and Ed Wielbacher

Resource People in Attendance²

Richard Acker – Openlands Project
George Czapar – University of Illinois (Council of Best Management Practices)
Chris Davis – IEPA
Albert Ettinger – Environmental Law and Policy Center
Tom Flattery – IDNR
Sharon Hartzold – NRCS

Philippe Moreau – Walter E. Deuchler Associates, Inc.
Ellen Shubart – Campaign for Sensible Growth
Paul Thomas – USEPA Region V
Connie Tonsor - IEPA
Amy Walkenbach – IEPA
Bruce Yurdin- IEPA

Observers

None in Attendance

MEETING HANDOUTS

Agenda
Final Ground rules (version 4.0)
Draft Code of Conduct
Contact List
Draft Final Meeting Summary

Revised Charge
Connie Tonsor Document
Ecosystem Partnerships Document
Tracy Mehan III Memorandum (12/3/02)

WELCOMING REMARKS AND REVIEW OF THE CHARGE

The meeting was called to order at 10:00 AM on October 27, 2003.

Rita Athas – NIPC Commissioner and of the Mayor’s Office

Quick welcome and spend money in town. Happy to sponsor such an important project to protect water quality.

² Designated Resource People not in attendance included: Ron Drainer (IEPA), Dennis Dreher (NIPC); Ashley Ferguson (IEPA); Bernie Killian (IEPA); Barb Lieberoff (IEPA); Scott Ristau (IEPA) and Deb Williams (IEPA).

HOUSEKEEPING AND ADMINISTRATION

Adam R. Saslow, President - Consensus Solutions, Inc.

Review of the Day's Agenda

At the end of this meeting, the B-MAG participants will have:

- Attended to All Outstanding Items Remaining From September
- Understood the Rationale for Moving Forward With B-MAG Activities
- Considered the Characteristics for Selecting A Single Watershed For The Pilot;
- Selected a Single Watershed for the Pilot (and Maybe Two),
- Identified A Roadmap For The Development And Oversight Of The Pilot.

Administrative Details

Ground rules and Code of Conduct

Bill Compton resigned from process because he couldn't sign. Alex has been told not to sign the groundrules by his board. Until they have a better understanding of where this is going, they cannot sign. Julie Sullivan also indicated she could not sign the groundrules.

Mr. Saslow introduced a Code of Conduct (see Appendix A) that incorporated the decision rule, substitution rule, media rule, and good faith elements. After some discussion, a motion was made for the B-MAG to adopt the Code of Conduct as the rules by which the B-MAG would operate (no signatures required). There was universal consensus.

Approval of the September Meeting Summary

There were no objections to characterizing the September 29 meeting summary as a Final Meeting Summary.

One participant noted that it would be nice to have the "track changes" function on any updates and until the meeting summary is declared to be "Final."

Update on Action Items

One participant asked for a clarification of the land use phraseology on page two of the charge. Ms. Willhite responded that a verb might have been missing? IEPA doesn't have land use policies, but they recognize the importance of this issue.

CURRENT REGULATORY STRUCTURES

Connie Tonsor– Illinois EPA

Ms. Tonsor provided the definition of “Jurisdiction”. IEPA only has the authority that the general assembly has provided. She spoke on the Bubbly Creek example.

Q: Can the IEPA deny a permit if no state or federal funds are being used by a person building outside their FPA boundaries?

A: Collection vs. Plant. The Agency can deny a permit for a POTW(plant) that discharges in an area outside of its FPA (CWA 303/208). The IEPA policy prohibits the permitting of a collection system that crosses an FPA boundary. There has not been litigation on this issue.

Q: If they are using their own money, why can't they do it?

A: Ms. Willhite indicated that locating a competing system outside the boundary would likely be denied. In practice, the Bureau of Water (BOW) may have developed policy on capacity issues and their effect on water quality. The money issue has gone away. Point source discharges outside FPA area will be challenging. Anti-degradation issues will also play a role.

Participants were provided with a handout that recaps much of Ms. Tonsor’s presentation (see Appendix II)

Final points – USEPA can speak to the issue of watershed permits (see later reference) – Ms. Tonsor noted that a general permit might be appropriate for this group to consider.

The B-MAG’s final product might require rule making. If you go back to the Clean Water Act, the first focus was on the situation that created Bubbly Creek. We need some rethinking to deal with efficiency. The IEPA does have the authority to go forward with watershed planning.

