



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

REPLY TO THE ATTENTION OF:

W-15J

October 18, 2023

Brian C. Rockensuess, Commissioner
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Dear Mr. Rockensuess:

Thank you for your letter of May 11, 2022, submitting changes to Indiana's water quality standards that designate the state's combined sewer overflow (CSO) wet weather limited use for seven waterbodies near Fort Wayne. U.S. Environmental Protection Agency hereby approves these revised water quality standards.

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 or revised state water quality standards. EPA reviewed the information submitted in support of Indiana's new and revised standards and determined that Fort Wayne can achieve greater environmental benefits, in terms of increased opportunities for safe recreation, by controlling non-CSO sources of bacteria compared to controlling the remaining CSOs that occur during large storms when the public is less likely to recreate due to safety considerations. Fort Wayne provided information in its June 2020 Use Attainability Analysis and a February 15, 2023 letter to EPA about how the City engages in a wide variety of activities designed to further enhance water quality and the community's enjoyment of Fort Wayne's rivers, and about the high level of CSO control that Fort Wayne will be achieving.

As more CSO communities nationally near the completion of their Long Term Control Plans, EPA will continue to evaluate the applicability of the factors listed in EPA's implementing regulations at 40 CFR § 131.10(g) to CSO-related designated use revisions. EPA recognizes that this type of revision to water quality standards raises complex policy issues that would benefit from further analysis going forward. EPA intends to further evaluate these issues to inform future actions of this kind, and will consider providing additional information on these issues, as needed and appropriate, in accordance with the Clean Water Act.

Section 7 of the Endangered Species Act, 16 U.S.C. § 1536, requires federal agencies to consult with the U.S. 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,

10/18/2023

X Linda Holst

For Tera L. Fong
Director, Water Division
Signed by: LINDA HOLST

Enclosure

cc via email w/ enclosure:

Paul Higginbotham, IDEM
Nancy King, IDEM
Martha Clark Mettler, IDEM
Beth Admire, IDEM
Dave Tennis, IDEM
Kumar Menon, Fort Wayne City Utilities
Matthew Wirtz, Fort Wayne City Utilities