

Illinois Program Work Plan

Agreement Between

Illinois EPA and Region 5, U.S. EPA

The Illinois EPA and Region 5, U.S. EPA work together to implement federally authorized, delegated and/or approved environmental programs within Illinois in a timely, appropriate and effective manner. We establish priorities, negotiate program commitments and work sharing, and evaluate program performance.

Illinois EPA and Region 5 are executing this Agreement as a means to strengthen Illinois' implementation of several federally authorized, delegated and/or approved environmental programs. This work plan contains activities and commitments for both Agencies relating to the Clean Water Act NPDES and Clean Air Act Title V permitting and enforcement programs; the work plan generally spans federal fiscal year (FFY) 2011 and 2012. In the event of a conflict between this work plan and the November 1, 2010, Memorandum of Agreement (MOA) between the U.S. EPA and the Illinois EPA, this document supersedes the MOA.

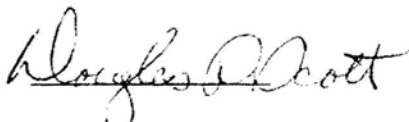
Illinois EPA and Region 5 will monitor progress under this Agreement via existing program to program communications, as well as during our annual joint senior management planning meeting. Work plan elements may be adjusted by mutual agreement. As part of our joint planning for FFY13, Illinois EPA and Region 5 will formally assess the need to negotiate a revised Agreement and work plan for these program areas.

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 2/24/11.

For Illinois EPA:

For Region 5, U.S. EPA



Douglas P. Scott

Director



Susan Hedman

Regional Administrator

**Illinois Program Work Plan
February 2011
Water Programs**

In March 2008, the Illinois Citizens for Clean Air & Water (Illinois Citizens) submitted a petition for withdrawal of Illinois' authorized National Pollutant Discharge Elimination System (NPDES) program. Illinois Citizens contend that the Illinois Environmental Protection Agency (Illinois EPA) is 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 the U.S. Environmental Protection Agency (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.

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://epa.gov/region5/illinoiscafo>.

- Take timely and appropriate enforcement action to address noncompliance by CAFOs.
- 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.

The following outlines the specific actions that Illinois EPA will take to address the initial findings in U.S. EPA's report. Actions that U.S. EPA will take to assist Illinois EPA are provided below as well.

NPDES Permitting for Concentrated Animal Feeding Operations

Objective 1: All Large CAFOs that discharge or propose to discharge possess NPDES permits. This objective addresses U.S. EPA's CAFO program review findings related to issuance of NPDES permits to CAFOs as required under the NPDES regulations². It also addresses U.S. EPA's finding related to resources for the CAFO NPDES program³.

Approach:

1. By February 2011, Illinois EPA CAFO permit managers will confer with all Region 5 States, including Minnesota and Michigan, to learn about the systems and staffing those States employ to authorize CAFOs under general permits.
2. Illinois EPA has posted job announcements for three new field positions and three new permit positions to work full time on the NPDES CAFO program. Illinois EPA will use best efforts to fill the positions by August 2011. By August 2011, Illinois EPA will provide a preliminary workload assessment to U.S. EPA. The assessment will identify the number of full-time employees required to implement an effective CAFO permitting, compliance evaluation, and enforcement program for a range of estimates of the regulated universe. Illinois EPA will provide the draft assessment to U.S. EPA for review. Illinois EPA will prepare a final workload assessment in conjunction with production of the statewide CAFO inventory discussed below⁴. The final assessment will identify staff distribution by function and geographic area of responsibility.

² See the *Initial Results*, Section VI. 1, page 35.

³ See the *Initial Results*, Section VI. 6, page 40.

⁴ Compliance Monitoring and Enforcement Objective 1, approach 1.b.

3. Newly-hired Illinois EPA CAFO permit writers will complete the NPDES Permit Writers' Course and the Nutrient Management Plan (NMP) Training for Federal and State Permit Writers, Inspectors, and Technical Assistance Providers within six months after their start date. Existing permit writers will complete the NMP Training within 30 days after it becomes available on-line. By March 2011, U.S. EPA will train existing permit writers on the Clean Water Act and federal regulations prohibiting unpermitted discharges and requiring CAFOs that discharge or propose to discharge to apply for a permit. U.S. EPA will train newly-hired permit writers within six months after their start date.

4. Illinois EPA established a schedule for making a completeness determination and taking preliminary and final action on all permit applications that were pending as of November 30, 2010. In January 2011, Illinois EPA provided a draft of the schedule to U.S. EPA for approval or approval with modification. Subsequent to the approval, Illinois EPA will provide a monthly status report on each application to U.S. EPA. The frequency of such reports may be adjusted after the initial six months by mutual agreement.