Q: How does IEPA define “High Quality Water?”

A: HQW exists where the existing quality exceeds the water quality necessary to maintain its use. Statement is in the regulations. For most waters in Illinois, water quality is better than its designated use. This statement excludes the secondary contact limited waters in the northeastern portion of Illinois.

Q: Does IEPA have GIS coverage of impairments?

A: Multiple parameters cause difficulty in showing impairments. Tom Flattery identified that there is biological data available to assist in this issue. Separation between chemistry and biota.

Q: Has anyone assessed areas of programmatic duplication or areas of overlap within IEPA?

A: Duplication of overlap in IEPA has not yet been done. Ms. Tonsor indicated that such duplication exists - alternative analysis anti-degradation, alternative analysis in other places. NPDES. Local land use issues are not an area that we can cover. There's a county that doesn't like development on prime farmland... we can't choose where to locate a subdivision, but we can work with counties ... special assessment back to fund (county)... lots of areas where we butt up to each other and somewhere we overlap. Looking for overlaps and gaps between state agencies and others.

Action Items

Tabular format showing overlaps and gaps (inside and outside IEPA) – Marcia will take it on.

Need for more expertise needed for this group. Detail gaps in your knowledge. Give lead time to Adam, so that these resources can be brought to the table.

LESSONS LEARNED FROM OTHER STATES

Deanne Doohaluk

Deanne Doohaluk unable to attend, Amy Walkenbach will provide the entire presentation.

Amy Walkenbach – Illinois EPA

USEPA Watershed Approach is tailored to local needs. USEPA has given IEPA free rein to implement the watershed approach. See memo from Tracy Mehan III, Assistant Administrator for US EPA (Office of Water). This sets out the USEPA commitment to advance the watershed approach. USEPA has no new statutory authority in place.

Comment: Years ago, IEPA submitted an outline for the vehicle inspection management system, once USEPA approved it, the Illinois General Assembly was blackmailed into implementing it, because of USEPA's approval. This participant wants to guard against a similar outcome in watershed protection.

Action Item: Amy Walkenbach will send copies of her presentation out to the group.

Minnesota

MN is working on a Basin Planning and Management System - Basin Information Document

("BID") - not a plan as it does not include implementation steps. A Basin Plan (targeting water bodies or sub-watersheds) is developed by a Basin Team. To implement, they go to the local level. Note that this does not replace the local efforts.

Q: Is this an extra step?

A: Yes, for the state agency. No regulations or zoning included.

Q: Are the contacts listed state staff?

A: Yes.

Q: How is program funded?

A: Unknown.

Minnesota is not much farther than Illinois in their process. Ms. Willhite noted that federal permit fees and state funding is possible. Minnesota has chosen eight basins to start in.

Q: How do they deal with conflict within the basin groups?

A: Start with rather generic information, which in turn stimulates local involvement. State is going to encourage local groups to meet both state and local goals. Where does the money follow? The money goes to the locals; agency identifies water quality impairments.

Q: Is the technical capability to enhance change in planning provided at the basin level?

A: Agency provides this information to the local groups at the local level.

Q: Are the river basin plans developed by the state?

A: The local planning committee does them with input from the state.

Virginia

VA has an evolving program including nonpoint source pollution and looking for an opportunity to reach stakeholders. VA DEQ is currently doing a systematic review of all of their basins in the state. Basin plans to address local issue and state issue. A one-document process.

Wisconsin

Wisconsin – Local stakeholders are focused on local problems. They work on relatively small watersheds. The state agency develops an inventory of issues and also provides educational background. Working on relatively small watersheds.

Q: Where's the monitoring component?

A: Wisconsin does not place a lot of emphasis on monitoring. Money is always a concern.

Q: Reference to a committee – both seem to be addressing NPS, are they also addressing point source?

A: Unknown if they are doing watershed based permitting, but she can find it out.

Richard Acker said he would get more information to the group (documented) on sewer service areas in the state.

Ohio

OH is currently using an FPA process similar to Illinois. Ohio EPA does not address boundary changes, with the exception of Columbus. OH is unhappy with their program, and feels that their program does not address all of the issues and that it is cumbersome, disconnected and rarely used. It is local government that brings in all the participants when there is a boundary conflict. Again Ohio EPA doesn't make decision, but the Governor makes a proclamation stating the decision. There is a well-established set of regional relationships.

