

# SB2081



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB2081

Introduced 2/10/2011, by Sen. Kirk W. Dillard

#### SYNOPSIS AS INTRODUCED:

415 ILCS 5/12.5

Amends the Environmental Protection Act. Uses a portion of the NPDES fees collected by the Environmental Protection Agency to finance clean water projects recommended by the DuPage River Salt Creek Workgroup (DRSCW). Requires all projects receiving grants from the Agency to be recommended by the DRSWC, in accordance with a project prioritization process and annual prioritized projects list. Establishes requirements for eligible projects. Establishes requirements for an organization to be certified as a Certified Local Watershed Organization (CLWO). Requires the Agency to adopt rules to implement these requirements. Creates the Illinois Local Watershed Fund as a special fund in the State treasury.

LRB097 10313 JDS 50521 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by  
5 changing Section 12.5 as follows:

6 (415 ILCS 5/12.5)

7 Sec. 12.5. NPDES discharge fees; sludge permit fees.

8 (a) Beginning July 1, 2003, the Agency shall assess and  
9 collect annual fees (i) in the amounts set forth in subsection  
10 (e) for all discharges that require an NPDES permit under  
11 subsection (f) of Section 12, from each person holding an NPDES  
12 permit authorizing those discharges (including a person who  
13 continues to discharge under an expired permit pending  
14 renewal), and (ii) in the amounts set forth in subsection (f)  
15 of this Section for all activities that require a permit under  
16 subsection (b) of Section 12, from each person holding a  
17 domestic sewage sludge generator or user permit.

18 Each person subject to this Section must remit the  
19 applicable annual fee to the Agency in accordance with the  
20 requirements set forth in this Section and any rules adopted  
21 pursuant to this Section.

22 (b) Within 30 days after the effective date of this  
23 Section, and each year thereafter, except when a fee is not due

1 because of the operation of subsection (c), the Agency shall  
2 send a fee notice by mail to each existing permittee subject to  
3 a fee under this Section at his or her address of record. The  
4 notice shall state the amount of the applicable annual fee and  
5 the date by which payment is required.

6 Except as provided in subsection (c) with respect to  
7 initial fees under new permits and certain modifications of  
8 existing permits, fees payable under this Section are due by  
9 the date specified in the fee notice, which shall be no less  
10 than 30 days after the date the fee notice is mailed by the  
11 Agency.

12 (c) The initial annual fee for discharges under a new NPDES  
13 permit or for activity under a new sludge generator or sludge  
14 user permit must be remitted to the Agency prior to the  
15 issuance of the permit. The Agency shall provide notice of the  
16 amount of the fee to the applicant during its review of the  
17 application. In the case of a new NPDES or sludge permit issued  
18 during the months of January through June, the Agency may  
19 prorate the initial annual fee payable under this Section.

20 The initial annual fee for discharges or other activity  
21 under a general NPDES permit must be remitted to the Agency as  
22 part of the application for coverage under that general permit.

23 Beginning January 1, 2010, in the case of construction site  
24 storm water discharges for which a coverage letter under a  
25 general NPDES permit or individual NPDES permit has been issued  
26 or for which the application for coverage under an NPDES permit

1 has been filed with the Agency, no annual fee shall be due  
2 after payment of an initial annual fee in the amount provided  
3 in subsection (e) (10) of this Section.

4 If a requested modification to an existing NPDES permit  
5 causes a change in the applicable fee categories under  
6 subsection (e) that results in an increase in the required fee,  
7 the permittee must pay to the Agency the amount of the  
8 increase, prorated for the number of months remaining before  
9 the next July 1, before the modification is granted.

10 (d) Failure to submit the fee required under this Section  
11 by the due date constitutes a violation of this Section. Late  
12 payments shall incur an interest penalty, calculated at the  
13 rate in effect from time to time for tax delinquencies under  
14 subsection (a) of Section 1003 of the Illinois Income Tax Act,  
15 from the date the fee is due until the date the fee payment is  
16 received by the Agency.

