



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 18 2019

REPLY TO THE ATTENTION OF:
WW-16J

Mr. James A. Zellmer, Deputy Administrator
Division of Environmental Management
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Mr. Zellmer:

Thank you for your letter received August 5, 2019, submitting Wisconsin's variance from the water quality standard for chloride for the Paddock Lake Wastewater Treatment Facility, WPDES Permit No. WI-0025062-10-0, to the U.S. Environmental Protection Agency for review under Section 303(c) of the Clean Water Act (CWA). This action would grant the Paddock Lake Wastewater Treatment Facility a variance from Wisconsin's chloride chronic toxicity criterion of 395 mg/L and would establish a variance-based effluent limit of 510 mg/L, expressed as a weekly average, for Paddock Lake Wastewater Treatment Facility's discharge to Brighton Creek in Kenosha County, Wisconsin. This variance is for five years, to coincide with the discharger's National Pollutant Discharge Elimination System Permit.

Consistent with Section 303(c) of the CWA and federal regulations at 40 CFR 131.21, EPA is required to review and approve new or revised state water quality standards. As detailed in the enclosed review document, EPA has determined that Wisconsin's variance is consistent with the requirements of the CWA and applicable federal regulations. EPA therefore approves the variance.

As required by section 7 of the Endangered Species Act and federal regulations at 50 CFR Part 402, EPA evaluated whether approval of this variance would affect federally-listed threatened or endangered species or designated critical habitat. As described in the biological evaluation, EPA determined that the action may affect, but is not likely to adversely affect, one or more listed aquatic, aquatic-dependent or wetland species. Further, EPA determined that the action will not destroy or adversely modify designated critical habitat. EPA has initiated but not completed consultation with U.S. Fish and Wildlife Service.

If your staff has any questions regarding this approval, please contact Jennifer Phillips-Vanderberg of my staff at (312) 353-7626.

Sincerely,



Joan M. Tanaka
Acting Director, Water Division

Enclosure

cc: Lisa Creegan, WDNR (electronic)
Laura Dietrich, WDNR (electronic)
Peter Fasbender, USFWS (electronic)
Nick Utrup, USFWS (electronic)

**EPA's Review of Wisconsin Department of Natural Resources
Request for Approval of a Variance from Chloride Water Quality Standard
Village of Paddock Lake, WPDES Permit Number WI-0025062-10-0
Under Section 303(c) of the Clean Water Act
WQSTS # WI 2019-1750**

Date:

I. Executive Summary

On August 5, 2019, the U.S. Environmental Protection Agency received a request from the Wisconsin Department of Natural Resources (the State) for approval of a variance from the water quality standard (WQS) for chloride for a discharge from the Paddock Lake Wastewater Treatment Facility, Wisconsin Pollutant Discharge Elimination System (WPDES) Permit No. WI-0025062-10-0, located in Paddock Lake, Kenosha County, Wisconsin. This facility is an existing discharger to Brighton Creek, designated as a warm water sport fishery, and discharges effluent with chloride concentrations in excess of the water quality-based effluent limit (WQBEL) necessary to meet the existing WQS of 395 mg/L for the protection of aquatic life. The variance allows the State to include a variance-based interim chloride effluent limit of 510 mg/L, as a weekly average, in the WPDES permit and requires the discharger to implement source reduction measures (SRMs) to identify and minimize sources of chloride to the facility.

As discussed in Section II of this document, EPA has determined that the variance is consistent with the relevant requirements of the Clean Water Act (CWA) and federal regulations at 40 CFR 131 and therefore approves the WQS revision. Consistent with the requirements of the Endangered Species Act (ESA), EPA evaluated the potential impacts of its approval of the variance on federally-protected species and designated critical habitat and has determined that consultation with the U.S. Fish and Wildlife Service (FWS) is necessary. As discussed in Section III of this document, EPA developed a biological evaluation (BE) that evaluates potential effects of its approval. Last, consistent with the "EPA Policy on Consultation and Coordination with Indian Tribes," EPA evaluated whether approval of the variance may affect the interests of federally-recognized tribes. EPA concluded that approval of the variance will not impact tribal interests and that, therefore, tribal consultation is unnecessary.

