



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Dept. Of Environmental Management  
Commissioner's Office

DEC 28 2005

DEC 21 2005

REPLY TO THE ATTENTION OF:

WQ-16J

Thomas W. Easterly, Commissioner  
Indiana Department of Environmental Management  
P.O. Box 6015  
100 North Senate Avenue  
Indianapolis, Indiana 46206-6015

Dear Mr. Easterly:

On October 4, 2005, the United States Environmental Protection Agency (USEPA) received a letter transmitting Indiana's new Streamlined Mercury Variance rule, 327 IAC 5-3.5. This rule was published in the Indiana Register on May 1, 2005, and became effective on May 6, 2005. The Attorney General's certification for this rule was signed on June 7, 2005, and received by USEPA on October 4, 2005. Also submitted by Indiana were supporting documents demonstrating the widespread social and economic impacts of compliance with mercury limits derived from Indiana's existing water quality criteria as well as documentation prepared by the Indiana Department of Environmental Management (IDEM) showing compliance with the requirements of 40 CFR 132, Appendix F, Procedure 2.

The rule establishes a process and application requirements for obtaining a variance from the existing water quality criteria used to establish a water quality-based effluent limitation for mercury in wastewater discharges. This rule is applicable statewide. The rule, together with the additional documentation provided by IDEM, constitutes a variance from water quality standards for National Pollutant Discharge Elimination System (NPDES) permit holders in Indiana that meet the application requirements of 327 IAC 5-3.5.

USEPA has reviewed 327 IAC 5-3.5 and the supporting documentation provided by IDEM. With the exceptions noted below, USEPA has determined that the rule and the supporting documentation meet the substantive requirements for a variance from water quality standards consistent with Section 303 of the Clean Water Act (CWA) and Federal regulations at 40 CFR 131 and, for portions of Indiana within the Great Lakes basin, 40 CFR 132. USEPA has also determined that Indiana's rule complies with the procedural requirements of Federal regulations at 40 CFR 131.20 for a complete submission. Therefore, USEPA hereby approves this variance pursuant to Section 303 of the CWA and Federal regulations at 40 CFR 131 and 132 except for 327 IAC 5-3.5(4)(b)(1) and 327 IAC 5-3.5(10). USEPA is not acting on 327 IAC 5-3.5(4)(b)(1) at this time. USEPA has determined that Indiana's rule at 327 IAC 5-3.5(10) is not a water quality standard and, therefore, falls outside of USEPA's review and approval authorities under Section 303 of the CWA.



Consistent with Section 7 of the Endangered Species Act (ESA) and Federal regulations at 50 CFR Part 402, USEPA is required to consult with the United States Fish and Wildlife Service (USFWS) on any action that may affect Federally-listed threatened and endangered species. Pursuant to the "Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act" (the MOA) governing consultation with USFWS, the approval of new and revised State water quality criteria under Section 303 of the CWA is an action requiring consultation. To date, USEPA has initiated, but not completed, consultation with USFWS on the revised rules approved above. USEPA has determined that this approval action does not violate Section 7(d) of the ESA, which prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives, and has included in the record the basis for the conclusion that there are not impacts of concern during the interim period until the consultation is completed.

If you have any questions regarding this action, please contact me at (312) 353-2147, or either Francine Norling or David Pfeifer of my staff. Ms. Norling may be reached at (312)886-0271, and Mr. Pfeifer at (312) 353-9024.

Very truly yours,

A handwritten signature in black ink, appearing to read "JL Traub", with a long horizontal flourish extending to the right.

Jo Lynn Traub  
Director, Water Division

cc: John Nixon, IDEM  
Steve Rousch, IDEM  
Scott Pruitt, USFWS