

**Testimony for the Record Submitted on Behalf of Jim Ardis, Mayor, Peoria, Illinois and Michael F. Menke, President, Board of Trustees, Greater Peoria Sanitary and Sewage Disposal District**

**U.S. House of Representatives  
Water Resources and Environment Subcommittee  
Committee on Transportation and Infrastructure**

**Hearing on Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality**

**July 25, 2012**

The following testimony is submitted for the record of the July 25, 2012 hearing on “Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality,” on behalf of Mayor Jim Ardis and Board President Michael F. Menke.

Mayor Ardis is the mayor of the City of Peoria, Illinois (City). Peoria is the oldest community in Illinois, with a population of 115,007. Mr. Menke is the President of the Board of Trustees of the Greater Peoria Sanitary and Sewage Disposal District (GPSD). GPSD currently serves an area of approximately 65 square miles, and treats wastewater collected from 650 miles of sewer. Municipalities served include Peoria, Peoria Heights, Bartonville, West Peoria and Bellevue, plus adjacent unincorporated areas.

Peoria is a proud river city. The Illinois River is the reason Peoria exists. Our roots in commerce and industry can be traced to the Illinois River. Peorians’ respect for the Illinois River led to the formation of the Greater Peoria Sanitary District and the construction of the sewage treatment plant in 1931, decades before most similarly sized communities had modern sewage treatment. This early investment, and more than 80 years of continual maintenance and improvements to the treatment plant and collection system, speaks to Peorians’ stewardship for the environment, and has allowed us to submit proposals to the U.S. Environmental Protection Agency (EPA) that will meet current water quality standards at a proposed cost lower than EPA expected, and can

address most EPA issues in a 5-year permit cycle, rather than through court enforcement.

While our community values the Illinois River and the environment, we have other pressing needs competing for our financial and other resources. Peoria has a larger share of the population not in the labor force than the state average. The median income in the Peoria region is \$7,109 (13%) less than the state average. About 14.5% of all families in the City of Peoria live below the poverty level, a level more than 1/3 higher than the state average. Seventy-five (75) percent of Peoria Public Schools' enrollment of over 14,000 children are considered to be from low income families. Peoria has the third highest crime rate in Illinois, and the crime rate is 77% higher than the state average. Due to regional and national economic recessions, the City of Peoria workforce has been reduced by almost twenty (20) percent in the last 10 years. While we remain advocates of meeting environmental goals, we believe we must do so in the most cost-efficient way possible, so that we may devote more of our limited resources to improving our schools, reducing crime, and bettering our local economy in a time of national recession.

Like many communities, Peoria has a combined sewer system. During periods of no or normal rainfall, the combined sewage is sent to the GPSD wastewater treatment plant (WWTP) for treatment before it is discharged to the Illinois River in compliance with the District's National Pollutant Discharge Elimination System (NPDES) permit. In times of heavy rain events, GPSD treats the excess combined sewage in peak flow treatment facilities that have been permitted by the State of Illinois since the 1980's. During an average year, the GPSD WWTP treats approximately 9.5 billion gallons of wastewater, including combined stormwater and wastewater during periods of wet weather. In a typical rainfall year this represents more than 98% of all wastewater (wet and dry weather flows) entering the collection system being treated to NPDES permit discharge standards. While occasionally there are combined sewer overflows (CSOs) that discharge directly to the Illinois River, this system has served to protect water quality in Illinois waterways for over 30 years. In addition, Peoria occasionally experiences

sanitary sewer overflows (SSOs). However, these overflows generally are the result of localized conditions that occur in spite of the proactive sewer maintenance program that has been implemented by the GPSD. Additionally, these overflows rarely reach waters of the United States and therefore result in negligible environmental impact, no public health impact and no economic impact.

Over the past several years, however, EPA has decided to make sewer overflows and process bypasses an enforcement priority, and informed the City and GPSD that it considers its currently-permitted peak flow treatment facilities to violate the Clean Water Act. These facilities have consistently operated, for over 30 years, in compliance with the NPDES permit issued by Illinois EPA. In 2006, the City began negotiating with EPA over a Long-Term Control Plan to address the CSOs. In March 2010, the City made EPA a good faith offer to reduce overflows and meet all applicable water quality standards with a plan that would cost the citizens of Peoria \$90 million. EPA rejected the City's offer and, in November 2011, insisted that the City of Peoria and GPSD both enter into a joint consent decree with EPA to address CSOs and SSOs, as well as the peak flow treatment facilities located at the WWTP.

The Illinois River at Peoria is generally known to be impaired primarily due to silt and bacteria. CSO, SSO and wastewater treatment plant discharges have no impact on silt impairments, and only a limited impact on bacterial impairments in the Illinois River, due to the predominance of non-municipal sources. As a result, the substantial EPA-mandated expense now facing Peoria citizens will produce minimal or no discernible improvement to water quality in the Illinois River. The City and GPSD are, however, receptive to facilitating meaningful water quality improvements through silt management and control of non-point sources of bacteria.