II. Whether the variance is consistent with the factors specified in 40 CFR 131.5(a)

Provisions of CWA Sections 101(a)(2) and 303(c)(2) are implemented through federal WQS regulations contained in 40 CFR 131, including 40 CFR 131.21, which require EPA to review and approve or disapprove state-adopted WQS. In making this decision, EPA must consider the factors set forth at 40 CFR 131.5(a). 40 CFR 131.14 identifies specific requirements pertaining to variances that EPA must consider in accordance with 40 CFR 131.5(a)(4) when deciding whether to approve or disapprove state-adopted variances. 40 CFR 131.6 outlines minimum requirements for state WQS submissions that EPA must consider in accordance with 40 CFR 131.5(a)(6). 40 CFR 132 sets forth specific requirements pertaining to WQS for the Great Lakes System that EPA must consider in accordance with 40 CFR 131.5(a)(6). Paddock

Lake Wastewater Treatment Facility is not within the Great Lakes drainage basin, meaning 40 CFR 132 is not applicable to this facility.

II.A. 40 CFR 131.5(a)(1) through (3) and (5) are not relevant to EPA's review of the variance.

40 CFR 131.5(a)(1) - (3) and (5) are not relevant in considering whether to approve the variance because the variance does not modify the underlying designated water uses, criteria, antidegradation policies, antidegradation implementation procedures or compliance schedule provisions within the State's WQS.

II.B. Whether the variance is consistent with 40 CFR 131.14. (40 CFR 131.5(a)(4))

40 CFR 131.14 specifies requirements that states must fulfill to obtain EPA approval of variances to WQS. As described below, the variance meets all of the relevant requirements of 40 CFR 131.14.

II.B.1. Whether the variance identifies the pollutant and the water body to which it applies and the permittee subject to the variance, and that the variance only applies to the specified permittee and water body. (40 CFR 131.14(a)(1) & 40 CFR 131.14(b)(1)(i))

As specified in the variance submittal, the variance only applies to chloride, Brighton Creek in Kenosha County and the Paddock Lake Wastewater Treatment Facility. Therefore, the variance is consistent with the requirements of 40 CFR 131.14(a)(1) and 40 CFR 131.14(b)(1)(i).

II.B.2. Whether the State retained, in its standards, the underlying designated use and criterion addressed by the WQS variance. (40 CFR 131.14(a)(2))

The State has retained in its WQS the underlying aquatic life uses at s. NR 102.04(3), as well as the related criteria for Brighton Creek at s. NR 105.05 and 105.06. Therefore, the variance is consistent with the requirements of 40 CFR 131.14(a)(2).

II.B.3. Whether the designated use and criterion addressed by the WQS variance can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act. (40 CFR 131.14(a)(4))

The State's 395 mg/L aquatic life criterion for chloride is more stringent than any federal effluent guideline or any other technology-based limits that could be required for this type of facility under sections 301(b) and 306 of the CWA. Therefore, the variance is consistent with the requirements of 40 CFR 131.14(a)(4).

II.B.4. Whether the variance includes the requirements that apply throughout the term of the WQS variance that represent the HAC of the waterbody segment applicable throughout the term of the WQS variance.... (40 CFR 131.14(b)(1)(ii))

Federal WQS variance regulations at 40 CFR 131.14(b)(1)(ii)(A) identify three possible ways to set the highest attainable condition (HAC) when a state or tribe adopts a discharger-specific WQS variance; these rules require states and tribes to consider whether “additional feasible pollutant control technology” can be identified that would reduce the discharge of the variance pollutant and improve effluent quality and ambient water quality. In the case of chloride, potential pollution control technologies include: (1) preventing introduction of chloride into wastewater at the chloride source(s); (2) installing pollution control technologies (i.e., lime softening) at the drinking water plant to remove the need for the introduction of chlorides by point-of-use water softeners; and (3) installing additional wastewater treatment technology to attempt to remove chloride from wastewater, prior to discharge, at the wastewater treatment plant. All technologies that remove chloride at the wastewater treatment plant (i.e., reverse osmosis filtration) function by transferring chloride from wastewater into another waste stream (either solid or concentrated liquid) that requires disposal.

For facilities where a major source of chloride is point-of-use water softeners, lime softening may be used to soften drinking water before it goes to customers and thereby reducing or eliminating the need to use point-of-use water softeners and the associated chloride loadings.

