



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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MAR 27 2008

ENVIRONMENTAL QUALITY BOARD

#2659

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Dear Sir or Madam:

The U.S. Environmental Protection Agency (EPA), Region III, has reviewed the proposed amendments to Chapter 93 of the Commonwealth's environmental regulation. This proposal, which was announced for public review and comment in the Pennsylvania Bulletin on January 12, 2008, constitutes Pennsylvania's current triennial review of its water quality standards, as required by the Clean Water Act (CWA) Section 303(c)(1). The purpose of this letter is to provide EPA's comments on the proposal. Please note that the comments and recommendations contained in this letter are strictly for the Environmental Quality Board's (EQB) consideration and are not a determination by the EPA Administrator under CWA Section 303(c)(4)(B) that a revised or new standard is necessary to meet the requirements of the Clean Water Act.

EPA fully supports Pennsylvania's proposal to merge sections of the Water Quality Toxics Management Strategy – Statement of Policy (Chapter 16) into Chapter 93, the Commonwealth's Water Quality Standards Regulation. EPA is also pleased that Pennsylvania is proposing to modify many of the human health criteria based on EPA's 2000 *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*. We do have a few comments regarding this proposal.

The proposal includes modification in §93.7(d) to clarify that considerations of natural quality for aquatic life protection now apply to Table 5, which is being created in this proposal, and Chapter 16, Appendix A Table 1, which is being repurposed during this triennial review. EPA would remind Pennsylvania that such determinations must be based on a set procedure that is specific enough to establish natural background concentrations accurately and reproducibly. The "Protocol for the Determination and Use of Background/Ambient Water Quality in the Determination of Wasteload Allocations and NPDES Effluent Limitations" Technical Guidance 391-2000-022, which has been identified as the procedure to be used in the past by the Pennsylvania Department of Environmental Protection (PADEP), no longer appears to be available. EPA would also like a clarification on how the criteria in Chapter 16, Appendix A Table 1 will be considered. The Chapter 16 proposal indicates that this table will be renamed "Site-specific Water Quality Criteria for Toxic Substances" and that site-specific criteria will be housed here until a time that there is an opportunity to incorporate the criteria into Chapter 93, Table 5. Background conditions are site-specific by nature, so EPA is unsure how such criteria will be incorporated into Table 5, which appears to include only statewide criteria.



Pennsylvania is proposing to relocate the Conversion Factors Table from §16.24(b) to §93.8b. For the most part, the table is being relocated without modification, except for a change to the lead conversion factor. This modification is not mentioned in the summary of issues, but it appears to be corrective. Please confirm the basis of this modification.

Pennsylvania is also proposing to relocate §93.8 to a new §93.8d, which is being relocated for the most part without modification. However, Pennsylvania is proposing to add language to §93.8d(2)(b) of this provision to provide references to various other procedures and guidances that may be considered when developing site specific criteria. EPA is concerned that this list may appear to definitive, whereas there are other procedures and guidances that may be considered. EPA is recommending that Pennsylvania only refer generally to "PADEP and EPA procedures and guidances" in this provision, and to refer the reader to Chapter 16, where a more inclusive list of acceptable methods, and an explanation of their intended applications, can be maintained.

EPA has noted that Newtown Creek, which is in Drainage List E (§93.9e), is spelled incorrectly, and is also noted as being located in Berks County rather than Bucks County. We note that corrections have not been proposed in this action, so we are bringing to the Board's attention for consideration.

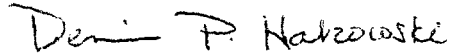
In §93.9x, Pennsylvania is adopting by reference the Federal water quality standards regulation at 40 CFR 131.41, as applicable to the water contact use in Lake Erie. The Federal regulation sets forth bacteria criteria for coastal recreational waters of certain States, including the Lake Erie recreational coastal waters in Pennsylvania. EPA promulgated those criteria for States that did not have criteria for pathogens and pathogens indicators as protective as the criteria published by EPA, under the mandate of the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000. The regulation also provides that once EPA approves a State's criteria as protective under the BEACH Act, the Federal criteria will no longer be applicable in that State.

EPA understands that by referencing 40 CFR 131.41 in the State's §93.9x, Pennsylvania intends to incorporate the criteria listed at 40 CFR 131.41(c). We recommend that the State specifically reference 40 CFR 131.41(c) rather than referring to 40 CFR 131.41 in general. This would avoid confusion which could arise from seeming to adopt not only 40 CFR 131.41(c) but also the rule of applicability at 40 CFR 131.41(d) which mandates the application of the Federal criteria in Pennsylvania. To include 40 CFR 131.41(d) would appear to contradict the effort of the State itself adopting the criteria and the language in 40 CFR 131.41 limiting the application of the Federal criteria upon EPA's approval of such adoption.

Thank you for this opportunity to provide comment on Pennsylvania's triennial review of its water quality standards regulation. EPA would be happy to assist the Commonwealth as necessary to complete this triennial review. EPA will also provide to PADEP comments on the

proposed modifications to Chapter 16, the Water Quality Toxics Management Strategy – Statement of Policy. If you have any comments concerning this letter, please contact me at (215)814-5726.

Sincerely,



Denise P. Hakowski
Water Quality Standards Specialist
Office of Standards, Assessment &
Information Management
Water Protection Division

cc: Richard Shertzer (PADEP)
Thomas Barron (PADEP)
David Densmore (USFWS)

