



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

MAR 22 2016

REPLY TO THE ATTENTION OF:
WN-16J

Bowden Quinn
Chapter Director
Sierra Club Hoosier Chapter
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Jesse Kharbanda
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Hoosier Environmental Council
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Albert Ettinger, IL Bar # 3125045
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Chicago, IL 60604

Jessica Dexter
Environmental Law & Policy Center
394 Lake Avenue, Suite 309
Duluth, MN 55802

Dear Petitioners:

Thank you for your February 29, 2016, letter to Administrator Gina McCarthy regarding the U.S. Environmental Protection Agency (EPA) response to a Petition for Corrective Action you originally submitted December 17, 2009, and supplemented on April 29, 2010, August 20, 2010, and August 1, 2013, regarding the National Pollutant Discharge Elimination System (NPDES) program for the State of Indiana. Your letter has been forwarded to me for response. It highlights concerns raised by your petition regarding the general permit-by-rule for coal mines and State oversight of coal mine activities, observes that 6 years have elapsed since your initial petition, with no final response, adds a concern regarding a September 23, 2015, decision by the Marion County Superior Court on the Bear Run mine in a case where the Sierra Club is the Plaintiff, and cautions that further delay in responding to the Petition is not warranted and would violate the Administrative Procedure Act.

As noted in our enclosed September 27, 2013, response to the Petitioner's August 1, 2013, supplement, EPA provided petitioners with the protocol describing our planned activities on May 16, 2012, (the Protocol); and had approved amendments to Indiana's antidegradation policy and methods to implement that policy, reviewed NPDES permits for 21 major dischargers, and provided comments to the Indiana Department of Environmental Management (IDEM) on five draft general permits. The Protocol laid out our plans for responding to the following allegations: 1) the lack of antidegradation implementation rules and procedures; 2) the draft implementation rules covering new or increased discharges in the Lake Michigan Basin and the U.S. Steel

permit; 3) the draft antidegradation implementation rule; 4) the Indiana legislation on de minimis threshold, antidegradation review, and consideration of socioeconomic factor; 5) the approval of permits in impaired watersheds, lack of a ban on phosphorous fertilizers, and designation of releases from Concentrated Animal Feeding Operations (CAFOs) as spills; 6) the issuance of permits without consideration of need for antidegradation or full public participation; 7) the issuance of general permits-by-rule without analyzing how the permits meet the antidegradation policy; 8) the appropriateness of allowing general-permits-by rule for coal mines; 9) the adequacy of public comment periods for general permits; 10) the permits-by-rule and the lack of a five year term; and 11) the enforcement of the requirements of general permits by IDEM. A number of those allegations (e.g. 1-4, 9, 10) were directed at draft legislation, rules, policies and/or permits the State has since changed or promulgated. EPA has been reviewing those changes as discussed in the Protocol. For others (e.g. 5-7), the Protocol noted the petition lacked specific information, but said EPA would review permits to be issued by the State. For some, it provided a preliminary response, noting in the responses to allegations 8 and 9, respectively, that EPA regulations do not categorically exclude coal mines from general permitting, and do not require a comment period at the time a facility submits a Notice of Intent, with the exception of CAFOs.

EPA has followed through on the plans it set forth in the Protocol. Among other things, it approved IDEM's final antidegradation policy and implementation methods (on September 27, 2012); reviewed general permits IDEM drafted to replace permits-by-rule for Non-contact Cooling Water, Petroleum Products Terminals, Sand & Gravel Operations, Groundwater Petroleum Remediation, and Hydrostatic Testing of Commercial Pipelines; reviewed draft individual NPDES permits for 21 major dischargers, as noted in the September 27, 2013, correspondence, to assure they complied with antidegradation requirements; reviewed the application of Indiana's prior antidegradation policy to the Jefferson, Austin and McCordsville permits; reviewed the Memorandum of Understanding (MOU) IDEM executed with the Indiana Department of Natural Resources on coal mining; conducted mine site inspections; and reviewed IDEM compliance and enforcement files for coal mines.

