

Regulatory Analysis Form This space for use by IRRC

(1) Agency
 Department of Environmental Protection

2002 OCT -9 PM 12:35
 REVIEW COMPLETED

(2) I.D. Number (Governor's Office Use)
 7-374

IRRC Number: 2242

(3) Short Title
 Water Quality Standards Implementation – Great Lakes Initiative (GLI)

(4) PA Code Cite
 25 PA Code, Chapter 93

(5) Agency Contacts & Telephone Numbers
 Primary Contact: Sharon F. Trostle 783-1303
 Secondary Contact: Edward R. Brezina, 787-9637

(6) Type of Rulemaking (Check One)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?
 No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulatory amendment to Chapter 93 provides consistency with the federal guidance for the Great Lakes System by eliminating opportunity for the use of mixing areas for discharges of toxic and persistent chemicals known as bioaccumulative chemicals of concern (BCCs). Examples of BCCs are mercury, PCBs and dioxin. BCCs in the waters of the Great Lakes are not flushed from the system but build up for long periods of time, allowing aquatic organisms to accumulate and magnify the pollutants. Animals and humans who consume the fish are subject to increased loadings of these toxic pollutants. This regulation eliminates the use of mixing areas in calculating allowable discharge limits for BCCs, thereby lessening loadings to the Great Lakes System.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Pennsylvania Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394) as amended, 35 P.S. § 691.1 et seq.

Section 1920-A of The Administrative Code of 1929, as amended, 71 P.S. § 510-20.

In addition, section 118(c)(2)(C) of the federal Great Lakes Critical Programs Act of 1990, 33 U.S.C.A. §1269(c)(2)(C), directs the Great Lakes States to adopt standards, policies, and procedures “consistent with” the guidance published by the U.S. EPA Administrator at 40 CFR Part 132 (relating to water quality guidance for the Great Lakes System).

American Iron and Steel Institute vs. EPA, 115 F.3d 979 (D.C. Cir. 1997)

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Federal regulations at 40 CFR Part 132 require each of the Great Lakes states to adopt water quality standards, antidegradation policies and implementation procedures "as protective as" the GLI into their water quality management programs. This regulation fulfills the requirements by adding the new federal provision to our GLI regulations. The federal regulation requires states to submit the provision to EPA for approval by May 13, 2002.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

After Pennsylvania's GLI was fully approved by EPA, EPA promulgated the provision to eliminate mixing areas for BCCs. EPA requires the Great Lakes states to adopt the provision or EPA will promulgate it for the states. The provision limits the amounts of BCCs that can be discharged to the Great Lakes and provides for consistent protection of fish and shellfish in the Great Lakes System and the people and wildlife who consume them.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Without this regulation, the discharge of bioaccumulative chemicals to the Great Lakes System could result in larger loadings that will persist and cause environmental degradation and public health hazards.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The citizens of the Commonwealth will benefit from the regulation since it will provide an appropriate level of water quality protection for the Great Lakes System. The revised regulation will limit the amounts of BCCs discharged to the Great Lakes, lessening the impact both on the aquatic life in the waters and the people who consume the fish.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The Commonwealth, political subdivisions, local governments and individuals having existing or planned new activities requiring an NPDES permit for discharges that contain BCCs would be affected by these regulations. No current discharges include these pollutants; therefore, impacts would only exist if an existing discharge adds any of the BCCs or a new discharge is proposed that includes one or more BCCs. The number of affected point source discharges cannot be determined, since this would depend on case specific circumstances.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Persons with proposed or existing discharges of BCCs to surface waters of the Great Lakes System must comply with the regulation.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Water Resources Advisory Committee (WRAC) supported the amendments at its meeting of October 18, 2001. In addition, the revision was discussed with representatives of the dischargers in the Great Lakes region of the Commonwealth. The dischargers are familiar with the federal requirement and recognize that the state's action is necessary to comply with those requirements.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendment is not expected to impose any additional costs on the regulated community, unless a discharge of BCCs is proposed. The proposed discharge of BCCs would be subject to additional costs for limiting or eliminating the amount of pollutants. A specific estimate of costs to the regulated community is not possible because of the case specific nature of discharges. It is anticipated that few, if any, proposed discharges would include BCCs because of the growing awareness of the toxicity and impacts of these pollutants. This regulation will not require any additional legal, accounting or consultant procedures.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

See Question #17.

