



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 01 2016

REPLY TO THE ATTENTION OF

WN-16J

MEMORANDUM

SUBJECT: Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 73

FROM: Kevin Pierard, Chief 
NPDES Permits Branch

TO: File

Issue 73 (Submittal of Mixing Demonstration)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 73 stated the following:

Wis. Admin. Code NR §§ 106.06(4)(c) 5 and 10 mandate that the State provide time for a discharger to complete mixing demonstrations. These provisions are contrary to the federal regulation at 40 C.F.R. § 122.47 to the extent that they require the time to be included in a compliance schedule in a permit. Please clarify whether the rules require the State to provide time before permit issuance or as a compliance schedule. If corrective rulemaking is required, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

Letter from Susan Hedman, Regional Administrator, U.S. EPA, to Cathy Stepp, Secretary, WDNR (July 11, 2011) (on file with U.S. EPA).

Analysis of Supplemental Information Provided by WDNR

In its October 14, 2011 letter, WDNR responded to Issue 73 in Attachment C by stating that "[i]f WDNR provides time for a permittee to make a mixing zone demonstration under NR 106.06(4) (c) 5. and 10, this time is provided prior to permit issuance or reissuance." Letter from Matt Moroney, Deputy Secretary, WDNR, to Susan Hedman, Regional Administrator, U.S. EPA (Oct. 14, 2011) (on file with U.S. EPA).

For Issue 73, WDNR's written response states that the time provided to complete mixing zone demonstrations occurs prior to permit issuance. Thus, mixing zone demonstrations are not included in compliance schedules that occur post issuance. Given WDNR's implementation, Wis. Admin. Code NR §§ 106.06(4)(c)(5) and (10) are consistent with 40 C.F.R. § 122.47.

Conclusion

Based on EPA's above review of the State's submission of supplemental information, EPA concludes that Issue 73 has been resolved as previously communicated in EPA's December 5, 2012 letter to WDNR. Letter from Tinka G. Hyde, Water Division Director, U.S. EPA, to Kenneth G. Johnson, Administrator Division of Water, WDNR (Dec. 5, 2012) (on file with U.S. EPA).

Additional Notes

To confirm that mixing zone demonstrations are not incorporated into compliance schedules, EPA should monitor their timing as part of its review of selected Wisconsin National Pollutant Discharge Elimination System permits when applicable.