5. Illinois EPA will establish a standard operating procedure, with timelines, for making a completeness determination and taking preliminary and final action on permit applications received on and after December 1, 2010. The SOP will provide for final action not more than 180 days after receipt of an application. Under the SOP, Illinois EPA will respond to all incomplete applications with a notice of incompleteness (NOI) delineating the deficiencies in the application and requiring a response within 30 days. Illinois EPA will copy U.S. EPA on all NOIs. The SOP will provide that Illinois EPA will issue a violation notice (VN) under section 31 of the Illinois Environmental Protection Act or request U.S. EPA to issue an information collection order under section 308 of the Clean Water Act for any applicant who has not responded or when Illinois EPA finds that the application is still incomplete after issuance of the NOI. By February 2011, Illinois EPA will provide a draft of the SOP to U.S. EPA for review and approval or approval with modification.

6. By August 2011, Illinois EPA will report on the outcome of a re-investigation of the 45 cases in which Illinois EPA determined that an applicant did not require a permit. The report will include conclusions and, as appropriate, recommendations for further action.

7. U.S. EPA will issue information collection orders to CAFOs that have submitted incomplete applications to Illinois EPA and are not subject to federal enforcement. Illinois EPA will refer such CAFOs to U.S. EPA within 30 days after the deadline Illinois EPA sets in a NOI letter or VN to the applicant. U.S. EPA will issue the information collection orders within 60 days after receipt of a complete referral from Illinois EPA.

8. Within 60 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 NMPs and incorporation of NMP terms into permits. Such methods include, but are not limited to, use of Manure Management Planner or other nutrient management planning software. For any conditions or practices so identified, Illinois EPA will act to modify the conditions or adopt the practices in accordance with the schedule set in Objective 2, approach 7, of this section. Illinois EPA may request support for implementation of the streamlining actions.

Indicia of Progress: For applications submitted prior to March 31, 2011, Illinois EPA completes the following by June 30, 2011: issue permits to the applicants, post draft permits or notices of coverage for public comment, or refer the CAFO to the Illinois Attorney General's office for formal enforcement or U.S. EPA for an information collection order. For other applicants, Illinois EPA takes final action as detailed in the SOP contemplated in Approach 5 in this section.

Objective 2: U.S. EPA approves amendments to 35 Ill. Adm. Code, subtitle E, which (1) reflect the 2003 and 2008 revisions to the federal regulations for CAFOs and (2) require the owners or operators of all Large CAFOs to register with Illinois EPA. This objective addresses U.S. EPA's CAFO program review findings related to administrative rules for CAFOs as well as technical standards for nutrient management by Large CAFOs⁵.

Approach:

1. Illinois EPA provided draft amendments to 35 Ill. Adm. Code, subtitle E, to U.S. EPA for review on December 1, 2010. U.S. EPA provided comments and recommendations on January 14, 2011. Illinois EPA will revise the draft to resolve U.S. EPA's comments and provide the revised draft to U.S. EPA by April 15, 2011. U.S. EPA will provide any remaining comments and recommendations within 15 days of receipt.

2. Within 90 days after receipt of U.S. EPA's comments and recommendations on the revised draft, Illinois EPA will resolve U.S. EPA's comments and file the amendments as a proposed amendatory rulemaking with the Illinois Pollution Control Board. Illinois EPA and U.S. EPA program managers will elevate issues to agency water directors or higher as may be required to resolve U.S. EPA's comments within the 90-day period contemplated here.

⁵ See the *Initial Results*, Section VI. 7, page 41.

3. As appropriate given the content of the draft amendments and other considerations, U.S. EPA will recommend that the Board propose the amendments for the purpose of requesting public comment.
4. If Illinois EPA requests, U.S. EPA will provide support to Illinois EPA as the Board considers the amendments.
5. Within 30 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 duty to apply for a permit and the potential consequences for failing to apply. Illinois EPA will provide a draft of the letter to U.S. EPA for review and approval or approval with modification.
6. Within 45 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.
7. 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.

Indicia of Progress: U.S. EPA finds the amended rules to be consistent with federal regulations. Illinois EPA implements the amended rules upon becoming effective. U.S. EPA acts on the amendments within 90 days of receipt.

NPDES Compliance Monitoring and Enforcement for CAFOs

Objective 1: To detect, report, and sufficiently document all violations in order to support enforcement of the federal regulations. This objective addresses U.S. EPA's CAFO program review findings related to developing and maintaining a comprehensive inventory of CAFOs and evaluating their regulatory status, revising the inspection processes to determine and track CAFOs requiring NPDES permits, and developing and implementing SOPs for responding to CAFO-related citizen complaints⁶.

