

LEGISLATIVE AUDIT COMMISSION



Review of
Environmental Protection Agency
Year Ended June 30, 2008

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**REVIEW: 4311
ENVIRONMENTAL PROTECTION AGENCY
TWO YEARS ENDED JUNE 30, 2008**

FINDINGS/RECOMMENDATIONS - 9

**ACCEPTED - 7
IMPLEMENTED - 2**

REPEATED RECOMMENDATIONS - 6

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 6

This review summarizes the financial audit for the year ended June 30, 2008 and the compliance examination for the two years ended June 30, 2008 of the Illinois Environmental Protection Agency, filed with the Legislative Audit Commission March 5, 2009. The auditors conducted a compliance examination and financial audit in accordance with State law and *Government Auditing Standards*. The auditors stated that the financial statements for the Water Revolving Fund are fairly presented.

The mission of the EPA is to safeguard environmental quality, consistent with the social and economic needs of the State, so as to protect health, welfare, property and quality of life. The EPA is organized into three Bureaus: Air, Water, and Land. The Agency has laboratory facilities in Champaign and Springfield. Regional offices are located in Rockford, Des Plaines, Elgin, Elk Grove, Peoria, Springfield, Champaign, Collinsville, and Marion. Activities of the Agency include issuing permits for air, land and water to restrict pollutants into the environment from industrial and commercial sources; regulating pollution control facilities and solid waste disposal sites; testing the quality of water processing procedures for operators of sewage treatment plants and public drinking supplies and testing gasoline vehicles in Chicago and Metro-East ozone non-attainment areas.

Appendix A lists some of the Agency's service efforts and accomplishments. Included are the number of vehicles tested for air pollution control, the number of leaking underground storage tank incidents reported, and the number of wastewater facilities inspected.

Doug Scott was the Director of the Illinois Environmental Protection Agency during the audit period. Director Scott was appointed in July 2005.

The average number of employees during the fiscal years indicated was:

2008 - 1,016; 2007 – 1,112; 2006 – 1,070.

Expenditures From Appropriations

Appendix B presents a summary of appropriations and expenditures for the two-year period under review. The Agency received appropriations from 26 different funds, including the General Revenue Fund. Total expenditures decreased from \$428,584,045 in FY07 to \$403,312,555 in FY08, a decrease of \$25,271,490, or 5.9%.

Examples of significant variations in expenditures from FY07 to FY08 include:

- \$15.4 million decrease in the Water Pollution Control Revolving Fund largely due to the State's inability to provide 20% matching funds;
- \$13.6 million decrease in the Vehicle Inspection Fund due to renegotiated vehicle emissions testing costs with the testing contractor, reduction of approximately 30% of the testable fleet due to legislative action, and technological improvements in vehicle emissions testing;
- \$9.5 million decrease in Build Illinois Bond Fund due to no matching federal grants;
- \$5.8 million increase in the Hazardous Waste Fund due to the start of the cleanup of the Lake Calumet Cluster;
- \$3.2 million increase in the Underground Storage Tank Fund; and
- \$2.9 million increase in the U.S. Environmental Protection Fund.

Lapse period expenditures were almost \$9 million, or 2.2% of FY08 total expenditures.

Cash Receipts

Appearing in Appendix C is a summary of cash receipts of the Agency for FY08, FY07, and FY06. Cash receipts were \$434,014,078 in FY07 compared to \$342,796,183 in FY08, a decrease of \$91 million or 21%. The primary reason for the decrease was \$75.3 million less due to lack of State funds for the required 20% match. Receipts in the Environmental Protection Trust Fund decreased \$2.2 million due to fewer receipts from penalties; and receipts in the Vehicle Inspection Fund from DOT decreased by \$2.4 million because of lower contractor expenses for the vehicle emission testing program.

Accounts Receivable

Appendix D is a summary of the Agency's total accounts receivable which were almost \$1.741 billion at June 30, 2008. Receivables were \$1.679 billion at June 30, 2007. Of the \$1.741 billion in accounts receivable, the vast majority is current. Almost \$22.3 million, or 1.2%, is over 180 days past due, and \$1.717 billion, or 98%, is current.

Property and Equipment

The summary of property and equipment transactions of the Illinois Environmental Protection Agency is limited solely to equipment. The balance increased from

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\$26,662,030 as of June 30, 2007, to \$26,974,305 as of June 30, 2008. Appendix E reflects all Agency property, including amounts falling below the capitalization thresholds set for financial statement reporting purposes.

Accountants' Findings and Recommendations

Condensed below are the nine findings and recommendations presented in the audit report. There were six repeated recommendations. The following recommendations are classified on the basis of updated information provided by Douglas P. Scott, Director, via electronic mail received July 7, 2009.

