



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

JUL 01 2009

REPLY TO THE ATTENTION OF:

WQ-16J

Todd L. Ambs, Administrator
Division of Water
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Mr. Ambs:

U.S. Environmental Protection Agency has completed its review of Wisconsin's revised water quality rules at Chapter NR 105. The revised rules were submitted to EPA by the Wisconsin Department of Natural Resources on May 4, 2009. This submission, with certification of the Wisconsin Attorney General received by EPA on March 17, 2009, satisfies the requirements of the federal regulations at 40 CFR 131.6 for a submittal of new or revised water quality standards by a state to EPA. The revisions submitted by Wisconsin consisted of the following:

- Section 1. NR 105, Table 2, acute aquatic life criteria for total recoverable copper and total recoverable nickel;
- Section 2. NR 105, Table 2A, hardness ranges for acute aquatic life criteria for copper and nickel;
- Section 3. NR 105, Table 5, chronic aquatic life criteria for endrin and selenium;
- Section 4. NR 105, Table 6, chronic aquatic life criteria for total recoverable copper and nickel;
- Section 5. NR 105, Table 8, Human threshold criteria for antimony, cadmium, chlorobenzene, total chromium, chromium +3, chromium +6, total cyanide, 1,2-dichlorobenzene, ethylbenzene, hexachlorocyclopentadiene, and toluene; and,
- Section 9. NR 105, Table 9, Human cancer criteria for arsenic, 3,3'-dichlorobenzidine, and 1,3-dichloropropene.

Pursuant to section 303(c)(3) of the Clean Water Act (CWA) and federal regulations at 40 CFR 131.21, EPA is required to review and approve new and revised state water quality standards before they can become effective for CWA purposes. EPA approves the revisions to the human health non-cancer criteria for antimony, cadmium, chlorobenzene, total chromium, chromium +3, chromium +6, total cyanide, 1,2-dichlorobenzene, ethylbenzene, hexachlorocyclopentadiene, and toluene, at Section 5, Chapter NR 105, Table 8, and the revisions to the human health cancer criteria for arsenic, 3,3'-dichlorobenzidine, and 1,3-dichloropropene at Section 9, Chapter NR 105, Table 9. With the exception of the chronic aquatic life criterion for selenium for waters designated by Wisconsin as "Limited Forage Fish"

aquatic life use, EPA approves, subject to consultation with U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA), the revisions to the acute aquatic life criteria for total recoverable copper and total recoverable nickel at Section 1, Chapter NR 105, Table 2; the revisions to the hardness ranges for acute aquatic life criteria for copper and nickel at Section 2, NR 105, Table 2A; the revisions to the chronic aquatic life criteria for endrin and selenium at Section 3, Chapter NR 105, Table 5; and the revisions to the chronic aquatic life criterion for total recoverable copper and nickel at Section 4, Chapter NR 105, Table 6.

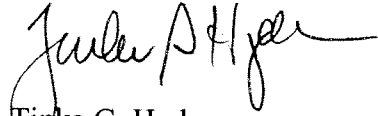
EPA is unable to act on Wisconsin's revised chronic selenium criteria for "Limited Forage Fish" Section 3, Chapter NR 105, Table 5, at this time. Unlike the revised chronic selenium criteria that Wisconsin adopted for other aquatic life uses expected to have fish species present, Wisconsin calculated this criterion based on toxicity studies that exposed test organisms to selenium through the water column. Currently available data indicate that toxicity to fish occurs as a result of dietary exposure to selenium. Consequently, a water column exposure-based criterion may not protect aquatic life uses for Limited Forage Fish waters. EPA's national selenium criterion is currently under review. EPA will act on this criterion once EPA finalizes its aquatic life criteria recommendations for selenium.

Consistent with section 7 of the ESA and federal regulations at 50 CFR Part 402, EPA is required to consult with FWS on any action that may affect federally-listed threatened and endangered species. EPA's approval of new and revised State water quality standards under section 303 of the CWA is an action requiring consultation. EPA has initiated, but not completed, informal consultation with FWS regarding these amendments to Wisconsin's surface water quality rules for aquatic life. EPA's approval of the aquatic life criteria revisions is, therefore, subject to the results of the consultation under section 7(a)(2) of the ESA. EPA's approval of the human health criteria is not subject to consultation under the ESA since EPA lacks discretion to alter this approval based on effects on listed species.

EPA has concluded that proceeding with approval of Wisconsin's aquatic life criteria revisions pending completion of consultation is consistent with section 7(d) of the ESA. EPA's approval decisions do not foreclose either the formulation by FWS, or the implementation by EPA, of any alternatives that might be determined in the consultation to be needed to comply with section 7(a)(2). By approving the standards subject to the results of consultation under section 7(a)(2) of the ESA, EPA has explicitly stated that it retains its discretion to take appropriate action if the consultation identifies deficiencies in the standards requiring remedial action by EPA. Moreover, EPA has included in the record the basis for the conclusion that approval of the state's water quality standards revisions will not result in any impacts of concern prior to the conclusion of consultation.

If you have any questions regarding this letter, please do not hesitate to contact me at (312) 353-2147, or Francine Norling of my staff at (312) 886-0271.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tinka G. Hyde
Director, Water Division

cc: Louise Clemency, USFWS, Green Bay Field Office
Bob Masnado, WNDR

bcc: David Pfeifer, WQ-16J
Francine Norling, WQ-16J
Lisa Larimer, OST