



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

REPLY TO THE ATTENTION OF:

WN-16J

MEMORANDUM

SUBJECT: Protocol for Responding to the Minnesota Center for Environmental Advocacy Petition for Corrective Action or Withdrawal of NPDES Program Approval from the State of Minnesota

FROM: Kevin M. Pierard, Chief *sent for 7-1-10*
NPDES Programs Branch

Sally K. Swanson, Chief *SKS 7-1-10*
Water Enforcement & Compliance Assurance Branch

TO: Tinka G. Hyde
Director, Water Division

Our protocol for reviewing issues raised in the petition is provided below.

Protocol for Responding to Issues Related to Permitting

Allegation 1: The petition alleges that the Minnesota Pollution Control Agency (MPCA) has not developed an adequate regulatory program for establishing water quality-based effluent limits for nutrients in NPDES permits.

Response: We will obtain and review MPCA issued NPDES permits to determine if and how Minnesota develops appropriate water quality-based effluent limits (WQBELs) for nutrients.

U.S. Environmental Protection Agency will investigate whether the State makes reasonable potential determinations and develops WQBELs necessary to implement State water quality standards in NPDES permits. EPA will investigate how MPCA's procedures ensure that:

- numeric nutrient criteria for lakes, including protection of downstream waters, are implemented in NPDES permits, and
- WQBELs are implemented in permits as needed to ensure that water quality standards for streams and rivers are met.

Schedule: We expect to begin our initial review of the permit files during August 2010 and to complete our review by March 1, 2011.

Allegation 2: The petition alleges that MPCA's pollutant offset and trading policy allows for NPDES permits that violate EPA regulations.

Response: We will examine MPCA practices and policies pertaining to its pollutant offset and trading program and evaluate whether permits issued pursuant to such policies meet the requirements of the Clean Water Act (CWA).

Schedule: We expect to begin our initial review during August 2010 and to complete our review by March 1, 2011. EPA will investigate whether Minnesota's *pre-TMDL Phosphorus Trading Permit Strategy* ensures compliance with the CWA. We will obtain and review NPDES permit files in which pollutant offset and trading is conducted in order to ensure that such permits were issued in compliance with CWA requirements.

Allegation 3: The petition alleges that MPCA's use of schedules of compliance in permits is inconsistent with the Clean Water Act and EPA's regulations.

Response: We will obtain NPDES permit files pertaining to schedules of compliance and evaluate whether those permits were issued in compliance with CWA requirements.

Schedule: We expect to begin our initial review of the permit files in August 2010 and to complete our review by March 1, 2011.

Protocol for Responding to Issues Related to Compliance Monitoring and Enforcement¹

Allegation 1: The petition alleges that MPCA has failed to establish and enforce an effective NPDES permitting program for direct discharges from over 55,000 known septic systems that are discharging to Minnesota waters.

Response: We will review information from MPCA concerning its implementation and enforcement procedures to control surface water discharges from point source onsite wastewater treatment systems that lack an NPDES permit. We will also evaluate State actions relative to compliance, monitoring, and enforcement necessary to determine:

¹ EPA maintains independent enforcement authority under the Clean Water Act. Comparable State authority is a prerequisite to receiving, and an ongoing requirement for the continued operation of, an approved State NPDES program.

- MPCA's knowledge of the number of unpermitted sites,
- MPCA's plan to reduce the number of unpermitted sites,
- Overall program performance,
- Adequacy of resources and staffing, and
- State code, rules or policy encumbrances.

We will negotiate with the State to include straight pipe compliance evaluation and enforcement actions as part of the State/EPA Joint Work Plan and/or the Compliance Monitoring Strategy for 2011.

Schedule: We expect to begin our initial review during August 2010 and to complete our review by March 1, 2011. MPCA and EPA will meet via conference call to discuss procedures that the State has adopted to address unpermitted point source dischargers.

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