As discussed in Section II.B.9, below, supporting documentation submitted by WDNR (Municipal Preliminary Screener Calculation for Use of Reverse Osmosis worksheet) indicates that installation of reverse osmosis filtration at this facility is not economically feasible. Furthermore, supporting documentation shows that installation of lime softening is not economically feasible either. Since neither the discharger nor the State identified a feasible pollutant control technology that would enable the discharger to reduce current chloride effluent concentrations beyond current levels, the State expressed the HAC for the variance period as “the...interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program,” consistent with 40 CFR 131.14(b)(1)(ii)(A)(3) and as described below in Section II.B.9. of this document. Per 40 CFR 131.14(b)(1)(ii)(A)(3), when adopting a discharger-specific variance, a state or tribe can choose to express HAC as either an “interim criterion” and a pollutant minimization program (PMP)/SRM plan or an “interim effluent condition” and a PMP/SRM plan. Thus, the State’s expression of HAC is consistent with federal requirements.

The State set the interim effluent condition for chloride using an EPA-approved statistical procedure for characterizing existing effluent quality (also known as “level currently achievable,” or LCA) that is outlined in Wisc. Adm. Code s. NR 106.82(9). This procedure specifies that the alternative effluent limitation for chloride shall equal either “(a) [t]he upper 99th percentile of the permittee's 4-day average of the representative data available to the department, or (b)... [a] value no greater than 105% of the permittee's calculated highest weekly average of the representative effluent data.” The State calculated the discharger’s limit to be 510 mg/L, which was calculated using method (b) above. Consistent with the State’s EPA-

approved rule at s. NR 106.83(3), in addition to requiring that the discharger meet its interim effluent limit for chloride, the permit requires the facility to implement a PMP/SRM plan to reduce potential sources of chloride to the system.

The discharger's SRM plan is designed to identify and eliminate sources of chloride in its wastewater influent and effluent and includes submitting annual reports to the State documenting the continued monitoring, source reduction activities, and progress in reducing chloride concentrations in the effluent. The discharger's source reduction measures include the following actions: develop and implement outreach targeting water softener use, present chloride reduction information at the open house at the facility and at the lake district meeting, publish chloride reduction information in the village website and newsletter, adopt an ordinance to require high efficiency water softeners for all new and replacement water softeners, adopt an ordinance requiring hose bibs to be plumbed with unsoftened water, require businesses to provide chloride reduction plans, survey residents on water softener use, sample collection system for chlorides, visit businesses and schools to discuss chloride reductions, reduce infiltration and inflow as part of CMOM, reduce road salt usage by 10-15% and ensure proper storage of road salt.

Therefore, the State's expression of the discharger's HAC satisfies the requirements of 40 CFR 131.14(b)(1)(ii).

II.B.5. Whether the variance includes a statement providing that the requirements are either the HAC identified at the time of variance adoption, or the HAC later identified during any reevaluation, whichever is more stringent. (40 CFR 131.14(b)(1)(iii))

No re-evaluation is required because the term of the variance does not exceed five years. As described above in Section II.B.4. of this document, the variance's requirements reflect the HAC identified at the time the variance was adopted. Therefore, the variance is consistent with the requirements of 40 CFR 131.14(b)(1)(iii).

II.B.6. Whether the variance includes the term of the WQS variance, and whether the term of the WQS variance is only as long as necessary to achieve the HAC, consistent with the demonstration provided in paragraph (b)(2) of this section. (40 CFR 131.14(b)(1)(iv))

The State's supporting documentation indicates that the variance term is five years, coinciding with the term of the discharger's permit. Since the State determined that source reduction measures are the most effective means of improving the discharger's effluent quality, implementation of the discharger's permit ensures that HAC is achieved by capping effluent chloride concentration at the LCA and requiring implementation of source reduction measures throughout the five-year permit and variance term. Because the HAC results from the implementation of the source reduction measures in the SRM plan and the SRMs run for the duration of the variance, the five-year term of the variance will ensure the HAC is achieved. EPA concludes that the facility's chloride variance will result in HAC throughout the term of the variance and that the variance is consistent with the requirements of 40 CFR 131.14(b)(1)(iv).

II.B.7. Whether, for a WQS variance with a term greater than five years, the variance includes a specified frequency to reevaluate the HAC ... and a provision specifying how the State intends to obtain public input on the reevaluation. (40 CFR 131.14(b)(1)(v))

Not applicable. The term of the variance is five years.