Other states do not have an FPA process.

North Carolina

Information was in the packet from last month. Basin wide basin plans for 17 basins reviewed on a five-year cycle. They conduct planning, implementation and permitting (which includes a public review process. And then develop a plan (<http://www.ncwater.org/>). They are detailed on water quality information and impairments. The plan receives approval from entity similar to the Illinois Pollution Control Board. Five-year cycle addresses permit renewals though new permits stay on the regular schedule.

General commentary: A participant mentioned that one of the most attractive features is the value of the IEPA pulling together information on a basin wide level and that local people can use on the local level. Another participant mentioned that this is already done by the University of Illinois. Ms. Walkenbach added some areas that may not be included in the U of I websites. NPDES may just be a layer waiting to happen. What is the wisest use of the resources available? How does IEPA define stakeholders? Watershed prioritization, NRCS and the State Technical Committee have worked on the nonpoint source issues already. We need a table of gaps, how does the watershed approach address the gaps and overlaps.

Mr. Saslow prompted the stakeholders and urged them NOT to let IEPA identify where they should improve. Do it as a group.

Federal Involvement.

No statutory authority to mandate watershed approaches.

Q: Do we know the requirements that USEPA is putting on the states?

A: One requirement falls in the Section 319 of the Clean Water Act program. We have to have a completed watershed management plan with 9 minimum elements (e.g., impairment of water quality, local reductions, public involvement, schedule of implementation). This program could help applicants to meet the 319 requirements. There is also money available for development of these plans through the Section 319 program.

WHY WATERSHED PLANNING AND PROTECTION ANYWAY

Marcia Willhite – Illinois EPA

USEPA has been promoting watershed planning for about a decade. They are upping the ante. Nonpoint source pollution control projects funded through USEPA must be linked to watershed planning. This is a policy direction for clean water programs – so this program is likely to be around for a while. IEPA is not following this program for many of the areas that we work in.

Ms. Willhite discussed the Illinois Water Quality Management Plan (IWQMP). IEPA believes that a future iteration of the IWQMP becomes a compilation of watershed management plans - not the FPAs. Nonpoint source pollution is difficult to address in the current set up that IEPA implements. If we continue with a service-area focus, we will have a problem controlling the nonpoint source pollution issues. We have strong regulatory programs in place, but nonpoint source pollution can be well-addressed using non-regulatory programs. IDNR noted that by definition, nonpoint sources do not discharge and can not, thus, be permitted like industrial facilities. As stated earlier, 2/3 of the state has nonpoint source pollution impacts and IEPA does not have authority to regulate. Stormwater provisions (e.g.) are in place, but we don't have authority to say to a landowner here is your discharge limit or that you can't discharge – we say that you can't cause a water quality problem. We can speculate to potential causes, but our tool to improve the situation is non-regulatory (incentives to install best management practices).

It was further noted that farm tiles are not defined as a point source, neither are storm sewers – and thus, do not have an effluent level. Storm sewers are identified in applications for NPDES. Ms. Tonsor noted that IEPA does have permitting authority over point source and does have authority to work voluntarily on nonpoint source through Section 319.

Watershed planning can bring the neighbors together to address issues, vs. the piecemeal program-driven approach. Today, there are inefficient duplications within the agency. The FPA planning is disconnected from our loan program and the permit program. Another issue is the resource base of IEPA – one ill funded to regulate the good stewards and the bad stewards – in the current system. The Agency needs to eliminate the overlaps in programs and the duplicated efforts.

Ms. Willhite's vision is to focus on the water quality issues and less on the fire drills that normally come up. She likes a classic approach (like NC):

- Monitor
- Assess What It Means (IEPA Is Doing That)
- Planning (But Not By IEPA)
- Implement
- Start Over Again (Including Adaptive Management).

IEPA is not currently asking the water quality questions at the state level. What's happening in the watershed right now, and how do we put protections in place to maintain water quality? Monitoring and assessment must be linked to impairments or to the protection of high quality waters. The B-MAG needs to bring in the vision into the planning effort.

Q: What's stopping IEPA from doing this?

A: Resource heavy – hope the talk will answer this question.

