



# STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR  
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
CHUCK GIPP, DIRECTOR

February 22, 2017

Sent electronically.

Michael Shapiro, Acting Assistant Administrator  
Office of Water  
USEPA  
1200 Pennsylvania Avenue  
Washington, D.C. 20460

**RE: 567 IAC Chapter 61, Water Quality Standards, and Chapter 64, Wastewater Construction, Iowa Antidegradation Implementation Procedure**

Dear Mr. Shapiro:

On February 17, 2017, the Iowa Environmental Council (IEC) and the Environmental Law & Policy Center (ELPC) submitted a joint letter to you in regard to the State of Iowa's request for further reconsideration of the U.S. Environmental Protection Agency's January 19, 2017 disapproval of Iowa's revisions to our Antidegradation Implementation Procedures. On February 13, 2017, Iowa had received a communication from Acting Region 7 Administrator Edward Chu, indicating that Iowa's request would be considered once the new EPA Administrator had been confirmed. We are satisfied with that direction and look forward to working through this issue in the near future.

I write at this time only to respond to IEC and ELPC's assertion that a reconsideration of the January 19<sup>th</sup> decision would be a significant departure from past EPA practice or that such action would be inconsistent with the requirements of the Clean Water Act.

In Iowa's review of prior Water Quality Standard decision making documents for Iowa and throughout the nation, it appears to be a routine practice that EPA will consider new and additional information outside of a specifically pending submittal package. Such information can include the latest scientific research, information on waterbody features and conditions such as drought information or independently obtained stream characteristic information, and independent inquiry in regard to public comments. Information from interested parties such as IEC and ELPC is also received and considered. Therefore, additional explanatory information from Iowa is appropriate for consideration at this time.

Additionally, there is precedent for EPA to reverse prior decisions in regard to Iowa Water Quality Standards. As recently as July 18, 2016, EPA Region 7 took action in regard to stream use designations which had been the subject of prior EPA decision documents. The prior decisions had either reserved action or, in some cases, disapproved Iowa's proposed stream designations. The new EPA approvals were independent of any new submittal package or

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additional information provided by Iowa, but were instead based solely upon EPA's independently obtained data. We ask only that EPA continue to be consistent in their position that such reconsideration is possible. An agency decision to alter this position at this particular point in time would be troubling.

Lastly, I wish to address a specific assertion of concern in the IEC/ELPC letter of February 17, 2017. The letter states "Furthermore, it is well established that the considered decision of a previous administration cannot simply be arbitrarily reversed." Of course, it is well established that a federal agency is prohibited from doing nearly any act that would be deemed "arbitrary". This is not a revelation that provides any additional support in regard to the issues to be considered. In truth, the case cited in the letter discusses the applicable considerations for exactly such a reversal.

I look forward to the continuation of our joint efforts to conserve and protect Iowa's waters. We will await the appropriate time for continued discussions. If you have questions, please do not hesitate to contact me at 515-577-9225.

Sincerely,



Jon C. Tack, Chief  
Water Quality Bureau

Copy to:

Stephanie Groen, Iowa Office of State-Federal Relations.  
Edward H. Chu, EPA Region 7  
Karen Flournoy, EPA Region 7  
Ralph Rosenberg, Iowa Environmental Council  
Josh Mandelbaum, Environmental Law and Policy Center