II.B.8. Whether the variance includes a provision that the WQS variance will no longer be the applicable WQS for purposes of the Act if the State does not conduct a reevaluation consistent with the frequency specified in the WQS variance or the results are not submitted to EPA as required by (b)(1)(v) of this section. (40 CFR 131.14(b)(1)(vi))

Not applicable. The term of the variance is five years.

II.B.9. Whether the supporting documentation includes a demonstration of the need for a WQS variance and that attaining the designated use and criterion is not feasible throughout the term of the variance because: (1) one of the factors listed in §131.10(g) is met, or (2) actions necessary to facilitate restoration preclude attainment. (40 CFR 131.14(b)(2)(i)(A))

As described below, the supporting documentation provided by the State included a demonstration of the need for a WQS variance because requiring the discharger to comply with the WQBEL needed to achieve the State's 395 mg/L aquatic life criterion for chloride through the construction and operation of additional pollution control technologies to remove chloride would result in substantial and widespread economic and social impact, consistent with 40 CFR 131.10(g)(6), and is therefore infeasible.

The State based this determination on EPA's 1995 Interim Economic Guidance for Water Quality Standards. Based on these guidelines, WDNR calculated the cost of installing reverse osmosis filtration relative to the median household income. WDNR determined that reverse osmosis treatment costs would be 3.64% of median household income, which is greater than the 2% threshold recommended by EPA for determination of large economic impact. Additionally, WDNR determined that lime softening treatment would cost 5.97% of median household income, again above the 2% threshold recommended by EPA. Based on this information, WDNR concluded that attaining the designated use and criterion is cost prohibitive throughout the term of the facility's variance and thus satisfies 40 CFR 131.10(g)(6). Therefore, EPA concludes that facility's variance is consistent with the requirements of 40 CFR 131.14(b)(2)(i)(A).

In its July 29, 2019 submittal letter to EPA, the State stated that the discharger "has met the requirements of Subchapter VII of ch. NR 106, Wis. Adm. Code, and s. 283.15, Wis. Stats," and "[t]hat requiring the applicant to meet the water quality standard for chloride at this time would result in substantial and widespread adverse social and economic impacts."

Based on EPA's review of the information submitted, the State demonstrated the need for a WQS variance because attaining the designated use and criterion is not feasible throughout the term of the variance. Since compelling the discharger to install and operate additional

wastewater treatment technology to remove chloride to the level necessary to achieve the WQBEL would result in substantial and widespread economic and social impact, the variance is consistent with the requirements of 40 CFR 131.14(b)(2)(i)(A).

II.B.10. Whether, for a WQS variance to a non-101(a)(2) use, the State submitted documentation justifying how its consideration of the use and value of the water for those uses listed in §131.10(a) appropriately supports the WQS variance and term. (40 CFR 131.14(b)(2)(i)(B))

Not applicable. The variance does not affect any non-101(a)(2) use.

II.B.11. Whether the supporting documentation includes a demonstration that the term of the WQS variance is only as long as necessary to achieve the HAC. Such documentation must justify the term of the WQS variance by describing the pollutant control activities to achieve the HAC. (40 CFR 131.14(b)(2)(ii))

As described in Section II.B.6., the supporting documentation indicates that the term of the variance is as long as necessary to achieve the HAC through compliance with the interim effluent limit for chloride, which reflects the LCA, and the implementation of a SRM plan to further reduce chloride introduced to the facility. Activities included in the SRM plan are described in Section II.B.4.

II.B.12. Whether, for a WQS variance that applies to a water body or waterbody segment, that variance includes: (A) identification of any best management practices for nonpoint source controls that could be implemented to make progress towards attaining the underlying designated use and criterion, and (B) any subsequent WQS variance must include documentation of the best management practice implementation and the water quality progress achieved. (40 CFR 131.14(b)(2)(iii))

Not applicable. This is a discharger-specific variance.

II.C. Whether the State has followed applicable legal procedures for revising or adopting standards. (40 CFR 131.5(a)(6))

In a letter dated July 29, 2019 and received by EPA on August 5, 2019, Cheryl Heilman, WDNR's Chief Legal Counsel, certified that the facility's variance was reviewed and duly adopted in accordance with procedures in s.VII of ch. NR 106, Wis. Adm. Code.