Accepted or Implemented

- 1. Review current process for the preparation and review of the annual financial statements and allocate the technical resources necessary to ensure a thorough and timely review of the financial statements and disclosures. (Repeated-2007)**

Finding: The Illinois Environmental Protection Agency did not identify errors in the Generally Accepted Accounting Principles (GAAP) Reporting Package or the draft financial statements provided to auditors. The auditors noted the following errors:

- The current portion of restricted loans receivable of \$5.686 million and loans and notes receivable of \$21.830 million were classified as noncurrent receivables.
- Interest income on pledged loans amounting to \$1.493 million was classified as interest income on unpledged loans.

The above errors resulted in a reclassification of \$2.855 million from restricted net assets for debt service to unrestricted net assets.

- Accrued interest receivable on pledged loans receivable and other receivables amounting to \$0.173 million and \$0.177 million, respectively, were overstated.

The Agency subsequently adjusted the financial statements to properly record the above transactions.

Agency management indicated that the total accounts receivable is correct, however, the error was in the manual calculations required to properly classify receivables. Because the Agency's Financial Assistance System requires further manual adjustment to provide proper classification of receivables for financial statement preparation, errors are more likely to occur.

Accepted or Implemented – continued

Updated Response: Accepted. The Illinois EPA has been delayed in implementing the computer system changes needed to eliminate the use of ratios to determine current and long-term portion of restricted and unrestricted accounts receivable due to the time and resources dedicated to developing processes for receipt and expenditure of American Recovery and Reinvestment funding. However, until the computer system is modified, the Illinois EPA will ensure that the ratio utilized in the current year is calculated properly and verified and is accurately reflected on the financial statements.

- 2. Require preparation of bank reconciliations before the end of the following month. In addition, a person independent of the preparer should indicate that the review and approval of the bank reconciliations has occurred monthly to ensure accuracy and timeliness of preparation. Also, consider cross-training of staff for back-up in case of vacation and/or absences.**

Finding: The Agency did not have adequate controls over its bank reconciliation process. In the review of monthly bank reconciliations for 16 bank accounts, auditors noted the following:

- Bank reconciliations for nine months during the examination period were prepared 40 to 88 days from receipt of the bank statements.
- Bank reconciliations did not have evidence of review and approval. The Agency uses an accounting firm under contract to assist in the monthly preparation of bank reconciliations and financial statements.

Agency management indicated the current agreement with their accounting firm is to prepare financial statements on a quarterly basis. Currently, the reconciliations and ledgers are sent to the Agency when the financial statements have been prepared. The bank reconciliations for the first two months of each quarter were presented late due to this procedure. The Agency does not currently document the reconciliations provided have been reviewed by Agency staff.

Updated Response: Implemented. The Illinois EPA currently receives bank reconciliations from an accounting firm on a monthly basis, and in FY09, the Illinois EPA has reviewed the bank reconciliations and we have documented that the reconciliations have been reviewed by agency staff.

- 3. Comply with internal procedures, Administrative Code rules, and prudent business practices by performing annual evaluations for all employees in a timely manner. (Repeated-1994)**

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Finding: The Agency did not conduct employee performance evaluations in a timely manner. During a review of 60 employee personnel files, auditors noted the following:

- 18 of 60 (30%) employees tested did not have performance evaluations for the evaluation period tested. The time elapsed from the employee's previous performance reviews ranged from 13 to 88 months.
- 35 of 60 (58%) employee evaluations were performed after the due date. The time elapsed from the due date to the performance review approval date ranged from 1 to 353 days.

Agency management stated staff shortages and additional management assignments led to the Agency's inability to evaluate all employees in a timely manner.

Response: Accepted. The Illinois EPA continues to strive for performance evaluations to be completed timely. The Office of Human Resources continues to track performance evaluations due dates and to ensure that the appropriate manager of supervisor is aware of the need to complete reviews in a timely manner.

4. Comply with the Industrial Hygienists Licensure Act requirements or seek legislative remedy to the statutory requirement. (Repeated-2004)

Finding: The Agency's Director appointed an Industrial Hygiene Examining Board (Board) as required by the Industrial Hygienists Licensure Act in October 1994. However, the Board has been inactive since then.

Agency management stated that there has not been an active Board since October 1994. The Board had licensed only 230 industrial hygienists during the time the Board was active. During FY07, there were 81 active licensed industrial hygienists and 15 have renewed their license. During FY08, there were 58 active licensed industrial hygienists and only 30 have renewed their license. Therefore, the Agency believes the decline in registration demonstrates the program did not enhance a licensee's business opportunities. The Agency's Safety Unit continues to monitor licensing activities and will continue until the General Assembly abolishes the program.

