



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

July 29, 2020

REPLY TO THE ATTENTION OF:
WW-16J

Bruno L. Pigott, Commissioner
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Dear Mr. Pigott:

Thank you for your letter of July 13, 2020, submitting changes to Indiana's water quality standards that designate the state's combined sewer overflow wet weather limited use for seven waterbodies near Indianapolis.

Section 303(c) of the Clean Water Act, 33 U.S.C. § 1313(c), and 40 CFR § 131.21 require EPA to review and approve or disapprove all new and revised state water quality standards. EPA reviewed the information submitted in support of Indiana's new and revised standards and hereby approves them.

Section 7 of the Endangered Species Act, 16 U.S.C. § 1536, requires federal agencies to consult with the United States Fish and Wildlife Service to ensure that any federal action does not jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. However, under 50 CFR § 402.02, Section 7 applies to agency actions "in which there is discretionary agency action or control." Consequently, EPA's actions with respect to certain types of water quality standards, such as those related to the protection of human health, are not subject to Endangered Species Act consultation since EPA lacks control or discretion under the Clean Water Act to modify its action based on other endpoints such as impacts to federally-listed threatened or endangered species. Because the new and revised water quality standards that EPA is approving here are related to the protection of human health, consultation under the Endangered Species Act is not required.

If you or your staff have any questions regarding this approval, please contact Aaron Johnson of my staff at (312) 886-6845 or johnson.aaronk@epa.gov.

Sincerely,

Tera L. Fong
Division Director, Water Division

Enclosure

cc: Paul Higginbotham, IDEM (electronic)
Nancy King, IDEM (electronic)
Martha Clark Mettler, IDEM (electronic)
Beth Admire, IDEM (electronic)
Kara Wendholt, IDEM (electronic)
Joseph Sutherland, Citizens Energy Group (electronic)
Ann W. McIver, Citizens Energy Group (electronic)
Erika Powers, Counsel, CWA Authority, Inc. (electronic)