No costs will be imposed directly upon state or local governments by this regulation, except to the extent they may own or operate a wastewater treatment plant and propose a new, expanded or additional discharge of BCCs.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

This regulation is based on and will be implemented through existing Department programs, procedures and policies. There are no additional implementation costs associated with this regulation.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not Measurable					
Local Government	“					
State Governments	“					
Total Savings	“					
COSTS:						
Regulated Community	Not Measurable					
Local Government	“					
State Governments	“					
Total Costs	“					
REVENUE LOSSES:						
Regulated Community	Not Measurable					
Local Government	“					
State Governments	“					
Total Revenue Losses	“					

(20a) Explain how the cost estimates listed above were derived.

Not Applicable.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Water Quality Management	\$16,704,886	\$16,605,573	\$18,741,606	\$15,995,084

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits to the citizens of the Commonwealth from protecting the unique resource known as the Great Lakes include reducing the toxic threat to those waters, protecting fish which inhabit those waters from accumulating toxic chemicals; and thereby, enhancing the health of humans and wildlife who consume the fish. These intangible benefits outweigh any increased cost of compliance to meet the GLI requirements because the beneficial impacts will preserve and improve the special ecosystem of the Great Lakes for future generations. An additional benefit of the rule is ensuring consistent implementation of the standards among the Great Lakes states.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There were no non-regulatory alternatives available to consider in this case because the regulations are required by federal regulations to be adopted by Pennsylvania.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There were no alternative regulatory schemes to consider in this case. See response to Question 22.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The amendment will not put Pennsylvania at a competitive disadvantage to other states since five of the eight Great Lakes states already have incorporated this provision and the other two are required to do so.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

In addition to the public input gathered as described in Question #16, notice of the proposed rulemaking and a 45-day public comment period ending March 12, 2002 was published in the *Pennsylvania Bulletin* and in a local newspaper in the Great Lakes region of the Commonwealth on January 26, 2002.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No additional reporting, record keeping, or other paperwork will be required.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The amendment does not contain any special provisions that are designed to meet the particular needs of minorities, elderly, small businesses, farmers or others.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become final and effective upon publication in the *Pennsylvania Bulletin* as final rulemaking. The federal regulation requires that Great Lakes states adopt the provision and submit it to EPA for approval by May 13, 2002. NPDES permits for new or expanded discharges will include the mixing area prohibitions when EPA approves DEP's submission of this regulation.

(31) Provide the schedule for continual review of the regulation.

This final regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended. In addition, water quality standards are required to be reviewed by the Department at least once every three years, with the results of the review to be submitted to EPA.

**CHAPTER 93 – WATER QUALITY STANDARDS
GREAT LAKES INITIATIVE (GLI)
COMMENT AND RESPONSE DOCUMENT**

List of Commentators

1. David J. Sterrett, P.E.
Erie Sewer Authority
120 West 19th Street
Erie, PA 16501

2. Independent Regulatory Review Commission
14th floor Harristown #2
333 Market Street
Harrisburg, PA 17120

Comment: The Department of Environmental Protection Regulatory Analysis Form for the regulation states that “No current discharges include these pollutants; therefore, impacts would only exist if an existing discharge adds any of the BCCs or a new discharge is proposed that includes one or more BCCs.” There is concern that existing testing may not be accurate or explicit enough to detect these chemicals at the low levels defined in the criteria. The regulation does not define a compliance procedure in the event that improved future testing techniques detect the presence of BCCs. The Department is encouraged to include a compliance procedure and schedule in the regulation. In the event that the Department’s assertion that no current discharges include BCCs is incorrect, some assurance that the permittee will be allowed a timely period to reach compliance is sought. (1)