Response: Accepted. The Illinois EPA will seek a legislative change in the next legislative session to change the Industrial Hygienists Licensure Act to allow us to convene the Industrial Hygiene Examining Board on an ad hoc advisory basis to address specific issues and concerns as they arise.

5. Ensure the Illinois Water Quality Report is submitted to the Governor and General Assembly on an annual basis, or seek legislative remedy to the statutory requirement. (Repeated-2004)

Accepted or Implemented – continued

Finding: The Agency did not submit the 2007 Annual Illinois Water Quality Report as required by the Rivers, Lakes and Streams Act. Agency management stated they believed the biennial water quality report submitted under federal regulation supported compliance with the annual report required by State statute.

Updated Response: Accepted. The 2008 Water Quality Report is currently under review by the U.S. Environmental Protection Agency. It is anticipated that comments will be received and the report will be finalized in the next few months. The Report will then be submitted to the Governor and General Assembly. Future reports will be submitted annually thereafter.

6. Ensure the committees for clean and drinking water programs meet periodically or seek legislative remedy to the statutory requirement. (Repeated-2004)

Finding: The Agency did not ensure the committees for the clean and drinking water programs met on a periodic basis, or recurring intervals. The Water Pollution Control Program and the Public Water Supply Program committees have not met since 2003.

Agency management stated the Agency has been unable to complete the formation of this Committee. Prior to this year, internal decisions were not finalized regarding how best to utilize the Committee.

Updated Response: Accepted. The Illinois EPA will seek a legislative change in the next legislative session to change the Environmental Protection Act to allow the Illinois EPA to convene the Water Pollution Control and Public Water Supply Committees on an ad hoc advisory basis to address issues or potential regulation changes as they arise. The passage of the American Recovery and Reinvestment Act of 2009 has provided new resources for the State Revolving fund programs and in the short term will require the adoption of emergency rules to administer the various program requirements mandated by the Act. In the long term, the Illinois EPA recognizes the need for a major updating of rules and procedures for these programs and the Illinois EPA will convene the Committees and other stakeholders to advise the Agency during this process.

7. Ensure the drafted rules are filed with the Joint Committee on Administrative Rules to reflect current statutes increasing permit fees. (Repeated-2005)

Finding: The Agency did not update or revise the Illinois Administrative Code to reflect the increase or establishment of new permit fees, which became effective on July 1, 2003.

Agency management stated the air pollution site fees have been discussed by the Agency's Division of Legal Counsel and the Bureau of Air. However, the delay has been

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caused by a number of issues related to administrative and legal interpretation concerns that had to be resolved (i.e. broad use terms in drafts of rules that may affect programs that weren't otherwise intended to be addressed). For the remaining Parts, the Agency has drafted the necessary rules but they have not been filed due to limited legal resources that had to be devoted to higher priority regulatory matters.

Updated Response:

Part 251.201 Amount of Air Pollution Site Fee

Response: The amendment to 35 Ill. Adm. Code 251.201 is being drafted and will be routed for final management approval by the end of September 2009. The amendment should be ready for filing in October 2009 with the Secretary of State for First Notice publication in the Illinois Register. The rule has not been filed sooner due to limited legal resources that had to be devoted to higher priority regulatory matters.

Part 320.201 Amount of the Fee

Response: The Joint Committee on Administrative Rules (JCAR) has completed its Second Notice review under the Illinois Administrative Procedure Act of the Illinois EPA's proposed amendments to 35 Ill. Adm. Code 320. JCAR had no objection to the proposed amendments. However, JCAR did publish a comment in 33 Ill. Reg. 7368 (June 5, 2009) for which the Illinois EPA will publish a response by July 2009. The Illinois EPA also expects to publish the adopted amendments to 35 Ill. Adm. Code 320 in the Illinois Register by July 2009, and this will complete the rulemaking.

(a) Part 690.201 Amount of the Fee

Response: JCAR has completed its Second Notice review under the Illinois Administrative Procedure Act of the Illinois EPA's proposed amendments to 35 Ill. Adm. Code 690. JCAR had no objection to the proposed amendments. The amendments are currently circulating for final approval by Illinois EPA management. The Illinois EPA expects to publish the adopted amendments to 35 Ill. Adm. Code 690 in the Illinois Register by July 2009, and this will complete the rulemaking.

(b) Part 857.201 Payment of Fees

Response: Presumably the amendment to Section 56.5(a) of the Act is the basis for this comment on 35 Ill. Adm. Code 857.201. 35 Ill. Adm. Code 857.201 applies only to those persons submitting a "Special Waste Hauling Permit" to the Agency (see 35 Ill. Adm. Code 857.101).

