

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-577 (IRRC #3383)

Triennial Review of Water Quality Standards

December 21, 2023

We submit for your consideration the following comments on the proposed rulemaking published in the October 7, 2023 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (Board) to respond to all comments received from us or any other source.

1. Protection of the public health, safety, and welfare; Reasonableness.

In this proposed regulation, the Board is revising water quality standards for the Commonwealth as part of its triennial review of water quality standards. Commenters have concerns about certain criteria proposed by the Board.

- In Table 5, the Board proposes to add a human health criterion of 0.3 micrograms per liter (mg/l) for 1,4-dioxane. The American Chemistry Council (ACC) asserts that this criterion is based on “the default assumption that there is no dose of the substance that does not present an increased cancer risk – no matter how small the increase.” ACC notes that both Health Canada and the World Health Organization recommend a drinking water level of 50 mg/l. Similarly, the Pennsylvania Chamber of Business and Industry contends that the Board “has not provided sufficient justification for moving the regulation of 1,4-[d]ioxane from what was formerly a stream segment specific standard in Chapter 16, Appendix A, Table 1A to a statewide [Ambient Water Quality Standard] in Chapter 93, Table 5.”
- Three Rivers Waterkeeper, citing multiple articles related to the harmful impacts of certain chemicals, opposes less stringent criteria for metolachlor, formaldehyde, acetone, resorcinol, and chloroform, stating, “Without scientific proof that the less stringent standards will not harm public health and our environment via acute and chronic exposure, standards should not be less stringent.”

We ask the Board to explain the reasonableness of revisions to the above criteria in the final regulation and how the criteria protect the public health, safety, and welfare.

Other commenters ask the Board to consider adopting additional criteria.

- The U.S. Environmental Protection Agency (EPA), Region III, recommends the Board adopt nutrient criteria for the protection of lakes and reservoirs derived using the models found in the 2021 document *Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs*.
- The EPA encourages the Board to adopt the EPA's 2001 recommended criterion for methylmercury for the protection of human health.
- The EPA asks the Board to consider revising its aquatic life criteria for aluminum, copper, and selenium to be consistent with the EPA's recommendations.
- PennFuture asks the Board to protect aquatic life in Pennsylvania's waters from discharges of chloride, asserting that elevated levels of chloride are toxic to aquatic life in freshwater environments, and that chloride can negatively affect the fish and insect community structure, diversity, and productivity, even at lower levels.

We ask the Board to explain how the final regulation protects public health, safety, and welfare as relates to these criteria.

2. Section 93.7. Specific water quality criteria.

Section 93.8c. Human health and aquatic life criteria for toxic substances.

Section 93.8e. Special criteria for the Great Lakes System. – Implementation.

In Sections 93.7(a), 93.8c(c), and 93.8e(b.1), the Board proposes to add language that clarifies the duration periods for the aquatic life criteria in Table 3, Table 5, and Table 6, respectively. In order to evaluate the impact of implementation of the revised criteria, the EPA requests that the Board provide the following additional information:

- Pennsylvania's current method for averaging data points when evaluating monitoring data for assessment purposes;
- A rationale for not also proposing to adopt the frequency component of aquatic life criteria in this triennial review;
- Absent the adoption of the frequency component, what the Department will use for a maximum allowable frequency of exceedance of the criterion maximum concentration (CMC) and criterion continuous concentration (CCC); and
- A rationale for having different durations for the CMC and the CCC for the aquatic life water quality criteria for acrylonitrile, chlordane, 4,4-DDT, alpha-endosulfan, and beta-endosulfan.

We will review the Board's response to the EPA relating to the impact of implementation of the revised criteria as part of our determination of whether the final-form regulation is in the public interest.