Ms Willhite suggested that a high level planning process needs to take place at the B-MAG level. Here are the water quality issues, here are the steps to be taken, and then provide it to the local planning groups for implementation. At the local level, we need to allow the different local players (landowners, towns, dischargers, SWCD, agriculture, developers and environmental groups) to come to the table to discuss what's happening, what authorities are available to make it happen. Check off what they are already doing and focus on the local gaps.

IEPA sees many challenges, but hopes that the people around this table can help us get through some of these challenges. Sometimes it's hard to see the goal, but it's also a chance to change the process. Need the right people in the process and their contributions to it.

Ms. Willhite underscored that there is nothing preventing IEPA from doing this job. If we are going to start aligning programs, she feels that people will want to say something about it. Ms.

Willhite does not see the B-MAG as a vehicle for developing new regulatory requirements.

Mr. Jirik noted that he was still struggling with the concept of a final product.

- Maybe example from other states could be helpful;
- Begin to get the substance to help define the nuts and bolts.
- SWOT (Strengths, Weaknesses, Opportunities, Threats) Analysis for water programs and evaluating for water quality protection?

A US EPA PERSPECTIVE ON WATERSHED PLANNING

Peter Swensen - US EPA Region V

USEPA headquarters seeks to integrate watershed approach into the permit process. Legally, this is a point source permitting program but they are trying to broaden the approach. He suggested a review of a headquarters permitting memo (Watershed-Based NPDES Permitting dated January 7, 2003). USEPA is taking a very broad view of watershed based permitting and encouraging the development of a wide variety of systems. Some states issue permits with a very narrow focus (not Region V). Website has fact sheets with case studies on innovative approaches (www.epa.gov/OW/index.html). Page 3 of memo – some states rotate the permit renewals, allowing the state to monitor on a more efficient basis. Four other examples of how permits could be written. Water quality trading – two sources of the same pollutant, one regulated and one not, using the trading scenario they can leverage their funds. Better use of data collection. Who would bear the cost? IEPA may be able to get other people involved to help. How would data be used? It could be used to help with permits. Some people think that we are issuing permits in a vacuum. This signals USEPA effort to do more.

Q: Permit fee structures, how monitoring would be paid, does the memo suggest an additional fee?

A: No.

Q: What is the fee and who pays?

A: These are existing permits. These are different mechanisms, but they could also reduce fees for some of the current permit holders (6 permits down to 1).

Q: Is this a mandate?

No. USEPA sees it as a good idea, doesn't see forcing people to do this.

There was discussion on traducing concepts for multiple discharges. For example, phosphorus

from nonpoint source and point source, the idea behind trading is that the point source discharge can pay nonpoint source pollution landowners to reduce their phosphorus load and save them money. Does the state want to explore trading? Ms. Willhite felt that one of the work groups might address it. Trading – regulated body, suggested to them that it would be cost-effective to enter into an agreement with a non-regulated body to do something different to get a net gain in water quality. Only so much loading that you will allow, the pollution could be coming from the non-regulated source, thus penalizing the regulated community. Trading allows point source discharger the opportunity to discharge more by buying someone else's discharge limits. Dr. Jaffe noted that the state has been doing this for air pollution for a number of years.

MOVING FORWARD ON THE B-MAG

Facilitated Discussion

Essentially two issues were discussed throughout this section of the agenda:

- I. DO we keep the B-MAG together in a plenary group form or do we split up into working groups to develop recommendations to the B-MAG?

For reference the seven working groups proposed were:

- a. Writing Team (5 people) Adam, Dr. Jaffe and Others
 - b. Public Involvement Issues
 - c. Wastewater Treatment and Land Use Planning
 - d. Point Source Pollution
 - e. NPS Pollution
 - f. Monitoring
 - g. Delivery System Team
2. Does the final product look like a “How To” guide for watershed management planning and protection – to be test driven in a single (or two) watersheds OR does the final product look like a SWOT analysis for each of the major water quality planning and protection issue areas?

A House United or a House Divided?

After much discussion it was decided that the plenary group would stay together as long as it was practicable – and certainly through the November 24 meeting. Generally, it was felt that we could accomplish a great deal in this forum in the existing timeline. Many are concerned by the “rush” of a January termination to the process.

There was sentiment expressed that we might have wiggle room for an additional gathering in early February – before the legislative season heated up.

