



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

REPLY TO THE ATTENTION OF:
WW-16J

Sanjay Sofat, Chief
Bureau of Water
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Mr. Sofat:

On August 14, 2020, your staff requested feedback on proposed edits to Revised Potential Draft Order Language for the Proposed Chloride Time-Limited Water Quality Standard (TLWQS or variance) for the Chicago Area Waterway System and Des Plaines River Watershed, PCB2016-014 (Consolidated) that the Illinois Environmental Protection Agency (IEPA) intends to file with the Illinois Pollution Control Board (IPCB or the Board).

As you are aware, U.S. Environmental Protection Agency submitted comments to the IPCB on March 16, 2020, with suggested revisions to the Revised Potential Draft Order Language to help address concerns as to whether any variance that is ultimately adopted is consistent with EPA's federal variance regulations at Title 40 of the Code of Federal Regulations (C.F.R.) § 131.14. As described below, EPA believes that IEPA's proposed edits address several the Agency's concerns and it would be beneficial if IPCB adopts those edits.

In Comment 1, EPA expressed support for conditions included in Section 4(d) of the IPCB's Revised Potential Draft Order Language requiring the chloride workgroup's annual reports to include information about the workgroup's outreach strategy and identification of any financial, technical, or other assistance the workgroup may be able to provide individual dischargers to overcome impediments. As EPA stated in that comment:

the proposed collaborative watershed approach would represent the highest attainable condition for the affected waterbodies if the variance contains enforceable conditions necessary to ensure that each entity is in fact participating in the watershed workgroup and implementing the actions recommended by the workgroup that are necessary to reduce chlorides to the greatest extent feasible.

IEPA's proposed edits retain these requirements and help strengthen the proposed collaborative watershed approach by adding requirements at Section 3(b)(29) requiring each discharger to report annually on the actions "that the discharger took to participate in a chloride workgroup,"

and Section 4(d)(8) requiring the chloride workgroup's annual report to assess "whether there has been adequate participation in the workgroup by the dischargers authorized under this TLWQS." Such conditions help strengthen the proposed collaborative watershed approach, and therefore would help ensure that any variance ultimately adopted by the IPCB would satisfy the highest attainable condition requirements of 40 C.F.R. § 131.14 by ensuring that the necessary information is available to assess whether dischargers are satisfying their requirement to participate in the chloride workgroup under Section 4(a).

Comment 2 of EPA's March 16, 2020 letter reflects concern that to justify the 15-year term of the proposed variance and help ensure that any variance ultimately adopted by the IPCB satisfies the highest attainable condition requirements of 40 C.F.R. § 131.14, the variance should require that variance conditions for each discharger are updated based on new information and that dischargers covered by the variance continue to reduce chlorides to the extent achievable throughout the 15-year term of the variance. If best management practices (BMPs) are identified in the future that are practicable for some but not all discharges within a particular category, IPCB should ensure that any such BMPs must be implemented by those dischargers able to do so to help satisfy the highest attainable condition requirements of 40 C.F.R. § 131.14.

IEPA's proposed edits include several revisions to the requirements in Section 6 regarding re-evaluations of the variance. Specifically, the proposed edits would require the IPCB to provide an opportunity for public input during the re-evaluation and require that the IPCB:

identify all additional BMPs and new or innovative technologies that are achievable for any discharger in the category and issue an order updating Table 3 to include any such BMPs or technologies for the entire category except that, if any such BMP or technology is achievable for some but not all dischargers within a discharger category, the Board may identify in Table 3 sub-categories of dischargers for whom the BMP or technology is not practicable.

IEPA's proposed edits help address EPA's concern.

Comments 3 and 5 of the Agency's March 16, 2020 letter also reflect concerns noted above about the need for the variance to ensure that dischargers update and tailor their discharger-specific pollutant minimization programs (PMPs). PMPs should reflect new information, including new information developed by the workgroups, and be updated to ensure that each discharger is implementing PMPs that reduce chlorides to the greatest extent that is achievable for each specific discharger. In addition, they reflect EPA's concerns that obligations to update and implement PMPs, and to meaningfully participate in the workgroup process need to be enforceable.

IEPA's proposed edits address these concerns by adding language to sections 2(a) and 3(a) requiring that each discharger's PMP be developed "to reduce chlorides into the CAWS and LDPR to the greatest extent achievable." Moreover, as noted above, IEPA's proposed edits would revise Section 6 to require the IPCB to update the BMPs in Table 3 during each re-evaluation. Section 6(c) of IEPA's proposed edits would require the chloride workgroups to "evaluate and provide recommendations for any BMPs that were identified in the Annual

Reports required by Section 3(b)(3).” Section 6(e) of IEPA’s proposed edits provide that the IPCB’s evaluation of additional BMPs shall be “[b]ased on the information provided in sections (c) and (d) and any other information available to the Board.” Sections 2(a) and 3(a) of IEPA’s proposed edits require that each discharger’s PMP must include all BMPs “specified by the IPCB following any re-evaluation required by Section 6.”

Taken together, these proposed edits would require that the chloride workgroups provide their recommendations for additional BMPs to the IPCB, that the IPCB consider these recommendations in updating Table 3, and that the dischargers implement all BMPs identified by the IPCB as part of the re-evaluation. These are important edits that help address concerns reflected in comments 3 and 5 of EPA’s March 16, 2020 letter.

In summary, IEPA’s proposed edits help address many of the issues identified in our March 16, 2020 letter and the Agency supports such changes. Thank you for the opportunity to provide feedback on IEPA’s proposed revisions to the draft chloride variance. These comments do not constitute final Agency action but are provided for your consideration as the State continues considering revisions to its WQS. If you have any questions regarding our comments, please contact Aaron Johnson of my staff at 312-886-6845 or johnson.aaronk@epa.gov.

Sincerely,

David Pfeifer, Chief
Watersheds and Wetlands Branch

Enclosure

cc: Stefanie Diers, IEPA (electronic)
Scott Twait, IEPA (electronic)