Approach:

1. Illinois EPA will implement a short-term strategy for evaluating facilities that are likely to be Large CAFOs. The strategy includes the following:
 - a. The creation of an interim NPDES inspection list of 25 likely Large CAFOs using existing lists of known and potential CAFO sites developed by Illinois EPA regional offices,

⁶ See the *Initial Results*, Section VI. 2, pages 36-38.

permit applications, citizen tips and complaints, and information from U.S. EPA, the Illinois Department of Agriculture, and the Illinois Emergency Management Agency. Illinois EPA will provide the list to U.S. EPA, including location data, no later than February 28, 2011.

b. By February 28, 2011, Illinois EPA will develop a plan to create and maintain a comprehensive inventory of Large CAFOs. Under the plan, Illinois EPA will seek commitments whereby the Illinois Department of Agriculture and Illinois Department of Public Health will routinely provide information about potential Large CAFOs to Illinois EPA. Illinois EPA will enter and maintain the inventory in the Integrated Compliance Information System (ICIS). The inventory will include potential CAFO sites identified by Illinois EPA regional offices, permit applications, citizen tips and complaints, U.S. EPA, the Illinois Department of Agriculture, the Illinois Department of Public Health, and the Illinois Emergency Management Agency. The plan may make use of a Geographic Information System-based pilot inventory currently being developed for seven high profile counties. Illinois EPA will provide the plan to U.S. EPA for review and approval or approval with modification.

c. Illinois EPA will develop a CAFO NPDES inspection/evaluation standard operating procedure by February 28, 2011. The SOP will enable the inspector to determine whether CAFOs discharge or propose to discharge. The SOP should include pre-inspection preparation, access procedures, site visit conduct, and inspection timing, sampling, and post inspection procedures including report timing, format, and content (including discharge documentation). Illinois EPA will provide the SOP to U.S. EPA for review and approval or approval with modification.

d. Illinois EPA will organize an initial training for all of its field inspectors and office enforcement staff so they can effectively evaluate CAFOs that are on the interim NPDES inspection list. In January 2011, Illinois EPA provided a proposed agenda to U.S. EPA for approval or approval with modifications. U.S. EPA will review training materials. Training will cover the approved SOP identified above in Paragraph 1(c) and will include pre-inspection preparation, inspection conduct, post-inspection follow-up and documentation, review of compliance data (i.e., overflow reports, discharge monitoring reports, Single Event Violations (SEVs), wet weather significant noncompliance (SNC) determinations, and complaints), new violation processing procedures instituted under this program work plan, and identification of new facilities/discharges. By March 2011, U.S. EPA and Illinois EPA compliance and enforcement staff will conduct this training. The Illinois Attorney General's office staff will be invited to participate.

e. Illinois EPA will perform 25 initial NPDES evaluations by June 1, 2011, to determine whether the facilities discharge or propose to discharge, including during wet weather. Illinois EPA will perform an additional 25 NPDES evaluations by June 1, 2012.

f. At its existing Compliance Group monthly meetings, Illinois EPA will review the findings and documentation of all NPDES evaluations for: a determination as to whether the facility meets the definition of a CAFO, areas of non-compliance, wet weather SNC determinations, violations detected, documentary evidence, and recommendations for correcting

the violations. Beginning in May 2011, Illinois EPA and U.S. EPA will confer monthly to review the findings and documentation of all CAFO noncompliance cases beginning with those initiated in 2009.

2. By June 1, 2011, Illinois EPA will develop and provide to U.S. EPA a long-term CAFO NPDES training curriculum for all staff conducting CAFO NPDES inspections. The curriculum will be completed by all existing CAFO inspectors and their first-line supervisors by August 2011. New staff will complete the curriculum within six months of their start date, and prior to conducting inspections independently. The curriculum will cover all State and federal Clean Water Act-related matters, including CAFO inspector training requirements specified in U.S. EPA internal order 3500.1.

3. By June 2011, Illinois EPA will develop a citizen complaint SOP and database for facilities that are potential CAFOs. The SOP will provide for a written report on investigation results to the complainant. The database will include a field recording the response to the complaint. The SOP will also provide instruction for ensuring 24-hour spill/release response capability which includes on-site presence of an NPDES trained inspector, sampling capability, and equipment to ensure that spills/releases from facilities are documented and assessed to determine if the facilities are CAFOs and require NPDES permits. The SOP will describe laboratory capabilities and services necessary to complete data analysis within prescribed holding times for pollutants of concern. The SOP must specifically address maintenance of those capabilities for those events which occur at night, on weekends, and on holidays.