Note from the facilitator: with that in mind, it would be very wise for people to hold February 9, 2003 as a last date for gathering the B-MAG.

The Final Product

Two Tracks for Development were offered:

Track One

- Inventory of State Programs – Developed and Presented by IEPA, IDNR and Ag (November)
- Subcommittee watershed selection group presents (November)
- SWOT analysis – entirety of the B-MAG (December)
- Fundamental Components of a watershed plan (December)
- Integration of various state programs (January)

Track Two

- Sequentially perform a SWOT analysis using the issue areas defined above (as working groups but in plenary form)

Regardless, the SWOT analysis would:

- Evaluate how good of a job all programs are doing currently;
- Be a compass for identifying the B-MAG’s ultimate direction and as a leverage point for implementation

A motion was made to pursue the SWOT concept and look to IEPA for primary focus of ideas and that we do that in the group as it is now. No dissention. It was further noted that the SWOT analysis should apply to critical issues and with regard to ALL state agencies. The first

cut at the inventory should move out of Springfield as soon as possible. That inventory should address their thinking on gaps and overlaps. Lots of learning by the group as a whole is needed.

Action Items:

Ms. Willhite offered to inventory IEPA programs related to clean water protection, what they are intended to do, what the situation is now (what's achieved), How IEPA thinks things can be improved and how it fits into a watershed prospective. IEPA will NOT provide cost assessments at this time (too labor intensive). Other state agencies to join in.

Independently, the group decided that Mr. Saslow should develop a template for a SWOT analysis – by issue area. At that time and once distributed, the B-MAG membership would complete a “gut reaction” SWOT to what is working and what is not.

It was decided that the FPA program was one part of this effort.

General Discussion: There was general discussion on whether or not to hear the report of the Watershed Selection Subcommittee. Though preferences were all over the map, it was decided to let the subcommittee take 15 minutes to present their work.

SELECTING THE WATERSHED FOR THE PILOT PROJECT

Alec Messina, Heather Hampton Knodle, Cindy Skrukud and Marcia Willhite

Cindy S. read the report as submitted and forwarded to the B-MAG. The Subcommittee agreed to recommend a selection on the basis of the 33 watershed basin map.

Q: Can we accomplish this on such a large watershed scale?

A: Ms. Willhite responded that it was dependent upon the level of planning being done.

Q: What was the thinking between selecting at the 33 and 52 levels?

A: IEPA resources available (screen). Ms. Willhite offered that it struck a balance between most useful and most economical. The Work group felt the agency was in a better position to state what it could accomplish. The further and smaller you get, the more specific you will get with your plan. The larger the area, the more chance there is to develop a plan that works throughout the state. Monitoring is on the larger scale. Amy offered to get size information

from other states. Blackberry Creek is a good “small” demonstration. Size issue is more important than the place. A participant noted that density issues will play a role in the decision. Is there another breakdown between 52 and 1,890?

Mr. Saslow offered to call the question of selecting a basin size. There was sufficient diversity of opinion that the question was not resolved at that time.

The committee was thanked for their efforts and asked to keep their work for a later discussion.

THE ROAD MAP AHEAD

Three Elements

1. Work state agencies will be doing.
2. Thoughts on what the B-MAG would pilot
3. Adam develops a template to frame your thoughts on SWOT. Committee members share thoughts concerning strengths and weaknesses – get them to Adam by 10/31. Adam will forward to B-MAG; B-MAG needs to get information back by 11/17.

NEXT STEPS AND ADJOURN

Next Meeting (**NOTE THAT THE VENUE HAS CHANGED!**):

- Where: Kane County Government Center (Geneva) – Building A (ground floor auditorium) Sam and Adam will send maps.
- When: November 24th from 10:00 a.m. to 6:00 p.m.
- How: Walking distance from the train station.
- Note: The last train out of Geneva is around 6:37 p.m.

Additional Note:

Those who wish to meet for dinner on Sunday night should contact Adam and coordinate. For those staying overnight, Adam was able to get a \$59 rate at the Springhill Suites in Warrenville.

The meeting was adjourned at 5:25 PM.