Response: There is no current discharge of BCCs in the Great Lakes System in Pennsylvania; so there is no need to develop a compliance procedure or schedule at this time. Details of a compliance schedule would be case specific, if needed. If there is an existing discharge of a BCC before November 13, 2010, the federal regulation at 40 CFR Section 132.5, Appendix F, Procedure 3.C.6. provides for exceptions for technical and economic considerations in implementation of the BCC mixing zone phase-out. If a discharge of BCCs is found at any time in a new or expanded discharge, a new discharge must immediately comply with the no mixing zone provision, or if it can be demonstrated that the new or expanded discharge is necessary to prevent a public health problem, then the discharge is not “new”. These same provisions will be incorporated into Pennsylvania’s Great Lakes Initiative regulations by promulgation of these amendments.

Comment: The regulation contains the word “subpart” when the federal term is “section” in several places. To avoid confusion the final form regulation should not use “subpart.” (2)

Response: Following discussions with the Legislative Reference Bureau to determine how to address this issue, the word “subpart” is replaced with “:”. This change is made in Section 93.8a(j) in the definition of BCC and in the regulation referring to TMDLs.

During our review of the use of the term “subpart”, it became apparent that the proposed deletion should be expanded to also include deletion of the language “including all other subparts referenced in Subpart D” located in Section 93.8a(j)(2) because it is a redundant phrase.

For consistency, the same change will be made at a later date in Chapter 16, § 16.61 during the next review of the water quality standards in the Statement of Policy.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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2242

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
(AGENCY)

DOCUMENT/FISCAL NOTE NO. #7-374

DATE OF ADOPTION: _____

BY: David E. Hess

TITLE: DAVID E. HESS, CHAIRMAN
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

ORDER ADOPTING REGULATIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

GREAT LAKES INITIATIVE (GLI)
25 PA Code, Chapter 93

Title 25 – ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Great Lakes Initiative (GLI)

Order

The Environmental Quality Board (EQB) by this order is amending 25 PA Code Chapter 93 as set forth in Annex A. The amendment incorporates federal requirements concerning prohibitions and phasing out of mixing zones for bioaccumulative chemicals of concern (BCCs) in waters of the Great Lakes System.

This notice is given under Board order at its meeting of September 17, 2002.

A. Effective Date

This amendment is effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P.O. Box 8467, Harrisburg, PA 17105-8467, 717-787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, 717-787-7060.

Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users) and request that the call be relayed. This final rulemaking is available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

This amendment is made under the authority of §§5(b)(1) and 402 of the Clean Streams Law (35 P.S. §§691.5(b)(1) and 691.402), which authorize the Environmental Quality Board to develop and adopt rules and regulations to implement the provisions of the Clean Streams Law, and §1920-A of the Administrative Code of 1929 (71 P.S. §510-20), which grants the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department.

D. Background

The Board approved the proposed rulemaking on November 20, 2001, and it was published at 32 Pa.B. 427 (January 26, 2002) with a provision for a 45-day public comment period that closed on March 12, 2002.

The purpose of this final rulemaking is to revise existing water quality regulations in Chapter 93 (Water Quality Standards). The Great Lakes Initiative (GLI) requirements were promulgated at 40 CFR Part 132 on March 23, 1995 (60 FR15366) to provide for consistent protection of the Great Lakes System. Pennsylvania promulgated the regulations for the Commonwealth waters in the Great Lakes System on December 27, 1997, and EPA approved the regulations on March 17, 2000.

