

Illinois Program Work Plan for Calendar Years 2014-2016

Agreement Between

Illinois Environmental Protection Agency and Region 5, U.S. Environmental Protection Agency

Pursuant to federal assistance statutes, the Illinois Environmental Protection Agency (Illinois EPA) and Region 5, U.S. Environmental Protection Agency (EPA Region 5) work together to implement authorized, delegated, and/or approved environmental programs within the State of Illinois in a timely, appropriate, and effective manner. Together we establish priorities, negotiate program commitments and work sharing, and evaluate program performance.

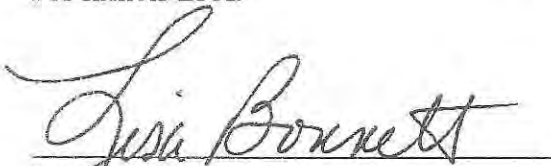
Illinois EPA and EPA Region 5 are replacing the previous Work Plan Agreement as a means to continue our partnership to strengthen Illinois' NPDES permitting for CAFOs and to significantly reduce the Clean Air Act Permit Program permit backlog. The Work Plan for 2014-2016 includes activities and commitments for both Agencies relating to the Clean Water Act National Pollutant Discharge Elimination System (NPDES) and Clean Air Act Title V permitting program.

Illinois EPA and EPA Region 5 will monitor progress under the Work Plan Agreement via existing program-to-program communications, as well as during the annual joint senior management planning meeting. The Work Plan may be adjusted by mutual agreement.

The execution of this Agreement demonstrates our continuing commitment to environmental improvement through a strong partnership and shared responsibility for meeting our regulatory obligations.

Entered into on 9/5/2014.

For Illinois EPA:



Lisa Bonnett, Director
Illinois Environmental Protection Agency

For EPA Region 5:



Susan Hedman
Regional Administrator

Illinois Program Work Plan
For Calendar Years 2014 -2016
Water Programs

In March 2008, the Illinois Citizens for Clean Air & Water (Illinois Citizens) submitted a petition to the U.S. Environmental Protection Agency (U.S. EPA) requesting the withdrawal of Illinois' authorized Clean Water Act National Pollutant Discharge Elimination System (NPDES) program. Illinois Citizens contend that the Illinois Environmental Protection Agency (Illinois EPA) was not properly administering the NPDES program for concentrated animal feeding operations (CAFOs). In February 2009, Illinois Citizens, joined by the Environmental Integrity Project, provided additional information in a supplementary petition to U.S. EPA.

U.S. EPA conducted an informal investigation of the petitioners' allegations and issued a report in September 2010¹. The report discusses U.S. EPA's initial findings for the various program areas, and the actions that Illinois EPA must take to comply with Clean Water Act requirements for authorized state NPDES programs. In particular, Illinois EPA must accomplish the following:

NPDES Permitting for CAFOs

- Issue NPDES permits to CAFOs that are required to be permitted under NPDES regulations.
- Develop and maintain a comprehensive inventory of CAFOs and evaluate their regulatory status.
- Establish technical standards for nutrient management by Large CAFOs and revise title 35 of the Illinois Administrative Code, Subtitle E, as necessary to be consistent with the federal CAFO rules.
- Ensure that sufficient resources are maintained to issue or deny permits.

NPDES Compliance Monitoring and Enforcement for CAFOs

- Revise the inspection process for livestock and poultry facilities to enable Illinois EPA to determine and track whether inspected facilities are CAFOs that are required to have NPDES permits and whether they are in compliance with NPDES requirements.
- Develop standard operating procedures and properly investigate, track, and respond to citizen complaints reporting potential violations of NPDES requirements.
- Take timely and appropriate enforcement action to address noncompliance by CAFOs.

¹ See the "Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois" (Initial Results), available at: <http://www.epa.gov/region5/illinoisworkplan/>.

- Require that Illinois EPA enforcement actions address CAFOs failing to apply for an NPDES permit, where a facility has discharged, is discharging, or is designed, constructed, operated, or maintained such that it will discharge.
- Ensure that sufficient resources are maintained for inspections and enforcement of NPDES requirements for CAFOs.

Progress to date and plan forward

- Since February 2011, Illinois EPA has hired and trained new CAFO staff; made progress on issuing, reinvestigating and tracking CAFO permits; has developed an inventory of large CAFOs; has made progress on conducting and tracking CAFO inspections; has issued violation notices and referred actions to the Illinois Attorney General Office; has submitted proposed amendments to Title 35 of the Illinois Administrative Code to the Illinois Pollution Control Board; has developed and implemented standard operating procedures; and has developed and implemented its Enforcement Response Guidelines related to inspections and enforcement.
- Both Illinois EPA and U.S. EPA agree to extend the Work Plan Agreement through calendar year 2016 to continue the progress to meet the Objectives established in the 2011 and 2013 Work Plan Agreements.