In adopting the variance, the State also provided opportunities for public input consistent with federal requirements at 40 CFR 131.20(b) and 40 CFR 25. More specifically, the State public noticed its preliminary decision to grant the variance request on May 23, 2019 in the *Kenosha News* newspaper. The State also posted public notice of its intent to reissue the permit and issue the proposed variance, along with supporting variance and permit documentation, on its website. The State held a public hearing to discuss the proposed variance on July 11, 2019 at the DNR Sturtevant Service Center in Sturtevant, WI and accepted public comments on its

proposal through July 18, 019. Consequently, the variance satisfies the requirements of 40 CFR 131.20(b) and 40 CFR 25.5.

Because the State followed its legal procedures for adopting a discharger-specific variance and met federal public participation requirements regarding the revision of WQS, the variance is consistent with the requirements of 40 CFR 131.5(a)(6).

II.D. Whether the State standards which do not include the uses specified in section 101(a)(2) of the Act are based on appropriate technical and scientific data and analyses. (40 CFR 131.5(a)(7))

Although (as described above in Section II.B.2.) the State is retaining its underlying designated uses and criteria for waters impacted by the variance, for the period of time that the variance is in effect, the State's standards effectively do not include all of the uses specified in Section 101(a)(2) of the Act. As described above in Section II.B., the variance is based on appropriate technical and scientific data and analysis. Consequently, the variance is consistent with the requirements of 40 CFR 131.5(a)(7).

II.E. Whether the State submission meets the requirements included in §131.6 of this part

40 CFR 131.6 identifies the minimum requirements of a WQS submission that EPA must consider.

II.E.1. 40 CFR 131.6(a), (c), (d) and (f) are not relevant in considering whether to approve the variance.

40 CFR 131.6(a), (c), (d), and (f) are not relevant in considering whether to approve the variance because the variance does not remove the underlying designated water uses, criteria, antidegradation policies, antidegradation implementation procedures or compliance schedule provisions within the State's WQS.

II.E.2. Whether the State submitted methods used and analyses conducted to support the variance. (40 CFR 131.6(b))

The State submitted the following documents that describe the methods used and analyses conducted to support the variance:

- Transmittal letter from WDNR to EPA, dated July 29, 2019, received by EPA on August 5, 2019;
- Certification statement for variance approval sent from WDNR to EPA, dated July 29, 2019, received by EPA on August 5, 2019;
- Paddock Lake Chloride Source Reduction Plan Addendum, 2019-2023;
- Draft Permit Fact Sheet (WI-0025062-10-0), dated April 29, 2019;
- Final Facility Specific Chloride Variance Data Sheet for Village of Paddock Lake dated July 19, 2019;
- Draft Facility Specific Chloride Variance Data Sheet for Village of Paddock Lake dated May 21, 2019;

- Preliminary Draft Facility Specific Chloride Variance Data Sheet for Village of Paddock Lake dated April 25, 2019;
- Notice of Final Determination to Reissue a WPDES Permit No. WI-0025062-10-0;
- Proposed WPDES Permit No. WI-0025062-10-0 with proposed effective dates from October 1, 2019 to September 30, 2024;
- Letter from Tim Popanda of Paddock Lake to Nick Lent of WDNR Subject: Financial Screening Questions and Response;
- Excel sheet of public water systems in Paddock Lake;
- Chloride Variance Economic Eligibility Tool (Lime Softening) for Village of Paddock Lake, dated April 23, 2019;
- WPDES Permit No. WI-0025062-09-1 with effective dates from May 1, 2014 to March 31, 2019, modified on August 1, 2017;
- Letter from Tim Popanda of Village of Paddock Lake to Tim Thompson of WDNR dated January 8, 2015 RE: Annual Report;
- 2019-2024 Chloride Source Reduction Study and Plan Village of Paddock Lake;
- Chloride Variance Application for Village of Paddock Lake, signed by Tim Popanda, dated October 23, 2018;
- Facility Inputs for Lime Softening Eligibility Calculation for Village of Paddock Lake dated March 19, 2019;
- Paddock Lake Sanitary Sewer Service Area Map;
- State of Wisconsin Department of Natural Resources Public Notice of Informational Hearing and Intent to Reissue Wisconsin Pollutant Discharge Elimination System (WPDES) Permit No. 0025062-10-0;
- Paddock Lake Wastewater Treatment Facility chloride effluent concentration and mass data in Excel;
- Paddock Lake Sanitary Sewer District Annual Chloride Report 2015;
- Paddock Lake Sanitary Sewer District Annual Chloride Report 2016;
- Paddock Lake Sanitary Sewer District Annual Chloride Report 2017;
- Paddock Lake Sanitary Sewer District Annual Chloride Report 2018;
- Map of Village of Paddock Lake Wastewater Treatment Facility;
- Substantial Compliance Determination for Village of Paddock Lake (#0025062-10-0) signed by Bryan Hartsook, dated February 27, 2019
- Correspondence/Memorandum, dated November 19, 2018, Water Quality-Based Effluent Limitations for Paddock Lake Wastewater Treatment Facility (WPDES Permit #WI-0025062-10-0);
- Municipal Preliminary Screener Calculation for Use of RO in Wisconsin, prepared by Bryan Hartsook for Village of Paddock Lake.