EPA had promulgated a mixing zone prohibition provision as part of the regulation, but the provision was vacated by the U.S. Court of Appeals for the District of Columbia Circuit in the case of American Iron & Steel Institute v. EPA, 115 F.3d 979 (D.C. Cir. 1997), and was remanded to the Agency for further consideration. In response to the Court's remand, EPA published a proposal on October 4, 1999, to amend the Guidance to reinstate the provision to prohibit mixing zones for BCCs (64 FR 53632). EPA promulgated the final rule to amend Appendix F, Procedure 3.C of 40 CFR Part 132 to prohibit mixing zones for BCCs in the Great Lakes System, subject to certain exceptions for existing discharges, by publication in 65 FR 67638 (November 13, 2000). The regulatory amendment to Chapter 93 provides consistency with the federal guidance for the Great Lakes System by eliminating opportunity for the use of mixing areas for discharges of toxic and persistent chemicals known as BCCs. Examples of BCCs are mercury and dioxin. BCCs in the waters of the Great Lakes are not flushed from the system but build up for long periods of time, allowing aquatic organisms to accumulate and magnify the pollutants. Animals and humans who consume the fish are subject to increased loadings of these toxic pollutants. This regulation eliminates the use of mixing areas in calculating allowable discharge limits for BCCs, thereby lessening loadings to the Great Lakes System.

For existing discharges to waters of the Great Lakes System, the regulation prohibits mixing zones for BCCs after November 15, 2010. New discharges of BCCs to waters of the Great Lakes System are subject to the mixing zone prohibition when EPA approves the state's submission of these regulations. The three Great Lakes states, Pennsylvania, Ohio and New York, which did not include the BCC mixing zone provision in their regulation, are required to submit amended regulations for EPA approval by May 13, 2002. The federal regulation provides for an extension to November 13, 2002 for states making progress toward adopting the provision.

On May 8, 2002, the Water Resources Advisory Committee (WRAC) approved the final draft recommendation for presentation to the EQB.

E. Summary of Comments and Responses on the Proposed Rulemaking

A 45-day public comment period for the regulation ended on March 12, 2002. Two comments were received. The first comment asked the Department to develop a compliance plan in case a BCC is found in an existing discharge at a later date by improved analytical methods. Because DEP addresses compliance on a case-by-case basis, no such plan will be developed unless and until one is needed.

The other comment alleged that use of the word “subpart” in the regulation was incorrect. After discussion with the Legislative Reference Bureau, “subpart” was replaced with a “.” and corresponding changes were made to the regulation. An editorial change was also made to the definition of BCC, removing the word “subpart.”

F. Benefits, Costs, and Compliance

Executive Order 1996-1 provides for a cost/benefit analysis of the amendment.

Benefits

Overall, the citizens of the Commonwealth will benefit from the change because it provides the appropriate level of protection of the waters in the Great Lakes System. The revision also assures compliance with the applicable federal requirements.

Compliance Costs

The amendment is not expected to impose any significant additional compliance costs on the regulated community. No current NPDES permits provide for discharges of BCCs to the Great Lakes System in Pennsylvania. For this reason, no costs associated with phase out of mixing provisions need to be addressed. New discharges would have to meet the requirement when discharging commences, but there is no way of knowing if or when such discharges will be proposed.

Compliance Assistance Plan

The amendment adds a requirement that, in practice, will only be applicable if there are new discharges of BCCs to waters of the Great Lakes System. The requirement is straightforward and will not require implementation guidance. Staff are available to assist regulated entities in complying with the regulatory requirements if any questions arise.

Paperwork Requirements

This regulatory revision should have no significant paperwork impact on the Commonwealth, its political subdivisions, or the private sector.

G. Pollution Prevention

In keeping with Governor Schweiker's interest in encouraging pollution prevention solutions to environmental problems, this regulation specifically provides for prevention of additional loadings of BCCs to the water environment by requiring that the addition of these substances be significantly limited, even beyond that necessary to meet water quality standards.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended. In addition, water quality standards are required to be reviewed by the Department at least once every three years, with the results of the review to be submitted to EPA.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §745.5(a)), the Department submitted a copy of the proposed rulemaking on January 11, 2002 to the Independent Regulatory Review Commission and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the amendment, the Department provided the Commission and Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered all comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

This final-form regulation was deemed approved by the House and Senate Committees on _____, 2002. IRRC met on _____, 2002, and approved the amendments in accordance with Section 5.1(e) of the Regulatory Review Act.

J. Findings

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law. All comments were

considered.

(3) This final-form regulation does not enlarge the purpose of the proposal published at 32 Pa.B. 427.