4. Illinois EPA will develop an annual site-specific CAFO inspection plan which ensures NPDES inspection at a minimum of 20 percent of all permitted CAFOs, consistent with U.S. EPA's National NPDES Compliance Monitoring Strategy. Illinois EPA will provide the plan to U.S. EPA by September 1 of each year for approval.

5. During federal fiscal year 2011, U.S. EPA will conduct oversight inspections of a minimum of five 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. U.S. EPA will also conduct independent inspections at additional CAFOs with suspected wet weather discharges. U.S. EPA will invite Illinois EPA participation. U.S. EPA will initiate any appropriate follow-up enforcement consistent with existing State/U.S. EPA enforcement communication agreements and the Environmental Performance Partnership Agreement.

Indicia of Progress: Illinois EPA creates and maintains in ICIS a consolidated inventory of Large CAFOs. The inventory is easily accessible to all Illinois EPA staff and the public. Illinois EPA conducts NPDES evaluations at 25 potential Large CAFOs by June 1, 2011, and a total of 50 by June 1, 2012, consistent with approved SOPs. Illinois EPA implements approved annual inspection plans for permitted CAFOs consistent with the National Compliance Monitoring Strategy. Illinois EPA implements a satisfactory training program for inspectors. Illinois EPA responds to all citizen complaints and emergency CAFO-related discharges in a timely manner. Illinois EPA identifies and records 100 percent of Single Event Violations and all wet weather Significant Non-Compliance (SNC) in ICIS.

Objective 2: To properly track and efficiently resolve newly-identified violations. This objective focuses on newly-identified violators and addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs and the requirement that all CAFOs that discharge or propose to discharge must apply for an NPDES permit.⁷

Approach:

1. Illinois EPA's Bureau of Water will revise its Enforcement Response Guide (ERG) in a manner designed to assure timely and appropriate response to violations detected at CAFOs and ensure a prompt return to compliance⁸. Illinois EPA will submit the revised ERG to U.S. EPA by February 28, 2011. The ERG will require all Large CAFOs to apply for and obtain an NPDES permit where the CAFOs discharge or propose to discharge. The ERG will require all Medium livestock and poultry facilities to apply for and obtain a permit where the facility meets the definition of a CAFO. In addition, the ERG will reflect the wet weather SNC policy in the determination of SNC as well as the appropriate enforcement response. Illinois EPA will submit the ERG to U.S. EPA for review and approval or approval with modifications. Illinois EPA will fully adopt and implement the ERG within 30 days of U.S. EPA approval or approval with modifications. All staff working on livestock and poultry issues will be trained and the revised ERG will be implemented by May 31, 2011.

2. By May 1, 2011, Illinois EPA will issue violation notices (VNs) for all significant noncompliance detected at CAFOs, within 180 days of Illinois EPA becoming aware of the alleged violation, pursuant to Section 31(a) of the Illinois Environmental Protection Act (Act). The VN will contain a recommended remedy and schedule for implementation as appropriate. Compliance Commitment Agreements (CCAs) will be accepted when they bind the respondent to the requirements and timeframes recommended in the VNs. If Illinois EPA is unable to

⁷ See the *Initial Results*, Section VI. 3, pages 38-39.

⁸ The ERG should include systems and procedures which assure timely and appropriate response to violations detected at other sources as well.

negotiate an acceptable CCA within 120 days of issuing the VN, Illinois EPA will refer the matter to the Illinois Attorney General's office. For conditions that constitute an imminent or substantial endangerment to human health, the environment or property, Illinois EPA will immediately refer the matter to the Illinois Attorney General's office pursuant to Section 43 of the Act.

3. In cases where the facility does not respond to the VN or proposes a remedy that is less effective than the remedy proposed by Illinois EPA, Illinois EPA will immediately complete the necessary actions under Section 31 to allow Illinois EPA to formally refer the matter to the Illinois Attorney General's office or the State's Attorney of the county in which the alleged violation occurred. Simultaneously, Illinois EPA will refer the case to its existing Enforcement Decision Group for pre-referral consideration of the case.

Indicia of Progress: Illinois EPA consistently follows the approved ERG. All CCAs are finalized within 120 days of the VN. No State-lead enforcement cases result in U.S. EPA taking additional action to resolve the same violations.

Objective 3: To assure that unresolved enforcement matters are properly tracked and efficiently resolved. This objective focuses on existing matters and addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs⁹.

