

Adaptive Implementation

QUESTION

The following question was sent to member of the NACWA Legal Affairs Committee on March 9, 2009:

We are writing to you as a member of the NACWA Legal Affairs Committee with a request for information from a NACWA member utility that has asked if any NACWA members are aware of any permit, Consent Order or Decree, Long Term Control Plan or any other regulatory document that incorporates “Adaptive Implementation.”

RESPONSES

The following responses were received from members of the committee:

Response 1: There are a lot of TMDLs that are adaptive. It's not as prevalent in consent decrees or permits. There is the Reckhow report that goes into adaptive TMDLs in detail. View Report at <http://www.nacwa.org/images/stories/public/2009-03-11reckhow.pdf>.

Response 2: Sanitation District No. 1's consent decree allows them to use watershed management to develop and implement a long-term control plan for the combined sewer overflows, “eliminate” sanitary sewer overflows, and improve water quality. The first watershed plans are due on June 30, 2009. SD1 then will update their watershed plans every five years. There have been several papers/presentations at WEFTEC and a presentation last year at the CSO Workgroup. The Consent Decree and SD1 deliverables are on their website: <http://www.sd1.org/documents/documents.asp?id=168&PageFrom=getDocs>.

Response 3: Northern Kentucky Sanitation District No. 1 has adaptive management in their CD. Also, Columbus Ohio has a state order – the words adaptive management may not be in the order – but they are to implement a portion of the program out front and then submit a plan for the rest of their program in the future.

Response 4: Due to ever changing circumstances, adaptive implementation is one of the preferred methods for TMDLs in Region 7. I'm not aware of a LTCP that uses this method explicitly, although reopeners are negotiated for various purposes.

Response 5: The Milwaukee Metropolitan Sewerage District's 2020 Facilities Plan, which has been approved by the Wisconsin DNR, contains an adoptive implementation plan under which certain facilities will or will not be built dependant upon whether or not projected long term residential growth occurs. The Facilities Plan is “regulatory” in the sense the District cannot commence construction of any new significant project which has not been approved by the DNR as part of such a plan. See letter from Wisconsin DNR at <http://www.nacwa.org/images/stories/public/2009-03-11wiscltr.pdf>.

Response 6: Check out the Louisville MSD. I worked on it as a sub consultant so I believe that this document makes a case that the green infrastructure will produce reductions of flows in the CSO area. Consequently, the idea is to develop the green infrastructure first and measure the reductions before proceeding with all of the gray projects. (gray or grey is concrete of course) I believe that over the course of developing this approach, MSD had conversations with the state and EPA Region 4 and there was agreement to this in concept. The LTCP and the Integrated Overflow Abatement Program (which is a combination of SSO and CSO a watershed approach in some folks mind) was submitted in December 2008 and EPA has not yet made official comments. <http://www.msdlouky.org/projectwin/ioap.htm> See this link for the MSD Project WIN Integrated Overflow

Abatement Program. BTW – they had a wonderful stakeholder process and these communities leaders were the ones who insisted on this adaptive implementation approach.

Response 7: To the extent that MS4 can serve as an example, the Washington State Phase I and II MS4 stormwater permits use a "compliance pathway" when there are violations of WQS. The compliance pathway was litigated at the PCHB and upheld as not a violation of federal or state law, in the context of municipal stormwater. In its Decision, the PCHB referred to the compliance pathway as adaptive management. The only other example I can think of is the trend toward reviewing assumptions and making adjustments to those assumptions in the context of TMDLs. For example, the Snake River Hells Canyon TMDL is being revised due to new information based on language in the TMDL that allowed for adjustments based on new information. The draft Spokane River TMDL that is still in process is contemplating an adaptive management component, which will allow for adjustments and off ramps based on new information after a period of time.