Consequently, the State satisfied the requirements of 40 CFR 131.6(b).

II.E.3. Whether the State submitted a certification by the State Attorney General or other appropriate legal authority that the variance was duly adopted pursuant to State law. (40 CFR 131.6(e))

In a letter dated July 29, 2019 and received by EPA on August 5, 2019, Cheryl Heilman, WDNR's Chief Legal Counsel, certified that the variance was reviewed and duly adopted in

accordance with procedures in s. VII of ch. NR 206, Wis. Adm. Code. Consequently, the State satisfied the requirements of 40 CFR 131.6(e).

Conclusion

For the reasons described above, the variance is consistent with the requirements of 40 CFR 131.5, the CWA and 40 CFR 131. Consistent with 40 CFR 131.5(b), EPA approves the WQS variance adopted by the State.

III. ESA Requirements

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 taken by EPA that may affect federally-listed threatened or endangered species or designated critical habitat. Actions are considered to have the potential to affect listed species if listed species are present in the action area.

According to the FWS Section 7 consultation assistance webpage (accessed June 3, 2019, <https://ecos.fws.gov/ipac/> and/or <https://www.fws.gov/midwest/endangered/lists/wisc-cty.html>), the listed threatened or endangered species in Kenosha County, Wisconsin that could possibly be in the action area include whooping crane, northern long-eared bat and eastern prairie fringed orchid. There is no critical habitat in Kenosha County in the potential action area of the facility.

Based on a review of the available information for these species, EPA has concluded that eastern prairie fringed orchid is not located in the action area, and therefore, the variance will have no effect on it. EPA identified no critical habitat within the action area. However, based on the potential presence of aquatic, aquatic-dependent, and/or wetland species in the action area, EPA concluded that consultation under Section 7 of the ESA is required. EPA drafted a BE analyzing the effects of chloride variances in Wisconsin and concluded that its approval of the variance may affect, but is not likely to adversely affect, the northern long-eared bat. Additionally, as part of an analysis of all possible effects of chloride variances in the state of Wisconsin, EPA analyzed possible effects on the whooping crane, both on applicable federal lands where it is treated as threatened and off applicable federal lands where it is treated as proposed. EPA found that chloride variances may affect but are not likely to adversely affect whooping cranes in either designation. In the case of the variance, no applicable federal lands are contained in the action area; therefore, whooping crane is treated as proposed. Per the Endangered Species Consultation Handbook, only two conclusions are possible for proposed species: likely to jeopardize proposed species or no effect on proposed species. Based on the state-wide analysis, the effects of variances on whooping cranes do not rise to the level of jeopardizing the species. EPA concluded that approval of the variance will have no effect on the whooping crane. EPA has sent a letter referring to a previously-developed BE to FWS requesting concurrence with its assessment.

IV. Tribal Consultation Requirements

On May 4, 2011, EPA issued the "EPA Policy on Consultation and Coordination with Indian Tribes" to address Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." The EPA Tribal Consultation Policy states that "EPA's policy is to consult on a government-to-government basis with federally recognized tribes when EPA actions and decisions may affect tribal interests." EPA reviewed the locations of tribal lands in and around Kenosha County and concluded that no tribal lands were located within the action area. Therefore, consultation is not necessary as tribal interests are not affected by the proposed variance.