APPENDIX I

“CODE OF CONDUCT” FOR THE B-MAG STAKEHOLDER DIALOGUE

All Participants in this dialogue agree to:

- Cooperate with each other, and assist the Facilitator by participating fully in the process.
- Communicate and negotiate in a civil and respectful manner. Disagree without being disagreeable. Personal attacks are never compelling.
- Assist each other by not interrupting, making comments, or being disruptive while someone else is speaking. Minimize the “sidebars” please!
- Listen carefully to each other... and to yourself. Process the words... refine thinking when necessary.
- Keep all statements and discussions focused, on point and concise.
- Focus on issues and interests (yours *and* theirs), rather than positions. Propose solutions that include consideration of others’ interests.
- Be specific in identifying the problems, what you believe are the root causes of those problems, and your proposed solutions.
- Stretch your mind... feel free to propose any creative, workable solution you think might help in resolving this dispute. “Mistakes” are the seeds of brilliance.
- While we will always strive for 100% unanimity, the dialogue will be permitted to progress with all goals, strategies and recommendations intact just so long as no more than 3 persons disagree. Abstaining from a vote is never permitted.
- Substitutions are permitted in the event that a B-MAG participant is unable to attend. They must be prepared in advance by the B-MAG participant and, to the extent possible, the facilitator. If a substitute is not present, that participant may provide another B-MAG member with his/her proxy provided that the facilitator and the B-MAG is aware in advance. No B-MAG participant may hold more than one proxy.
- The media is welcome to attend the meetings. Media questions regarding process should be directed to Mr. Saslow. If participants choose to respond to media inquiries they should make it clear that their commentary reflects personal opinion and in no way reflects the opinions of the group. Please be careful.
- Be mindful of how important it is to your peers that you reach a durable resolution. Remember that your contribution to this process will be recognized, honored and appreciated by the citizens of IL for a very long time.

APPENDIX II

Connie Tonsor's Notes

Jurisdiction means many things to many people and can be viewed as a tool within which one may act and a limitation on the ability to act. Jurisdiction to a governmental agency means the ability given the agency by the general assembly to act. Therefore, the handout of authorities is critical. A background of why we did what we did is also important and how our authorities developed is also helpful.

➤ Bubbly Creek

Bubbly Creek for a non-Illinoisan's information was an open-air, anaerobic digester for Union Stockyard and featured in Upton Sinclair's *The Jungle*. (I plan on putting a canoe on Bubbly Creek this Sunday weather permitting.) I may read a brief excerpt from it. Four years ago the Northern Municipal Permit Manager asked me whether Bubbly Creek was general use water, i.e. usable for fishing and swimming; or secondary contact water. Different water quality standards apply to general use waters as opposed to secondary contact waters.

The original goals of the CWA were to address in an immediate fashion the Bubbly Creeks and to stop the discharge of untreated waste into the rivers and streams of the country. One of the ways of doing so was the grant program that gave to waste management facilities construction grants to build sewage treatment plants. As a part of being good stewards of the federal funds, the USEPA wanted to ensure that it did not give grants to multiple agencies to provide waste treatment and that those entities which received grant funding utilized it in a fashion to provide the most efficient waste water treatment. Another basic way of doing this was to address point source discharges through the NPDES permit and regulatory program.

The mere fact that Al Keller asked this question very sincerely in the permitting process is a demonstration of how well the original CWA issues were addressed.

The basic regulatory and statutory framework of the Agency and CWA in planning developed to meet the needs of good steward of federal and state monies and to address in an immediate fashion the direct discharge situations.

- The Agency has the ability to engage in the planning process and the obligation to engage in the planning process. However, neither the CWA nor the Illinois EP Act equates the planning process with facility boundary areas. In the early 1980s the Agency

decided to utilize the FPA process to create territories for purposes of utilizing well the federal grant funding and in order to give those areas meaning as a matter of policy decided not to permit the construction of a sewer that crossed boundary lines.

- Implicit in Alec's e-mail was the concern that the limitation aspect of jurisdiction would be abandoned to reach the goal of using the available tools to complete Basin planning rather than territorial (facility planning). I believe that it is important that people know what the Agency's tools are in the planning area as well as what limitations are placed on the ability to act.

