

Midwest Environmental ADVOCATES

pro bono publico

VIA ELECTRONIC MAIL

December 16, 2005

Paul W. Luebke,
Department of Natural Resources
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707

Re: Comments on WPDES Permit No. WI- 0046477-03-0

Dear Mr. Luebke:

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air and water. We appreciate the opportunity to comment on WPDES permit no. WI-0046477-03-0 regarding General Mitchell International Airport. We are submitting the following comments on behalf of Friends of Milwaukee's Rivers.

At the outset, Midwest Environmental Advocates appreciates that the DNR and General Mitchell International Airport have taken steps to protect the waterways surrounding the airport. In particular, we appreciate that the airport has phased out all use of ethylene glycol in favor of the less toxic substitute propylene glycol. We also appreciate that General Mitchell is undertaking a water quality study for streams that receive storm water discharges.

On the other hand, Midwest Environmental Advocates is concerned that the airport is not meeting its glycol capture goals and that the current permit does not require compliance with water quality standards. The following comments detail our specific concerns.

COMMENT: The Permit Does Not Require Compliance with Water Quality Standards.

Federal regulations prohibit the DNR from issuing a WPDES permit that does not ensure compliance with water quality standards. The Clean Water Act and federal regulations require that *all* WPDES permits contain effluent limitations necessary to protect state water quality standards. 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4 and 122.44. Specifically:

40 C.F.R. 122.4. No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of [the Clean Water Act], or regulations promulgated under [the Clean Water Act];
...

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.

40 C.F.R. § 122.4(a) and (d). *See also* 40 C.F.R. § 122.44(d)(1)(i) (requiring limitations on all pollutants that DNR determines “may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to” a violation of water quality standards.”

The regulations cited above are applicable to storm water discharge permits as well as general point source discharge permits. 33 U.S.C. § 1342(p)(3)(A) (requiring permits for storm water discharges associated with industrial activity to meet all applicable provisions of [33 U.S.C.S. § 1311](#)).

Section 2.3 of the Proposed Permit only requires that water quality standards be met “to the maximum extent practicable.” This language violates the federal regulation cited above. Granted, Section 2.3 does state that storm water discharges may not contain pollutants that may cause a violation of water quality standards, but the permit does not identify what those pollutants are, specify the levels at which they may cause a violation of water quality standards, and does not use the “cause or contribute to” language in 40 C.F.R. § 122.44(d)(1)(i). As a result, Section 2.3 violates the federal regulations cited above and must be modified to require absolute compliance with water quality standards in Wilson Park Creek, the Kinnickinnic River, Oak Creek, and Lake Michigan.

COMMENT: Proposed Best Management Practices for Glycol Capture May Not Ensure Compliance with State Water Quality Standards.

As noted above, the WPDES storm water discharge permit for General Mitchell International Airport must *ensure* that state water quality standards will be met, but it is not clear that the current BMP’s will ensure this.

BMP’s are a form of “effluent limits” and may be used instead of numeric limits to satisfy water quality-based requirements. 40 C.F.R. § 122.2 (defining “effluent limit” broadly). However, BMPs must still be drafted and applied so as to ensure the attainment of water quality standards.

Midwest Environmental Advocates is concerned that the current permit may not ensure attainment of water quality standards. It appears that the airport may be causing or contributing to an exceedence of water quality standards in Oak Creek. First, the airport discharges storm water via outfall 003 to Oak Creek, which is listed as an impaired waterway on the state’s 2004 303(d) list due to acute toxicity. The airport is also discharging storm water via outfall 007 to Wilson Park Creek and the Kinnickinnic River, upstream of an impaired waterway (Kinnickinnic River downstream of Chase Avenue listed on 303(d) list). Thus, it is likely that the airport may be negatively affecting water quality in the Kinnickinnic River and Wilson Park Creek; the DNR

is proposing designated use downgrades for large sections of both waterways, each of which receive storm water runoff from the airport. Whether or not the downgraded designations are justified, the DNR's attempt to downgrade these waterbodies highlights the degraded water quality in those rivers.

Despite these potential reductions in water quality and apparent violations of water quality standards, DNR has apparently not made the BMPs related to glycol capture stricter since the last permit. On the contrary, the glycol capture goal is now lower than it was in the last permit. While we understand that this new, lower goal may more accurately reflect fugitive glycol losses and realistic capture goals, DNR may not lower the standard if it will contribute to nonattainment of water quality standards. Further, no matter what the goal is set at, the fact is that actual glycol capture for the past five years has been well below even the new, lower goal. The actual glycol capture rate varied between 20.6% and 31.8% between 2000 and 2005, while the goal was 38% to 40%. Further, there has not been a trend toward better capture; the rate was 31% in 2003-2004 but only 22.5% in 2004-2005.

Further, it is not clear whether the DNR wrote the previous permit intending that the glycol capture goal must be met in order to ensure attainment of water quality standards. If so, then the permittee has been in violation of its permit and the new permit needs to contain stricter BMPs to ensure better glycol capture. While economics may factor into the choice of BMPs, the DNR has a duty to require the permittee to comply with state water quality standards and to impose conditions in the permit to ensure compliance with water quality standards. If the BMPs for glycol capture are not being attained, and if this leads to nonattainment of water quality standards, then DNR must require alternate or additional measures for glycol runoff reduction – not reduce glycol capture requirements.

COMMENT: Section 4.1 and 4.2 Should be Clarified to State that Failure to Meet Glycol Recapture Goals, And Failure to Meet Water Quality Standards, Constitutes Noncompliance with the WPDES Permit.

As mentioned above, the airport has not met its glycol collection goals for the past five years and there is no evidence that its collection percentages are improving. Yet section 4.1 of the proposed permit states that the permittee is required to follow the Storm Water Pollution Prevention Program developed under the last permit, which presumably is the same permit under which the airport failed to meet its glycol capture goals. Further, section 4.2 states that

[i]f the airport fails to comply with the annual glycol capture goal for a deicing season, additional efforts shall be made to comply with the next year's glycol capture goal. An amendment to the storm water pollution prevention plan shall be submitted to the Department proposing additional efforts or changes.

This technique has apparently not worked to ensure attainment of the glycol recapture goal in the past. As a result, more stringent measures should be mandated in this WPDES permit. As written, this section leaves open the possibility that the permittee could continue to fail at its

capture goals with no consequences. This is especially worrisome if the glycol capture goals were set at the minimum level needed to protect state water quality standards.

COMMENT: The Airport Should be Required to Monitor Toxicity for Additional Parameters.

The airport should monitor for potential toxic pollutants that are additives in propylene glycol, such as tolyltriazoles and other surfactants and corrosion inhibitors. The EPA believes that the toxicity of propylene glycol is significantly higher due to the fact that it comes in a formulation that includes glycol, water, and chemical additives such as flame retardants and corrosion inhibitors. U.S. Environmental Protection Agency, Preliminary Data: Airport Deicing Operations, August 2000, § 9.2, available at www.epa.gov/waterscience/guide/airport/airport.pdf (last visited December 15, 2005). But, the current permit does not require a general toxicity test such as a WET test or monitoring for other chemicals. In order to find out what the pertinent problems are for aquatic toxicity, the airport needs to monitor regularly for more than just the parameters listed in Table 7.2.1.

CONCLUSION

For the foregoing reasons, the DNR must significantly improve the WPDES permit to ensure that the requirements of the Clean Water Act have been met. Thank you for considering these comments, and we look forward to your written response. Please do not hesitate to contact me if you have any questions.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.

s/Andrew C. Hanson

cc: Cheryl Nenn, Friends of Milwaukee's Rivers
Erin Chalmers