The City of Peoria and GPSD are willing to address CSOs and SSOs in an integrated way, but our experiences with EPA demonstrate that the new Integrated Planning Framework has had limited to no impact on local sensitivity and flexibility.

## **Background on EPA's Integrated Planning Framework**

EPA's June 5, 2012, "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" (Framework) is one response by EPA to a dialogue between EPA and city officials nationwide that has been taking place since October 2009. In this on-going dialogue, city officials have expressed concern to EPA and DOJ about the positions taken by EPA Regions and DOJ attorneys in negotiations regarding CSO and SSO controls. Specifically, cities have raised concerns about EPA and U.S. Department of Justice (DOJ) positions:

- Requiring local governments to spend to the limit of affordability, regardless of whether spending more money will result in meaningful additional water quality benefits.
- Taking a very narrow view of the costs that can be considered when examining the affordability of controls.
- Refusing to allow compliance periods longer than 20 years.
- Imposing constraints on the use of green infrastructure.
- Failing to consider the carbon footprint of new control technologies.
- Requiring local governments to enter into consent decrees that dictate specific technology controls for the next 20 years rather than imposing more flexible performance standards that allow controls to be adapted as experience is gained.

These concerns were expressed at a series of meetings sponsored by the U.S. Conference of Mayors. After EPA Headquarters officials denied that EPA was taking such positions in negotiations with cities, a technical meeting was held to provide specific factual examples of these concerns. That technical meeting took place in March 2011. In October 2011, EPA responded in part to the concerns expressed by cities by issuing a memorandum from Office of Water Assistant Administrator Nancy Stoner and Office of Enforcement and Compliance Assurance Assistant Administrator Cynthia Giles to the EPA Regions titled "Achieving Water Quality Through Integrated Municipal Stormwater and Wastewater Plans." (Attached) This memorandum includes some important statements. Specifically, it says that:

As we move forward in our work, we must be mindful that many of our state and local government partners find themselves facing difficult financial conditions. Their ability to finance improvements by raising revenues or issuing bonds has been significantly impacted during the ongoing economic recovery. We write this memorandum to make sure that we proceed as one EPA to assure that we work with states and communities to get the most effective as well as cost-effective approaches for meeting our shared objective of clean water that protects public health and the environment.

This memorandum also states that: “A comprehensive and integrated planning approach to a municipal government’s CWA waste- and storm-water obligations offers the greatest opportunity for identifying cost-effective and protective solutions and implementing the most important projects first.” Finally, the memorandum announced the Agency’s plan to develop the Framework that was finally issued on June 5, 2012.

### **Evaluation of EPA’s Success in Addressing Concerns Raised by Cities**

We greatly appreciate EPA’s goal of working “with states and communities to get the most effective as well as cost-effective approaches for meeting our shared objective of clean water that protects public health and the environment.” We strongly agree with that goal and believe that EPA’s interactions with cities on CSO, SSO, and other stormwater issues should be evaluated against that goal, as well as against the concerns initially raised to EPA through the U.S. Conference of Mayors. Using that goal and those concerns as a benchmark, we must say that, based on our experience in Peoria, Illinois, EPA Region 5’s actions on the ground still fall short of the goals expressed and promises made by EPA officials in Washington.

Despite these short-comings, we appreciate EPA’s commitment to improve the partnership with communities to address water quality problems and EPA’s commitment to use the flexibilities in the Clean Water Act to achieve these goals. We also appreciate the focus in the final Integrated Planning Framework on green infrastructure and adaptive management. Finally, we agree that integrated planning can be a useful tool that can lead to more cost-effective approaches to solving water quality problems. However, there is still a significant gap between commitments from EPA Headquarters

and implementation in EPA Regions. This is a gap that remains unfulfilled by EPA's integrated planning framework. Examples of this gap, specific to the City of Peoria and GPSD, are summarized below.

1. Continued insistence on use of enforcement tools over permits.

The City of Peoria and GPSD have proposed to EPA that we jointly develop an integrated plan to be implemented through our respective Clean Water Act (NPDES) permits. While EPA has formally endorsed the use of its integrated planning approach, as described in the June 5, 2012 Framework memorandum, EPA Region 5 is continuing to insist that the City and GPSD enter into a consent decree to implement controls, rather than allowing implementation through our NPDES permits. Most recently EPA Region 5 rebuffed the request to implement the GPSD CSO/SSO controls using the permit, notwithstanding GPSD's proposal to complete those improvements within the period of the next NPDES permit renewal cycle.