17 (e) The annual fees applicable to discharges under NPDES  
18 permits are as follows:

19 (1) For NPDES permits for publicly owned treatment  
20 works, other facilities for which the wastewater being  
21 treated and discharged is primarily domestic sewage, and  
22 wastewater discharges from the operation of public water  
23 supply treatment facilities, the fee is:

24 (i) \$1,500 for the 12 months beginning July 1, 2003  
25 and \$500 for each subsequent year, for facilities with  
26 a Design Average Flow rate of less than 100,000 gallons

1 per day;

2 (ii) \$5,000 for the 12 months beginning July 1,  
3 2003 and \$2,500 for each subsequent year, for  
4 facilities with a Design Average Flow rate of at least  
5 100,000 gallons per day but less than 500,000 gallons  
6 per day;

7 (iii) \$7,500 for facilities with a Design Average  
8 Flow rate of at least 500,000 gallons per day but less  
9 than 1,000,000 gallons per day;

10 (iv) \$15,000 for facilities with a Design Average  
11 Flow rate of at least 1,000,000 gallons per day but  
12 less than 5,000,000 gallons per day;

13 (v) \$30,000 for facilities with a Design Average  
14 Flow rate of at least 5,000,000 gallons per day but  
15 less than 10,000,000 gallons per day; and

16 (vi) \$50,000 for facilities with a Design Average  
17 Flow rate of 10,000,000 gallons per day or more.

18 (2) For NPDES permits for treatment works or sewer  
19 collection systems that include combined sewer overflow  
20 outfalls, the fee is:

21 (i) \$1,000 for systems serving a tributary  
22 population of 10,000 or less;

23 (ii) \$5,000 for systems serving a tributary  
24 population that is greater than 10,000 but not more  
25 than 25,000; and

26 (iii) \$20,000 for systems serving a tributary

1 population that is greater than 25,000.

2 The fee amounts in this subdivision (e)(2) are in  
3 addition to the fees stated in subdivision (e)(1) when the  
4 combined sewer overflow outfall is contained within a  
5 permit subject to subsection (e)(1) fees.

6 (3) For NPDES permits for mines producing coal, the fee  
7 is \$5,000.

8 (4) For NPDES permits for mines other than mines  
9 producing coal, the fee is \$5,000.

10 (5) For NPDES permits for industrial activity where  
11 toxic substances are not regulated, other than permits  
12 covered under subdivision (e)(3) or (e)(4), the fee is:

13 (i) \$1,000 for a facility with a Design Average  
14 Flow rate that is not more than 10,000 gallons per day;

15 (ii) \$2,500 for a facility with a Design Average  
16 Flow rate that is more than 10,000 gallons per day but  
17 not more than 100,000 gallons per day; and

18 (iii) \$10,000 for a facility with a Design Average  
19 Flow rate that is more than 100,000 gallons per day.

20 (6) For NPDES permits for industrial activity where  
21 toxic substances are regulated, other than permits covered  
22 under subdivision (e)(3) or (e)(4), the fee is:

23 (i) \$15,000 for a facility with a Design Average  
24 Flow rate that is not more than 250,000 gallons per  
25 day; and

26 (ii) \$20,000 for a facility with a Design Average

1 Flow rate that is more than 250,000 gallons per day.

2 (7) For NPDES permits for industrial activity  
3 classified by USEPA as a major discharge, other than  
4 permits covered under subdivision (e) (3) or (e) (4), the fee  
5 is:

6 (i) \$30,000 for a facility where toxic substances  
7 are not regulated; and

8 (ii) \$50,000 for a facility where toxic substances  
9 are regulated.

10 (8) For NPDES permits for municipal separate storm  
11 sewer systems, the fee is \$1,000.

12 (9) For NPDES permits for industrial storm water, the  
13 fee is \$500.

14 (10) for NPDES permits for construction site storm  
15 water, the fee

16 (A) for applications received before January 1,  
17 2010 is \$500;

18 (B) for applications received on or after January  
19 1, 2010 is:

20 (i) \$250 if less than 5 acres are disturbed;  
21 and

22 (ii) \$750 if 5 or more acres are disturbed.

