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 33

FROM: Kevin Pierard, Chief
NPDES Permits Branch

TO: File

Issue 33 (Real Time)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 33 stated the following:

> Wisconsin rules at Wis. Admin. Code NR §§ 106.32(3)(c)(2) and 106.32(4)(d) provide that certain effluent limitations may be based on real time conditions. Does Wisconsin have current or administratively continued permits that implement either of these provisions? If so, how does the State receive and manage discharge monitoring reports and other data to evaluate compliance?

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

There is no federal analogue, nor applicable federal guidance, to the State's use of "real time" data, thus EPA's inquiry focused on understanding the implementation of the State's provision to calculating effluent limitations. There are at least two state regulatory provisions that describe the use of "real time" data.

Wis. Admin. Code NR § 106.32(3)(c)(2) (2004) provides:

> If approved by the department, the value of Qs [stream-flow above the discharge point (volume/time)] of the receiving water for calculating effluent limitations based upon the chronic toxicity criteria specified in s. NR 105.06 may be determined on a case-by-case basis,

using historical flow data or real time data. Qs may be based on real-time streamflow data if the permittee demonstrates that modifications to effluent quality or quantity can be achieved in response to changing stream conditions. Appropriate modifications to effluent quality or quantity may include, but are not limited to, land application, storage, shutdown or reduction in ammonia feed rates.

Wis. Admin. Code NR § 106.32(4)(d) (2004) provides:

> *Real-time data.* Effluent limitations may be established based on real-time effluent and stream data provided the permittee demonstrates that the real-time data can be collected, and the discharge can be controlled to attain the effluent limitations. Adjustment of effluent pH may be an appropriate modification for compliance with real-time daily maximum limits. Real-time stream data may not be used to calculate ammonia limits if the department determines that the discharge may affect the existence of any endangered or threatened species listed under ch. NR 27.

In Attachment C of its October 14, 2011 letter, WDNR responded to Issue 33 as follows:

> For issue 33, EPA asked for information regarding use of real time data in Wis. Adm. Code NR §§ 106.032(3)(c)(2) and 106.32(4)(d). Here are two examples and a brief description regarding how compliance is measured:
>
> 1. Appleton WWTF (0023221)
> CBOD [carbonaceous biochemical oxygen demand] limits are listed in a grid based on river flow and temperature.
>
> Compliance is measured when Appleton reports the appropriate CBOD limit from the grid on the DMR [discharge monitoring report] and also reports their effluent CBOD value for that day. (River flow and temperature are also reported on the DMR.)
>
> SWAMP [System for Wastewater Applications, Monitoring, and Permits] has the capability to compare the effluent CBOD value to the reported CBOD limit and determine compliance. Exceedances are automatically flagged by SWAMP.
>
> 2. Eau Claire WWTF (0023860)
> Ammonia limits are listed in a grid based on effluent pH.
>
> Compliance is measured when Eau Claire reports the appropriate Ammonia limit from the grid on the DMR and also reports their effluent Ammonia value for that day. (Effluent pH is also reported on the DMR.)
>
> SWAMP has the capability to compare the effluent ammonia value to the reported limit and determine compliance. Exceedances are automatically flagged by SWAMP...

Letter from Matt Moroney, Deputy Secretary, WDNR, to Susan Hedman, Regional Administrator, U.S. EPA (Oct. 14, 2011) (on file with U.S. EPA).

WDNR's response affirms that they have National Pollutant Discharge Elimination System (NPDES) permits that implement the real time provisions of Wis. Admin. Code NR §§ 106.32(3)(c)(2) and 106.32(4)(d). Further, the real time examples provided by WDNR show that discharge monitoring reports are received and managed in a manner that is adequate to evaluate compliance. Therefore, WDNR's answer is sufficiently responsive to EPA's question regarding the utilization of real time data to ensure compliance.

Conclusion

Based on EPA's above review of the State's submission of supplemental information, EPA concludes that Issue 33 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).