The following are specific actions that Illinois EPA and U.S. EPA will continue to take to address the initial findings in U.S. EPA's report:

1. To ensure consistency with the Clean Water Act requirements, Illinois EPA will devote sufficient staff to implementation of the CAFO NPDES permitting and enforcement programs. At all times, Illinois EPA will ensure that sufficient resources are maintained to issue or deny permits expeditiously.
2. Within 60 days of receipt of U.S. EPA's review of Illinois EPA's final workload assessment, Illinois EPA will submit a revised final workload assessment.
3. Illinois EPA will continue to provide U.S. EPA with a bi-monthly status report on each CAFO permit application. Any future changes to the current version of the status report shall be mutually agreed upon by Illinois EPA and U.S. EPA.
4. Within 90 days following publication of amendments to 35 Ill. Adm. Code, subtitle E, Illinois EPA and U.S. EPA will jointly identify permit conditions that Illinois EPA could modify and practices that Illinois EPA could adopt, consistent with the 2003 and 2008 federal rules for CAFOs, to streamline the process for review of Nutrient Management Plans (NMPs) and incorporation of NMP terms into permits. For any conditions or practices so identified, Illinois EPA will act to modify the conditions or adopt the practices in accordance with a mutually agreed upon schedule.

5. Within 90 days following publication of amendments to 35 Ill. Adm. Code, subtitle E, Illinois EPA will submit to U.S. EPA for approval or approval with modification revisions to the March 2013 Standard Operating Procedure (SOP) for CAFO NPDES Permits so the SOP is consistent with the published amendments.
6. For permit applications submitted prior to March 31, 2011, Illinois EPA will either issue or deny permits to applicants or refer the matter to the Illinois Attorney General's office for formal enforcement or to U.S. EPA for an information collection order by December 31, 2014. For all other permit applicants, Illinois EPA will take action in accordance with its approved SOP for CAFO NPDES Permits
7. Within 90 days after publication of amendments to 35 Ill. Adm. Code, subtitle E, Illinois EPA will inform the owner of each Large CAFO in the State's inventory, in writing, about the unpermitted discharge prohibition and the duty to apply for a permit, and the potential consequences for discharge without a permit. Illinois EPA will provide a draft of the letter to U.S. EPA for review and approval or approval with modification.
8. Within 60 days after the amendatory rulemaking becomes effective, Illinois EPA will submit the final amendments to U.S. EPA for action under 40 C.F.R. §123.62.
9. Within 120 days after the effective date of the amendatory rulemaking, Illinois EPA will revise its permit application forms and formally ask the public to comment on draft modifications to general permit ILA01, as appropriate, based on the amendments and the federal regulations.
10. Illinois EPA will update and submit to U.S. EPA its Large CAFO inventory by August 31 and February 28 each year. By these same dates, Illinois EPA will ensure that the updated inventory is available to all Illinois EPA staff and the public in an easily accessible format. The inventory will include all confirmed Large and permitted CAFO sites identified by Illinois EPA based on information in permit applications, citizen tips and complaints, U.S. EPA, the Illinois Department of Agriculture, and the Illinois Department of Public Health.
11. By October 31, 2014, Illinois EPA will submit a plan to maintain the inventory. The plan will specify how Illinois EPA will maintain the inventory including a process of confirming sizes and whether discharges are occurring at unpermitted large and medium livestock facilities and documenting the determinations. The plan will also include the process to get updates from the Illinois Department of Agriculture and Illinois Department of Public Health. Within 60 days of receipt of U.S. EPA's review of Illinois EPA's plan, Illinois EPA will submit a final plan.
12. Each year between October 1 and September 30, U.S. EPA will conduct 2 oversight inspections of Illinois EPA NPDES CAFO inspections to evaluate the effectiveness of the

Illinois EPA inspection program. U.S. EPA inspectors will document their findings, and evaluate the thoroughness and scope of prior Illinois EPA inspections as well as the appropriateness of the record-keeping and reporting associated with the inspections. U.S. EPA will provide copies of these inspection reports to Illinois EPA within 60 days of completion.

**Illinois Program Work Plan
For Calendar Years 2014 -2016
Clean Air Act Program**

EPA Region V and Illinois EPA agree to this work plan for calendar years 2014 - 2016 (2014 work plan), with the following objectives:

- Significantly reduce the Clean Air Act Permit Program (CAAPP) permit backlog, as identified in the EPA Region V's Title V Operating Permit System (TOPS) database;
- Work toward lifting the stays of initial CAAPP permits issued to the coal-fired power plants;
- Upon rendering each coal-fired power plant initial CAAPP permit effective, work toward issuing CAAPP permit significant revisions for the subject source to address appeal issues and toward the permit reopening process to update the permit to incorporate all applicable CAA requirements.