Approach:

1. Beginning with the first quarter of calendar year 2011, Illinois EPA program and legal managers, Illinois Attorney General's Environmental Division managers, and U.S. EPA program and legal managers will conduct a quarterly docket review of all referred CAFO matters and all open federal enforcement cases. Participants will agree on the lead agency, path to resolution (including target dates), appropriate penalty resolution, and desired results. Illinois EPA will document decisions.

2. By July 2011, U.S. EPA legal staff and management will meet with the Illinois Attorney General's office and Illinois EPA's legal staff and management to discuss legal issues and strategy with respect to CAFO litigation and enforcement, including U.S. EPA penalty policies.

3. Illinois EPA will provide a report by no later than the 15th of each month to the U.S. EPA Water Enforcement Branch Chief. The report will reflect the activities completed during the preceding month. The reports will include the following:

⁹ See the *Initial Results*, Section VI. 3, pages 38-39.

- a list and electronic copy of the report for each facility evaluated under Objective 1, approach 1(e), to determine whether the facility is subject to NPDES permitting requirements;
- results of the Compliance Group's determinations under Objective 1, approach 1(f);
- a list of all potential CAFO-related citizen complaints/spills/releases received in the preceding month under Objective 1, approach 3, and the disposition of the cases;
- a list of potential CAFO facilities evaluated by the Enforcement Decision Group and a description of actions taken with regard to those facilities, including copies of any referrals to the Illinois Attorney General's office or written compliance determinations; and
- a list of all potential CAFO NPDES enforcement matters referred to the Illinois Attorney General's office or that are before the Illinois Pollution Control Board and a written summary of the status of the cases.

The frequency of reports may be adjusted after the initial six months by mutual agreement by Illinois EPA and U.S. EPA.

Indicia of Progress: All pending matters meet agreed-upon schedules for action and resolution. Decisions affecting case progress are made expeditiously, and barriers are removed. Newly-referred matters placed on the docket progress appropriately. Monthly reports are submitted timely and contain all required information.

Illinois Program Work Plan

February 2011

CAA Title V Permitting

The Illinois Environmental Protection Agency (Illinois EPA) implements the requirements of Title V of the Clean Air Act via its Clean Air Act Permit Program (CAAPP), which was approved by U.S. EPA on December 4, 2001 (66 Fed. Reg. 62946). Through regular program interactions, our annual planning process, and periodic program reviews, U.S. EPA and Illinois EPA discuss program progress and implementation barriers. On September 30, 2010, U.S. EPA provided Illinois EPA a Title V program review report which raised several concerns, most notably with the Illinois EPA's permit issuance rates. On January 18, 2011, Illinois EPA issued a response to the report. Since then, Illinois EPA and U.S. EPA have developed this work plan to strengthen the CAAPP, focusing on the following objectives:

- Issue CAAPP permits pursuant to the Clean Air Act and Section 39.5 of the Illinois Environmental Protection Act, 415 ILCS 5/39.5 (Section 39.5) .
- Significantly reduce issuance backlogs of CAAPP permit renewals and federally enforceable state operating permits, as identified in U.S. EPA's Title V Operating Permit System (TOPS) data base (FESOPs).

Both parties have agreed to approaches and commitments designed to address these objectives, as outlined in detail below.

Objective 1: Issue CAAPP permits pursuant to the Clean Air Act and Section 39.5.

In consideration of the entire permitting sequence, from application to drafting and review, Illinois EPA and U.S. EPA have identified the following approaches to support this objective:

Approach:

Effective use of the application completeness process:

1. Illinois EPA will continue to review each incoming CAAPP application to determine whether the application meets technical requirements and all administrative requirements of Section 39.5.

The Illinois EPA will continue to provide an application shield to only those sources for which the application has been deemed complete in accordance with 39.5(5). Illinois EPA will continue to request additional information as necessary during processing of the application.

2. Illinois EPA will continue to evaluate CAAPP application completeness by utilizing the existing completeness checklist, revising it as necessary. The CAAPP application forms require that an application must include a justification for non-applicability determinations and periodic monitoring requests, and that applicants certify that the information provided is complete and correct. Illinois EPA will review the application forms to assess whether they should be revised to make clear that applicants must include proposed methods for monitoring compliance with emissions limitations; the frequency of the proposed measurements; and, if the measurements are indirect (parametric), an explanation of how the measured values relate to actual emissions from the source. By March 31, 2011, Illinois EPA will provide U.S. EPA with the contents of its completeness checklist, highlighting any revisions. By July 1, 2011, U.S. EPA will assess Illinois EPA's completeness review process and will identify areas for improvement, if any. Illinois EPA will implement any agreed-to revisions as soon as practicable.