This is basically the context to discussing the following:

CURRENT REGULATORY STRUCTURE:
AREAS OF OVERLAPPING JURISDICTION
STATE, LOCAL, FEDERAL

Overview and Introduction

State agencies have the authority given them by the general assembly

How is the Agency's regulatory authority structured

- Agency, implements, investigates, proposes regulations, enforces, permits
- Agency has planning responsibilities, pursuant to Section 303(e)
- Agency has authority over low interest loans
- Board promulgates substantive regulations
- Board can enact regulations specific to a geographic area
- Permitting is a decision made based upon the technical determination that a specific activity is designed and operated such that it will comply with substantive regulations set by the Board/U.S. EPA.
- Agency is delegated authority for issuance of permits. Part of delegation involves: inspection, monitoring, water quality standards development, compliance and enforcement

What is this Jurisdiction concept anyway?

- Areas of overlap
 - *Monitoring*
 - *Planning*
 - *Nonpoint source*
 - *Antidegradation Concepts*

- Areas of non overlap
 - Permitting-NPDES
 - Local land use and planning

- Implementation overlap
 - Basin wide permitting
 - General permit incorporating specific conditions
 - Local land use on types of activities

Purpose of the Illinois Environmental Protection Act: **“to restore, maintain and enhance the purity of waters of this State in order to protect health, welfare, property, and the quality of life”**. 415 ILCS 5/11(b)

Purpose of the Clean Water Act (Section 303(c) of the CWA) water quality standards): A water quality standard is defined as the designated use of a water segment and the water quality criteria necessary to support those uses.

A state water quality standard must: **“protect public health or welfare, enhance the quality of water, and serve the purposes of the Clean Water Act.”** 33 USC 1313 (Section 303(c) of the CWA)

The Illinois EPA is the water pollution control agency for the state for all purposes of the Federal Water Pollution Control Act. 415 ILCS 5/4(l). Discharges of pollutants from point sources are prohibited absent an NPDES permit. The Illinois EPA is the state agency charged with the authority to issue NPDES. 415 ILCS 5/ 12(f); 39(b).

Section 319 of the CWA requires States to identify waters that without nonpoint source controls cannot meet water quality standards and submit plans for managing nonpoint source pollution utilizing best management practices. 33 U.S.C. 1329 (Section 319 of the CWA).

The CWA prohibited discharges from point sources into navigable waters, 33 U.S.C. 1311 (Section 301 of the CWA).

The Illinois EPA has a duty to collect and disseminate information of the quantity and nature of discharges from any contaminant source and conduct such experiments as may be necessary to carry out the purposes of this Act...415 ILCS 5/4(b).

The Illinois EPA has the duty to administer permit and certification programs.

The Illinois EPA shall have the authority, consistent with Section 5(e)...and for purposes of Section 303(e) of the Federal Water Pollution Control Act: “to engage in planning processes and activities and to develop plans in cooperation with units of local government, state agencies and officers, *and other appropriate persons in connection with the jurisdiction or duties of each such unit, agency, officer or person.*

Units of local government have the authority to set land use priorities through zoning, planning and environmental controls.

Section 4(k) and (t) concern the Agency authority in loans. As part of the initial process in loans, the applicant must do a facility plan that shows its 20-year wastewater needs.

The authority of the Agency with regard to non point source, diffuse run off, outside of an impaired stream TMDL, issue would be contained in Section 319 of the CWA and is generally summarized by best management practices types of program. We do not have permitting authority over non point sources and the ability to regulate in a prescriptive fashion diffuse run off, i.e. non point source.

The authority in the Act to administer the best management practices for the non point sources comes from comes from Section 4(l), which designates the Agency as the water pollution agency for the state for all purposes of the FWPCA.

The TMDL over impaired waters is basically a blend of point and non point source. The requirement to develop the TMDL is found in Section 303(d) but the implementation of it and the agency authority to do so comes, I believe from the requirement that TMDLs be incorporated into the continuing planning process of 303(e). The requirement to formulate them is basically in Section 303 (e) of the CWA.

Basin wide planning involves both non-point or diffuses runoff issues and point source (NPDES) issues. The Agency has the authority through the CWA to implement basin management plans. However, I will outline that the local governmental planning process may be utilized such that the ordinances and agreements of a local entity can fold into the point as well as non point source process. All the above sentence means is that if local governmental entities regulate where discharge activities can occur, the Agency has the authority to implement those restrictions. Implementation would be subject to the regulations existing and the ability of any permit holder to engage in a due process review. Local governmental authorities can also establish the local priorities for diffuse run off issues.