(4) This final-form regulation is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending § 93.8(a) to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

By:

David E. Hess, Chairman
Environmental Quality Board

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.8a. Toxic Substances.

- (j) The requirements for discharges to and antidegradation requirements for the Great Lakes System are as follows[.] :

- (1) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

BCC – Bioaccumulative Chemical of Concern – A chemical that has the potential to cause adverse effects which, upon entering the surface waters, by itself or its toxic transformation product, accumulates in aquatic organisms by a human health BAF greater than 1000, after considering metabolism and other physiochemical properties that might enhance or inhibit bioaccumulation, under the methodology in 40 CFR Part 132 Appendix B (relating to Great Lakes Water Quality Initiative). Current BCCs are listed in 40 CFR 132.6, Table 6[, ~~Subpart~~].A (relating to pollutants of initial focus in the Great Lakes Water Quality Initiative).

- (2) *Total Maximum Daily Loads (TMDLs).* TMDLs for Open Waters of the Great Lakes shall be derived following the procedures in 40 CFR Part 132, Appendix F, Procedure 3[, ~~Subpart~~].D (relating to Great Lakes Water Quality Initiative implementation procedures)[, ~~including all other subparts referenced in Subpart D~~][, ~~except Subpart C~~].



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

October 8, 2002

The Secretary

Phone: 717-787-2814

E-Mail: DavidHess@state.pa.us

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown #2
333 Market Street
Harrisburg, PA 17120

RE: Final Rulemaking: Great Lakes Initiative (GLI) (#7-374)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. This final rulemaking was approved by the Environmental Quality Board (EQB) on September 17, 2002.

This final rulemaking will satisfy federal requirements for protection of the Great Lakes System. It amends § 93.8a of the water quality standards regulations to delete an exception to the prohibition of mixing zones for Bioaccumulative Chemicals of Concern (BCCs), which are long-lasting pollutants that accumulate in the food web of large lakes. Deleting this exception incorporates EPA's final rule concerning BCCs in Appendix F, Procedure 3.C of 40 CFR Part 132.

EPA's Great Lakes Initiative (GLI) is currently excluded because it had been vacated by the U. S. Court of Appeals for the District of Columbia Circuit and remanded to EPA for further consideration at the time that the Pennsylvania GLI was promulgated in 1997. In response to the Court's remand, EPA on November 13, 2000, promulgated a rule to amend Appendix F, Procedure 3.C that would inhibit mixing zones for BCCs in the Great Lakes System, with certain exceptions for existing discharges. Pennsylvania, Ohio and New York—the three Great Lakes States that omitted the BCC mixing zone provision in their original regulations—were to submit revised regulations to EPA by May 13, 2002. The federal regulation does, however, provide for a six-month extension to November 13 for states making progress toward adopting the provision.

The proposed rulemaking was adopted by the EQB on November 20, 2001, and published January 26 with a 45-day public comment period. There were two comments on the proposal, one of which encouraged DEP to develop a compliance plan in the event a BCC is detected in an existing discharge at a later date by improved analytical methods. Because DEP addresses compliance issues on an individual basis, such a plan is not considered to be necessary and has not been included in the final rulemaking. The other comment was a clarity concern

Mr. Robert E. Nyce

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October 8, 2002

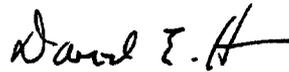
about the use of the term "subpart" where the corresponding federal regulation uses "section." To avoid confusion, the term has been substituted with a period to denote the division between number and letter in the federal citations listed in this section.

The Water Resources Advisory Committee (WRAC) endorsed the draft final rulemaking at its May 8, 2002, meeting.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Trostle, Regulatory Coordinator, at 787-4526.

Sincerely,

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

David E. Hess
Secretary

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-374
 SUBJECT: Great Lakes Initiative (GLI)
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 HOUSE COMMITTEE ON
 ENVIRONMENTAL
 RESOURCES & ENERGY
 2002 OCT -9 PM 1:35
 10/9/02

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/8	<i>Cindy Zinn</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/8	<i>Pat Carnahan</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/8	<i>M. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

September 17, 2002