Effective and efficient permit drafting:

3. An Illinois EPA manager will continue to review all draft permits and statements of basis before they are publicly noticed to ensure that the CAAPP permits and statements of basis include, at a minimum, the following elements required by the CAAPP: all applicable requirements, periodic monitoring sufficient to assure compliance, compliance assurance monitoring where applicable, compliance schedules where appropriate, origin and authority for all permit terms, and practicably enforceable terms.

4. Effective immediately, U.S. EPA will, at a minimum, review and comment on one draft permit and accompanying Statement of Basis per month, if available. Illinois EPA will work with U.S. EPA to address U.S. EPA's comments.

5. U.S. EPA will support Illinois EPA with training and help with permit-specific issues, and assist with applicability determinations where appropriate. In addition to U.S. EPA's data base of Title V petitions, orders and other guidance documents, which is accessible by states, U.S. EPA commits to provide the following on-going assistance:

a. U.S. EPA will provide all recently-issued responses to petitions to object to Title V permits, policy statements and Title V guidance documents once they are publicly available, and will be available at least once a month to discuss how these policies and orders will impact, and should be implemented by, Illinois EPA. U.S. EPA will assist Illinois EPA, as necessary, to search and extract examples of application of guidance. Although many such permit decisions and other documents may be case-specific, U.S. EPA will provide Illinois EPA examples of acceptable periodic monitoring for common emission units. U.S. EPA will provide Illinois EPA with any tools it develops that will aid in the issuance of permits that meet the most up-to-date guidance.

b. As detailed elsewhere in this document, U.S. EPA will provide permit-specific assistance on the development of statements of basis and responses to comments. U.S. EPA will

also assist or conduct, where appropriate, MACT and NSPS applicability reviews and single source determinations. Typically, U.S. EPA will provide these reviews and determinations within 60 days of a request by Illinois EPA.

6. Illinois EPA will continue to offer training to ensure that its permit analysts understand and are equipped to fully implement the requirements of the Clean Air Act, Section 39.5, and U.S. EPA's guidance and policies, as appropriate. This includes the on-going productivity initiative discussed in the April 2010 Title V program review¹⁰, regular CAAPP Unit meetings to discuss recent U.S. EPA comments on draft and proposed permits, applicability determinations, and responses to petitions to object to Title V permits; informal training on topics such as effective permit writing (e.g., periodic monitoring justification, writing techniques, etc.) and permit-specific issues; and formal training that U.S. EPA can provide or help Illinois EPA develop. Illinois EPA will have the Construction Unit manager and appropriate staff also participate when appropriate. U.S. EPA will be available to attend these meetings and answer permit-specific questions in Springfield at least monthly. Additionally, U.S. EPA will interact directly with permit analysts concerning draft permits and Statements of Basis.

Addressing and documenting responses to public comments:

7. By April 2011, U.S. EPA and Illinois EPA will re-open and revise the existing Title V implementation memorandum of understanding (MOU) to provide that Illinois EPA will make available to U.S. EPA its draft response to comments identified by U.S. EPA prior to the start of U.S. EPA's 45-day period to review a proposed permit. U.S. EPA's 45-day review will occur sequentially under this revised process, rather than being concurrent with the public review as per the existing MOU. This provision will not prevent U.S. EPA from waiving any portion of the 45-day review period remaining after it has completed its review. U.S. EPA's 45-day review period will begin when Illinois EPA provides U.S. EPA with the requested draft response to those comments identified by U.S. EPA and a proposed permit revised as necessary to address public comments. If requested by Illinois EPA, U.S. EPA will assist Illinois EPA in addressing comments prior to the start of the 45-day review period. Illinois EPA will continue to respond to all significant comments in the process of issuing CAAPP permits.

Indicia of Progress: U.S. EPA will see more thorough documentation of decision-making (e.g., Statements of Basis, Responses to Comments), resulting in fewer objections on this basis.

¹⁰ See September 30, 2010 program evaluation report, page 16

Objective 2: Significantly reduce permit issuance backlogs of CAAPP renewals and FESOPs.