Accepted or Implemented – concluded

The circumstances under which a “Special Waste Hauling Permit” must be submitted to the Agency are prescribed by the Pollution Control Board in 35 Ill. Adm. Code 809. 35 Ill. Adm. Code 809.211(j) exempts haulers of Potentially Infectious Medical Waste (PIMW) from the “Special Waste Hauling Permit” requirements in that Part. Also, in 1992 the Board repealed Subtitle I of 35 Ill. Adm. Code 809 that applied to PIMW. As a result, the amendments to Section 56.5(a) of the Act relating to PIMW hauling permits do not require an amendment to 35 Ill. Adm. Code 857.201 since that section is inapplicable to PIMW. The Agency has however amended the appropriate PIMW transporter fee rules contained in 35 Ill. Adm. Code 1450 as noted in the next item below.

- (c) Part 1450.300 Quarterly Submission of Payment of Potentially Infectious Medical Waste (PIMW) Transporter Fee
- Response: The Illinois EPA’s proposed amendments to 35 Ill. Adm. Code 1450 were adopted by the Illinois EPA on April 23, 2009, and were published in the Illinois Register as adopted amendments in 33 Ill. Reg. 6515 (May 8, 2009). This rulemaking has been completed.

8. Ensure the submitted plans and reports for the Site Remediation Program are processed within the mandated timeframe. In addition, document and retain written waivers or extension of deadlines in cases of appeals filed by remediation applicants.

Finding: The Agency did not comply with the required timeframe to complete and communicate decisions to the remediation applicants on submitted plans and reports for review and approval under the Site Remediation Program.

During the review, auditors noted that for five of the 25 (20%) remediation applicants tested during the examination period, the time elapsed from the dates the submitted plans and reports were received by the Agency to the dates the review and approval were completed and communicated by the Agency ranged from 62 to 277 days (2 to 187 days late). There were no available written waivers or extension approvals from the five remediation applicants on file.

Agency management indicated they have met the deadlines since the Agency and the remediation applicant mutually agree, verbally, to extend the timeframe. However, the Agency does not always have the additional time and resources of sending letters and tracking a waiver when the applicant works with the Agency towards the issuance of a “No

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Further Remediation” letter which acknowledges that a site owner or operator has satisfied the respective Bureau of Land laws and regulations.

Updated Response: Implemented. Written documentation of waivers or extensions of the deadlines are maintained with the project notes in the Bureau of Land’s files which are established within the mandated timeframes in accordance with the regulations.

9. Ensure compliance with the provisions of the Environmental Protection Act by performing the inspection of release of radionuclides at nuclear power plants on a quarterly basis.

Finding: The Agency, in cooperation with the Illinois Emergency Management, failed to perform inspections on the release of radionuclides at nuclear power plants.

During testing, the auditors noted quarterly inspections were not made on any of the six nuclear power plants in Illinois during the first quarter of FY07. In addition, quarterly inspections were not made for all of the six nuclear power plants from the second quarter of FY07 to the third quarter of FY08.

Agency management indicated the exception was due to a delay in the development of the framework on how to implement the mandate. Proposed procedures were just recently adopted by the Pollution Control Board on May 1, 2008.

Updated Response: Accepted. Inspections were not conducted in the first quarter of FY07 (July-September 2007) since the law had not been enacted until August 13, 2007 and the necessary Agency staff training and coordination with the Illinois Emergency Manage Agency had not been instituted at that time. The first tritium-based inspection was completed in December 2007. The Agency has completed inspections for all plants, with the exception of two, on a quarterly basis from the second quarter of fiscal year 2007 to the third quarter of 2008. The two inspections that were not conducted in the third quarter of 2008 were not completed due to the lack of trained staff to conduct the inspections during that quarter. All subsequent inspections have been completed as required by law.

Emergency Purchases

The Illinois Purchasing Act (30 ILCS 505/1) states, “The principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts...” The law also recognizes that there will be emergency situations when it will be impossible to conduct bidding. It provides a general exemption for emergencies “involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage ... prevent or minimize serious disruption in State services or to insure the integrity of State records, or to avoid lapsing or loss of federal or donated funds. The chief procurement officer may promulgate rules extending the circumstances by which a purchasing agency may make ‘quick

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purchases', including but not limited to items available at a discount for a limited period of time."

State agencies are required to file an affidavit with the Auditor General for emergency procurements that are an exception to the competitive bidding requirements per the Illinois Purchasing Act. The affidavit is to set forth the circumstance requiring the emergency purchase. The Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption.

The Agency filed no affidavits for emergency purchases during FY07 or FY08.

Headquarters Designations

The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission. Each State agency is required to file reports of all of its officers and employees for whom official headquarters have been designated at any location other than that at which their official duties require them to spend the largest part of their working time.

The Environmental Protection Agency indicated on July 15, 2008 that 45 employees assigned to locations other than official headquarters.