Our September 15, 2010, response to the August 20, 2010, petition supplement said we would respond to the petition in writing once we completed our review of the issues raised as supplemented. In exercising our discretion under 40 C.F.R. § 123.64(b)(1), to conduct an informal investigation of the allegations in a petition, we have been gathering information and pressing the State in the meantime to finalize changes to its statutes, regulations and policies and draft new general permits. As the Protocol noted, this petition was based on legislation, rules and policies the State had not yet finalized and did not provide specific information on a number of allegations. We reviewed the final enactments to assess their impact on the State's program, and are conducting our own review of permits and enforcement. EPA's review also considers the steps the State has taken to address the concerns your petition raised, since the State has effected a number of changes to its NPDES program. Our responses to your petition and supplements thus far have mainly tracked those State activities and our progress gathering and reviewing information.

We value your input and interest in the State's implementation of the NPDES program and have considered your concerns in our reviews of laws, rules, policies and permits the State has since issued, strengthening the State NPDES program in the process; but want to develop information further before we reach a decision that addresses all of your allegations. At present, EPA is reviewing rules the State promulgated in 2015, that, among other things, create a general permit program, to replace permits-by-rule, and impose a 5 year term on general permits.¹ As noted in the Protocol, EPA had approved much of the prior Indiana NPDES general permits-by-rule program in 1991, but not later revisions. IDEM's March 1, 2012, draft schedule responding to an EPA request regarding your petition, included a schedule to convert permits-by-rule to administratively issued NPDES general permits for 10 permit sectors by December 2013. The State has now promulgated regulations governing general permits; and we plan to ask IDEM for an updated schedule to submit draft general permits for Coal Mines, Construction Site Run-off, Industrial Stormwater, Municipal Separate Storm Sewer System (MS4), and the Allen County On-site Systems for review. With respect to your allegation that IDEM has not properly enforced general permit requirements at CAFOs and coal mines, EPA has conducted inspections at CAFO facilities and coal mine sites in Indiana. Regarding EPA's review of IDEM's compliance and enforcement files for coal mines, EPA reviewed compliance and enforcement files for 20 surface coal mining facilities, conducted 4 inspections and reviewed the Memorandum of Understanding between IDEM and IDNR. EPA plans to conduct additional file reviews of IDEM's compliance and enforcement actions for surface coal mines, and review the most recent iteration of the MOU between IDEM and IDNR.

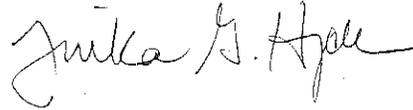
Your February 29, 2016, correspondence also expresses concerns about a September 23, 2015, decision by the Marion County Superior Court regarding Peabody Midwest Mining's Bear Run permit. Coverage under the general permit for coal mining discharges for this mine is an issue raised in your petition. In preparing to respond to your petition, EPA obtained and reviewed information on the Bear Run Coal Mine SMCRA Permit 256, NPDES permits ING040127 and ING040239; sent a letter to IDEM, dated November 19, 2010, recommending it require an individual permit for that mine; and issued two Clean Water Act Section 308 information requests dated October 12, 2011, and March 22, 2012, to Peabody Midwest Mining LLC (Peabody). EPA notes that the lack of response from IDEM to EPA's request for an individual permit prompted us to send the CWA Section 308 requests to Peabody, to obtain discharge data from the mine. We enclose our November 19, 2010, October 12, 2011, and March 22, 2012, correspondence on this matter, along with the responses we received from Peabody.

While working to complete our review of all the issues raised in the petition as supplemented, some of which entailed promulgation of new laws, we have worked with the State to review statutes, regulations, policies and permits the State has issued to address concerns you raised in your petition, as supplemented.

¹ The promulgated rules differ from drafts proposed earlier.

Please do not hesitate to contact Maria Gonzalez, Associate Regional Counsel, at (312)886-6630, if you have further questions, comments or would like additional information.

Sincerely,

A handwritten signature in cursive script that reads "Tinka G. Hyde". The signature is written in black ink and is positioned above the printed name and title.

Tinka G. Hyde
Director, Water Division

cc: Carol Comer, Commissioner, IDEM

Enclosures