Illinois EPA and U.S. EPA agree that there is a large backlog of applications that Illinois EPA must process. Illinois EPA and U.S. EPA have identified the following approaches to reduce this backlog:

Approach:

1. As soon as practicable, but no later than July 1, 2011, Illinois EPA will temporarily assign two to five additional FTE to process CAAPP permit applications, to help replace staff reductions that have occurred over the past several years.
2. Illinois EPA senior management will continue to reinforce to staff, in writing, that issuing CAAPP operating permits is a high priority. Illinois EPA senior management will take every opportunity to identify issuance of CAAPP permits as a priority, such as through e-mails, staff meetings, presentations, and the identification of priorities in performance objectives.
3. By March 2011, Illinois EPA will clearly lay out for appropriate Illinois EPA staff expectations for CAAPP permit issuance. Illinois EPA senior management will develop and post in the office visual or virtual displays of the targets and expectations along with a measure of Illinois EPA's success in meeting the targets.
4. By June 2011, Illinois EPA will identify and implement a strategy to increase the permit issuance rate of FESOPs.

Indicia of Progress: The following table summarizes Illinois EPA’s and U.S. EPA’s permitting goals for FFY 2011 and 2012 for the current CAAP backlog. Thereafter, Illinois EPA will continue to public notice and issue CAAPP permits from the backlog.

| Date | Cumulative Total of Draft Backlogged Permits Sent to Public Notice | Targeted Cumulative Total of Final Backlogged Permits Issued¹¹ |
|---------------|---|--|
| May 2011 | 6 | |
| November 2011 | 10 | 6 |
| May 2012 | 24 | 10 |
| November 2012 | 48 | 24 |

¹¹ The word “targeted” is used in relation to final permit issuance in recognition that third parties can impact “final” permit issuance and/or effective dates through petitions to object filed with the Administrator and permit appeals filed with the State by permittees.

**Illinois Program Work Plan
February 2011
Air Enforcement**

Illinois EPA and U.S. EPA collectively ensure that facilities comply with applicable provisions of the CAA and associated State laws, permits and requirements. Illinois EPA's implementation of its CAA enforcement program is monitored by U.S. EPA through data input to U.S. EPA's Air Facility System (AFS), regular discussions of ongoing case status, a joint annual planning process, and periodic audits under U.S. EPA's State Review Framework. Through these mechanisms, program progress is tracked, and barriers to further progress are addressed. Illinois EPA and U.S. EPA have agreed through this work plan to work together to strengthen the State's enforcement program, focusing on the following three objectives:

- To detect all federally reportable violations and document them in order to support formal enforcement.
- To track and efficiently resolve newly identified violations.
- To assure that existing, unresolved enforcement matters are tracked and efficiently processed.

Both parties have agreed to approaches and commitments designed to address these objectives, as outlined in detail below.

Objective 1: To detect all federally reportable violations and document them in order to support formal enforcement.

Approach:

1. Illinois EPA will continue to organize training for its field inspectors and office compliance staff. Training will cover pre-inspection preparation, inspection conduct, post-inspection follow-up and documentation, review of compliance data (i.e., stack tests, continuous emission monitoring, continuous opacity monitoring reports, deviation reports). By March 2011, Illinois EPA will provide U.S. EPA a summary of existing and proposed training, including agendas and materials, to be offered to Illinois EPA Bureau of Air (BOA) field inspectors and compliance staff during 2011. U.S. EPA will provide feedback as appropriate. A similar process will occur for any new training program topics. U.S. EPA will review training opportunities and from time to time, but at least quarterly, provide Illinois EPA's BOA Training Coordinator with a list of federally-sponsored training opportunities relevant to field inspections (inspection quality, inspection conduct, post-inspection follow-up, etc.), NSR and PSD compliance, specific source sector compliance, compliance with recent NESHAPs or NSPS, and other federal regulations or

requirements relevant to Illinois EPA's Compliance Monitoring Strategy. U.S. EPA will also share other non-federal training opportunities and materials it finds to be effective.

2. From time to time, U.S. EPA Headquarters develops specific source-sector enforcement initiatives that focus on PSD/NSR noncompliance. U. S. EPA has Section 114 authority that allows it to gather information or documents from the targeted source-sector that may be necessary to assess whether a PSD/NSR violation exists. When Illinois EPA has identified a modification at a source that may be a major modification, and cannot support an enforcement action with information available, Illinois EPA will provide to U.S. EPA the inspection report and any other documentation that may support a PSD/NSR noncompliance inquiry. U. S. EPA will then use its Section 114 authority to gather additional evidence relevant to the PSD/NSR inquiry.