EPA is taking this position despite the fact that the final Integrated Planning Framework states that enforcement is used, "when there is a history of long-standing violations without significant progress." That is ***certainly not*** the case in Peoria. The City and GPSD have ***no*** history of long-standing violations and were proactive in completing CSO improvements in the early 1990's at a cost of approximately \$10 million. Recently, the City has spent over \$4 million on planning and negotiations in an effort to develop a Long Term Control Plan acceptable to EPA Region 5.

The only excuse given by EPA Region 5 for refusing to use a permitting approach to implementing overflow controls was the fact that the parties had already begun negotiating a consent decree. However, no decree has been entered and even if one had, EPA also has made commitments that it will be flexible about reopening existing consent decrees to adopt integrated planning approaches.

2. Continued insistence on dictating specific engineering controls instead of performance measures.

We agree with the goal of protecting water quality, but do not agree that a community should be forced to go beyond that goal and implement engineering controls dictated by EPA Region 5. In Peoria, EPA Region 5 is insisting that it can dictate the precise number of CSO events that can occur, as well as the type of facilities that can be used to treat those discharges. In addition, EPA Region 5 is insisting that the City and GPSD cannot use peak wet weather treatment facilities to mitigate adverse water quality impacts of excess wet weather discharges, even though those facilities have been critical to ensuring that significantly more wet weather flows are treated. These facilities have been permitted by the State of Illinois for over 30 years (without objection from EPA), and have a consistent history of substantial compliance with the terms and conditions included in those permits. We believe that EPA does not have the authority to specify what treatment technology is to be used to meet the requirements of EPA's regulations.

For example, notwithstanding being properly permitted for over 30 years, EPA currently views GPSD's permitted peak flow treatment facilities as a bypass of secondary treatment. Even if that conclusion were accurate (which it is not), EPA has acknowledged that the bypass regulation does not mandate employment of a specific treatment technology. Instead, the regulation requires that a system be operated as designed and according to the conditions of the NPDES permit. 68 Fed. Reg. 63,048 (Nov. 7, 2003), citing *NRDC v EPA*, 822 F.2d 104, 123 (D.C. Cir. 1987). Given that, we fail to understand what authority EPA thinks it has to use the bypass regulation to prohibit the operation of specifically designed and validly-permitted peak flow treatment facilities.

We strongly believe that the GPSD permitted facilities meet the requirements of the Clean Water Act. EPA has acknowledged that biological treatment units generally cannot be designed to accommodate wide variations in flow volumes and influent strength (68 Fed. Reg. 63,046, Nov. 7, 2003). Given that, we do not understand what

authority EPA thinks it has to demand that publically owned treatment works (POTWs) provide biological treatment facilities to accommodate peak wet weather flows, which are highly variable in volume and influent strength.

3. Continued insistence on requiring a community to spend to the limits of affordability.

EPA is still asking the citizens of Peoria to spend to the limits of affordability even if spending more money will not result in meaningful water quality improvements. As noted above, EPA wants Peoria to eliminate as many CSOs as it can afford to eliminate, even though the additional CSOs eliminated by going from the City's \$90 million plan to EPA's suggested plan (that we estimate will cost almost \$500 million), will not result in any meaningful water quality improvements, because water quality standards would be fully met under the City's plan.

We believe that EPA may be taking these positions based on the same hide-bound interpretations of EPA policies that EPA Headquarters had disavowed. We agree with EPA Headquarters that existing EPA policies are flexible. For example, we believe that the 1994 CSO policy does not mandate the reduction of a specific number of CSOs, whether or not a water body is considered to be sensitive, as long as the designated use of the water body can be met. In Peoria, elimination of all CSOs is not physically possible. EPA's position is that the City and GPSD must eliminate as many CSOs as it can afford to. We disagree with that interpretation of the statute and the CSO Policy. That is, we do not believe that the statute requires EPA to impose additional requirements on cities above and beyond meeting water quality standards and we do not believe that the CSO Policy stands for the proposition that the only limits on CSO elimination efforts are the limits of affordability, even if a receiving water is designated as a sensitive area.

## **Conclusion**

As public officials, we are working every day to protect the health and safety of our citizens and our rate-payers. We are good stewards of both tax dollars and utility revenues. We also are good stewards of the environment, who share with EPA the goal of protecting water quality. Unfortunately, based upon the recent experience of the City and GPSD, EPA's Integrated Planning Framework to date does not appear to have positively affected how EPA Region 5 is moving forward to address this issue. We remain hopeful that EPA will recognize the flexibility in the Clean Water Act and in its policies and refrain from asking the City and GPSD to spend more than is necessary to meet water quality standards. We are concerned that the current process will result in great financial expense to our citizens with little to no measurable impact on public or environmental health and the water quality of the Illinois River.

Thank you for your interest in and continued oversight of EPA's stated goal of finding cost-effective approaches to solving water quality problems through sensitive and flexible negotiations. We believe that, if they want to, EPA can successfully attain that goal.