23 (f) The annual fee for activities under a permit that  
24 authorizes applying sludge on land is \$2,500 for a sludge  
25 generator permit and \$5,000 for a sludge user permit.

26 (g) More than one of the annual fees specified in

1 subsections (e) and (f) may be applicable to a permit holder.  
2 These fees are in addition to any other fees required under  
3 this Act.

4 (h) The fees imposed under this Section do not apply to the  
5 State or any department or agency of the State, nor to any  
6 school district, or to any private sewage disposal system as  
7 defined in the Private Sewage Disposal Licensing Act (225 ILCS  
8 225/).

9 (i) The Agency may adopt rules to administer the fee  
10 program established in this Section. The Agency may include  
11 provisions pertaining to invoices, notice of late payment,  
12 refunds, and disputes concerning the amount or timeliness of  
13 payment. The Agency may set forth procedures and criteria for  
14 the acceptance of payments. The absence of such rules does not  
15 affect the duty of the Agency to immediately begin the  
16 assessment and collection of fees under this Section.

17 (j) All fees and interest penalties collected by the Agency  
18 under this Section shall be deposited into the Illinois Clean  
19 Water Fund, which is hereby created as a special fund in the  
20 State treasury. Gifts, supplemental environmental project  
21 funds, and grants may be deposited into the Fund. Investment  
22 earnings on moneys held in the Fund shall be credited to the  
23 Fund.

24 Subject to appropriation, the moneys in the Fund shall be  
25 used by the Agency to carry out the Agency's clean water  
26 activities.



1 (k) Except as provided in subsection (l) or Agency rules,  
2 fees paid to the Agency under this Section are not refundable.

3 (l) The Agency may refund the difference between (a) the  
4 amount paid by any person under subsection (e)(1)(i) or  
5 (e)(1)(ii) of this Section for the 12 months beginning July 1,  
6 2004 and (b) the amount due under subsection (e)(1)(i) or  
7 (e)(1)(ii) as established by this amendatory Act of the 93rd  
8 General Assembly.

9 (m) A pilot grant program is hereby established to  
10 determine the effectiveness of local watershed management to  
11 improve the quality of local streams.

12 (1) All NPDES permit fees paid each year under Sections  
13 (e)(1), (e)(2), (e)(8), (e)(9) and (f) above for NPDES permit  
14 facilities which are owned by a municipality, county,  
15 sanitary District or other public agency and which are also  
16 tributary to the watersheds of the East Branch of the  
17 DuPage River, West Branch of the DuPage River and Salt  
18 Creek shall be directed into a grant program to be awarded  
19 by the Agency for projects recommended by the DuPage River  
20 Salt Creek Workgroup (DRSCW) to improve those three  
21 watersheds. The Agency shall provide the DRSCW with a list  
22 of the NPDES permit fees described under this section each  
23 year after these fees are invoiced and, 60 days following  
24 receipt of said list, the DRSCW shall notify the Agency of  
25 the NPDES facilities and fees which are tributary to the  
26 DRSCW watersheds and, therefore subject to this pilot grant

1       program. The location of the point of discharge into the  
2       receiving stream shall determine the tributary watershed  
3       for those NPDES permit facilities having one point of  
4       discharge. For those NPDES permit facilities having more  
5       than one point of discharge, such as a municipal storm  
6       water system, the tributary watershed shall be the  
7       watershed that receives the majority of the permitted flow.

8           (2) The recommendation of the DRSCW shall be required  
9       for such projects as long as the DRSCW is certified by the  
10       Agency as a Certified Local Watershed Organization (CLWO)  
11       as provided herein. The funds directed into the grant  
12       program shall only be used for the purposes designated  
13       herein. If the DRSCW fails to maintain designation as a  
14       CLWO for any year, the funds in the grant program for that  
15       year may be utilized for other clean water purposes, as  
16       determined by the Agency. If the total cost of all projects  
17       recommended by the DRSCW for any year is less than the  
18       funds available in the grant program, all such remaining  
19       funds in the grant program for that year shall be carried  
20       over to the next year.

