

Use Attainability Analysis For Wet Weather Discharges

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Indiana UAA Program - Background

- Over 100 CSO communities in Indiana
- A few Federal consent decrees, but most LTCPs are being done under State permits or orders
- State bacteria WQS have average and maximum levels
- Common issue to all LTCPs, except if total separation: how do you show compliance with WQS?

Options for WQS Compliance

- Presumptive approach: reduce to certain number of overflows per CSO Policy, and review situation during post-construction monitoring to see if more action is warranted
- That DOESN'T WORK in Indiana – if any overflows remain, you know that you will have WQS violations
- EPA has said that can't accept LTCP unless it shows that WQS compliance will happen, or (conditionally) that WQS are being revised and you will comply with revised WQS
- So you have to use another approach

The “Design Flow” Option

- IDEM developed another option – called “design flow” or “CSO treatment facilities” or “Michigan” approach, since patterned after approach from Michigan DEQ
- No untreated overflows – all overflows must be conveyed to a facility for some level of treatment
- 1-year, 1-hour storm flows must go to POTW
- 10-year, 1-hour storm flows must be treated at CSO treatment facility, including disinfection
- If you do all that, IDEM will exercise enforcement discretion not to sue you if there are WQS violations
- Community is still in legal jeopardy – not clear that you have any protection from citizen suits
- Works for some small communities – conveyance cost is obstacle for others (along with legal risks)

UAA Option

- For communities that can't do “design storm” approach, WQS need to be changed
- Way to do that is through UAA
- CSO communities in Indiana wanted to be able to do the UAA in/with LTCP
- That way, WQS get changed up front, and you know that after LTCP is implemented, you will be in compliance with new WQS
- This is all COMPLETELY consistent with USEPA guidance on LTCPs and UAAs
- Also included – long-term compliance schedules, to govern time period while LTCP is being implemented

Implementation of UAA Option

- Communities developed a legislative proposal that laid out process for doing UAAs in LTCPs
- Why legislative? Faster than regulatory, and provided added pressure on agency to take action
- Proposal was shared with State and NGOs, and issues and concerns were addressed, so there was no significant opposition to legislative passage
- Then IDEM had to issue rules to implement law
- Rules were adopted, then went to EPA Region, which raised concerns
- Issues were raised to EPA HQ, and EPA ultimately approved State process

Status of CSO UAAs

- All of the major CSO communities are developing UAAs in their LTCP process
- Indianapolis – when LTCP approved, agencies reserved judgment on UAA for later decision; held up by other developments, now coming back to UAA for resolution, and may need updating of economic info
- Kokomo – decided to get LTCP approved and then do UAA; UAA now done and waiting to go to Water Pollution Control Board for approval, then to EPA for approval

Current Issues

- Questions arose about why communities want UAA approved now, when WQS change will not technically take effect until LTCP is fully implemented, in 20 years
- IDEM has offered to issue a “comfort letter,” stating that UAA looks OK, and that community can come back when LTCP is implemented to get WQS change – in meantime, no enforcement
- One of IDEM’s concerns – if UAA based on economic test, outcome could change in 5-year review (which means that you should think about using non-economic UAA tests too)
- Communities not very keen on “comfort letters,” and are continuing with UAAs

Other Indiana LTCP Issues

- Schedules of more than 20 years
- Affordability threshold of 2% of MHI
- Promoting green infrastructure
- Awaiting results of US Conference of Mayors dialogue with US EPA on these issues

Questions?

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