Objective 1: To reduce permit issuance backlog of CAAPP permit renewals

Approach:

- Illinois EPA will review, propose and issue CAAPP permits following the framework established in the Memorandum of Understanding (MOU) between EPA Region V and Illinois EPA (2014 MOU).
- Illinois EPA management will work with Illinois EPA permit staff, and EPA Region V management (as needed), to identify and address barriers preventing the issuance of CAAPP permits.
- EPA Region V will review draft CAAPP permits and accompanying Statements of Basis and provide comments in accordance with the 2014 MOU.
- For the permits included in Schedule A, attached, Illinois EPA will provide to EPA Region V at the time it provides each proposed permit for EPA Region V's 45-day review² a Responsiveness Summary addressing any U.S. EPA comments and any significant comments from the public on the permit.
- EPA Region V will support Illinois EPA with training and help with permit-specific issues including addressing actual and perceived barriers that could delay permit issuance, and assist with applicability determinations where appropriate. In addition to EPA Region V's database of Title V petitions, orders and other guidance documents, which is accessible by states, EPA Region V's commits to provide on-going assistance as needed.

² Illinois EPA and EPA Region V commit to resolving the issue of the timing of Responsiveness Summaries for significant comments on other permits. However, for purposes of this work plan, Illinois EPA commits to providing Responsiveness Summaries for permits not on Schedule A no later than at the time of permit issuance.

- EPA Region V and Illinois EPA will comply with this 2014 work plan, the 2014 MOU, the October 14, 2009 Memorandum of Agreement, and the May 3, 2011 Memorandum of Agreement. In cases where any enumerated document is inconsistent with this 2014 work plan, this 2014 work plan supersedes the inconsistent document.

Indicia of Progress: The following table summarizes Illinois EPA's and EPA Region V's permitting goals for calendar years 2014 - 2016 for the current CAAPP permit backlog.³ Illinois EPA will track its progress in meeting these goals. Illinois EPA will track its progress in meeting these goals on a monthly basis. Illinois EPA will timely process pending applications received after January 1, 2014, while achieving these goals.

CAAPP permit backlog table

| Date | Backlog as reported in TOPS |
|-------------------|------------------------------------|
| June 30, 2014 | 380 |
| December 31, 2014 | 326 |
| June 30, 2015 | 254 |
| December 31, 2015 | 188 |
| June 30, 2016 | 116 |
| December 31, 2016 | 52 |

Objective 2: To issue effective CAAPP permits to coal-fired power plants.

Approach:

- Illinois EPA will work toward lifting the stays of the remaining initial CAAPP permits for coal-fired power plants following the approach agreed to by EPA Region V and Illinois EPA for the Ameren-Coffeen Generating Station permit as documented in the September 25, 2012 letter from the Illinois EPA to U.S. EPA.
- Upon rendering each initial permit effective, Illinois EPA will prioritize CAAPP permit significant revisions for the subject source to address appeal issues, and shall reopen the CAAPP permit in accordance with Schedule A, attached, to incorporate all CAA requirements that have become applicable to the individual source since 2005.
- Illinois EPA will comply with the attached Schedule A for issuing final effective and updated CAAPP permits to the remaining coal-fired power plants.

Indicia of Progress: A CAAPP permit that contains all requirements applicable to the source is issued for each of the remaining coal-fired power plants within the timeframes specified in Schedule A. Timeframes between case milestones are tracked to monitor progress. Barriers to complying with the permit processing schedule are timely communicated to U.S. EPA.

³ For purposes of this work plan, the backlog shall be defined as extended plus expired permits from the TOPS semiannual report.

Schedule A

| | | | | |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|
| Company Name: | CWLP | Coffeen | Kincaid, NRG Energy, SIPCO, Dynegy, Illinois Power ⁴ | |
| Number of Permits: | 1 | 1 | 6 ⁵ | 8 ⁶ |
| Issue Appealed CAAPP Permits By: ⁷ | 10/18/2013 | 10/17/2013 | 04/01/2015 or 07/01/2015 ⁸ | 06/30/2015 or 09/30/2015 ⁸ |
| Issue Reopened Permits By: ⁹ | 12/31/2014 or 03/31/2015 ⁸ | 06/30/2015 or 09/30/2015 ⁸ | 04/01/2016 or 07/01/2016 ⁸ | 06/30/2016 or 09/30/2016 ⁸ |

⁴ Includes the following fourteen utilities: Enviropower – Kincaid; Midwest Generation (NRG) – Powerton; Midwest Generation (NRG) – Will County; Midwest Generation (NRG) – Joliet; Midwest Generation (NRG) – Waukegan; and Southern Illinois Power. Includes: Ameren (Illinois Power) - Duck Creek; Ameren (Illinois Power) – Edwards; Ameren (Illinois Power) – Newton; Ameren (Illinois Power) - Electric Energy; Dynegy - Wood River; Dynegy – Baldwin; Dynegy – Havana; and Dynegy - Hennepin.

⁵ Any six (6) of the utilities listed in footnote ⁴.

⁶ The remaining eight (8) utilities listed in footnote ⁴ for which initial permits have not yet been made effective and for which had not yet undergone significant modification.

⁷ Permit modification addresses resolution of all issues appealed to Illinois Pollution Control Board.

⁸ Later date applies if a public hearing is held. If EPA Region V agrees circumstances beyond the control of the Illinois EPA occurred that would necessitate an extended issuance date, such extended issuance date shall not exceed 12/31/2016.

⁹ Permit reopening incorporates all requirements that have become applicable to source since 2005.