21           (3) All projects receiving grants from the Agency must  
22       be recommended by the DRSCW, in accordance with a project  
23       prioritization process and annual prioritized projects  
24       list. Persons desiring to obtain a grant for a DRSCW  
25       recommended project must submit an application to the  
26       Agency and DRSCW, with a commitment to provide at least a

1 40% project match. All grants shall be in the amount of 60%  
2 of eligible project costs, although the Agency and DRSCW  
3 can mutually agree to a lower grant participation  
4 percentage, and a corresponding higher local match, for any  
5 year based on project applications received. The DRSCW may  
6 submit applications for projects and DRSCW member dues may  
7 be used to satisfy the local match requirement for said  
8 projects. Funds from other grant programs, including  
9 Section 319 grant funds, may be used to meet the local  
10 match requirement for this program.

11 (4) Eligible projects must improve stream quality by  
12 enhancing habitat, reducing stream bank erosion, providing  
13 protective riparian areas, implementing green  
14 infrastructure or best management practices (BMPs) and  
15 other appropriate means.

16 (5) In order to receive designation as a CLWO from the  
17 Agency, a local watershed organization must submit  
18 documentation of the following items to the Agency by  
19 January 15 of each year:

20 (i) most recent audit report, if applicable;

21 (ii) most recent U.S. income tax return;

22 (iii) most recent Illinois income tax return;

23 (iv) notification of tax exempt status from  
24 the U.S. Internal Revenue Service;

25 (v) registration with the Illinois Secretary  
26 of State;

1           (vi) most recent annual report filed with the  
2           Illinois Secretary of State;

3           (vii) bylaws which require that all officers  
4           of the organization must be an employee or officer  
5           of a public agency holding an NPDES permit for a  
6           discharge from a publicly owned treatment works or  
7           from a public separate storm sewer system;

8           (viii) a map depicting the watershed(s) for  
9           which the CLWO designation is requested;

10           (ix) a diverse membership representing a  
11           cross-section of stakeholders within the  
12           watershed;

13           (x) a process to develop consensus on group  
14           activities;

15           (xi) stable and ongoing revenues to fund group  
16           activities;

17           (xii) a stream monitoring program appropriate  
18           to the watershed and adequate to identify and  
19           prioritize stream improvement projects and to  
20           evaluate the effectiveness of implemented  
21           projects;

22           (xiii) a process to identify and prioritize  
23           stream improvement projects;

24           (xiv) an annual prioritized list of stream  
25           improvement projects and

26           (xv) an application fee of \$1,500.00.

1       The Agency may request additional information and conduct  
2 such inquiries as it deems appropriate. If the Agency has not  
3 issued a written denial of a request for CLWO designation by  
4 April 15, then the CLWO designation is considered approved for  
5 that year. The Agency may deny CLWO designation to an  
6 organization that does not meet the above requirements. The  
7 Agency shall only approve one CLWO designation for a watershed.

8       (6) The Agency shall adopt rules, within 18 months, to  
9 establish the grant program. The Agency shall utilize  
10 interim procedures to award project grants pending the  
11 adoption of final rules.

12       (7) At the completion of the first five years of the  
13 pilot grant program, and every five years thereafter, the  
14 DRSCW shall prepare and submit to the Agency a report  
15 detailing all projects completed under the program,  
16 including the amounts of grant funding and local matching  
17 funding and an assessment of the improvements to the  
18 quality of each of the three watersheds within the DRSCW.

19       (8) All fees collected by the Agency under this Section  
20 shall be deposited into the Illinois Local Watershed Fund,  
21 which is hereby created as a special fund in the State  
22 treasury. Investment earnings on moneys held in the Fund  
23 shall be credited to the Fund.

24 (Source: P.A. 95-516, eff. 8-28-07; 96-245, eff. 8-11-09.)