3. Illinois EPA Bureau of Air (BOA) staff has developed a new Compliance Monitoring Report (CMR), which is currently being field-tested, and once perfected, will be used for each BOA inspection. The final CMR will standardize the pre-inspection, inspection, and post-inspection practices, and will include checklists to ensure that the field inspector has identified the necessary elements for each type of inspection (e.g., full compliance evaluation (FCE), partial compliance evaluation (PCE), complaint response, etc.). A draft of the CMR has been field tested on two FCE inspections. The comments on the initial draft of the CMR are currently being reviewed and the initial draft CMR is being revised. By March 15, 2011, the revised draft CMR will be field-tested by one or more inspectors in each regional field office. By April 15, 2011, comments on the draft CMR by the regional field staff involved in the next phase of testing will be received and any necessary changes to the draft CMR will be made. By May 1, 2011, the proposed CMR will be sent to U.S. EPA ARD program and legal managers for review and comment. U.S. EPA will provide comments to Illinois EPA BOA staff on the proposed CMR by June 1, 2011. In July, August and September 2011, Illinois EPA BOA will conduct training on the final CMR to ensure that each field inspector and compliance engineer is familiar with the CMR and its requirements. Beginning October 1, 2011, the CMR will be used for each field inspection.

4. By March 15, 2011, Illinois EPA will compose three (3) regional Meeting in Region (MIR) committees, consisting of Illinois EPA's field staff in that region, and compliance and legal staff assigned to that region, as well as the FOS Section Manager. Each of the committees will consult with their assigned field inspectors on scheduled inspections for the upcoming quarter to review methods of evaluation, applicable regulatory requirements, and necessary documentation specific to that investigation. Post inspection, each of the three regional MIR committees will meet with each of their assigned inspectors to review their findings and documentation, and identify areas of non-compliance and possible remedies.

Indicia of Progress: Documentation supporting violations is sufficient to ultimately resolve most of the violations through negotiation or litigation. The number of cases that the Compliance Decision Group (CDG) (see below) refers back to technical staff due to insufficient information will be tracked to measure progress.

Objective 2: To track and efficiently resolve newly identified violations.

Approach:

1. Illinois EPA will continue to use a Compliance Decision Group (CDG) composed of the BOA Permit Section Manager, the Field Operations Section (FOS) Manager, the Compliance Section Manager and the Manager of the Division of Legal Counsel-Air Enforcement. The CDG will analyze each violation detected during the previous month, detailing supporting evidence, desired corrective action, and expected environmental benefits. The CDG will prioritize ongoing or recurring violations for expedited Violation Notices (VNs), preliminarily identify violations that may require formal resolution, and direct insufficiently supported cases back to the technical staff for follow-up. Decisions will be documented and maintained.
2. Beginning in March 2011, where the appropriate technical remedy is known, the Illinois EPA will issue VNs containing a recommended technical remedy and schedule for implementation. Where the appropriate technical remedy is not known, Illinois EPA will generally describe a remedy(s) believed by Illinois EPA to be applicable to the particular case and a schedule for resolution.
3. Non-responses to VNs or responses without a commitment to a technical remedy that is at least as effective as that proposed by Illinois EPA will be immediately referred to the CDG.
4. The CDG will meet monthly to dispose of matters referred to them. Most matters referred to the CDG following step 3 above where High Priority Violators (HPVs) have been identified will be referred to the Illinois Attorney General's office unless that office declines. If the Attorney General's office declines referral, the CDG can consider other options for resolution. Decisions of the CDG will be documented and maintained.
5. Beginning in March 2011, Illinois EPA legal enforcement staff will utilize its regular calls with the Illinois Attorney General's office to discuss the status of existing active cases, including information needs, affirm agreement on settlement terms and path to resolution, etc., as well as review the backlogged cases for next opportunities and necessary actions.

Indicia of Progress: No extended periods of negotiation for Compliance Commitment Agreements where HPVs have been identified in a VN. Time frames between case milestones

will be tracked to monitor progress. A twenty-five (25%) percent increase in HPV cases referred to the Illinois Attorney General's Office over FFY 2010 levels in both FFY 2011 and FFY 2012.

Objective 3: To assure that existing, unresolved enforcement matters are tracked and efficiently processed.

Approach:

Beginning in March 2011, Illinois EPA BOA program and legal managers and U.S. EPA ARD program and legal managers will conduct a semi-annual review of cases where a HPV has been identified in a VN (prior to referral), or in a referral to the AGO. Participants will review the status of each unresolved, state-initiated, HPV (post VN); agree upon the lead agency, path to resolution (including target dates), and appropriate penalty resolution; and affirm desired results. Decisions will be documented.

Indicia of Progress: All pending matters will be closely monitored through ultimate resolution, decisions affecting case progress will be expeditiously made, and barriers will be identified and a path to address the barrier will be agreed upon.