

DELAWARE RIVER BASIN COMMISSION

FINAL

ORDER

Amendments to the *Water Quality Regulations, Water Code and Comprehensive Plan* to Revise the Human Health Water Quality Criteria for PCBs in Zones 2 through 6 of the Delaware Estuary and Bay

Proposed: Delaware *Register of Regulations* (17 DE Reg. 143 (08/01/2013)) on August 1, 2013.

Adopted: December 4, 2013

Authority: 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (*Delaware River Basin Compact*).

Effective Date: Thirty (30) days from publication of the corresponding notice of final rulemaking in the Federal Register.

Expiration Date: N/A

The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the *Delaware River Basin Compact*.

Summary: By Resolution No. 2013-8 on December 4, 2013, the Delaware River Basin Commission approved amendments to the Commission's *Water Quality Regulations, Water Code and Comprehensive Plan* to establish a uniform water quality criterion of 16 picograms per liter for polychlorinated biphenyls (PCBs) in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects.

Supplementary Information: Notice of the proposed amendments appeared in the *Delaware Register of Regulations* (17 DE Reg. 143) on August 1, 2013, as well as in the *Federal Register* (78 FR 47241) on August 5, 2013, the *New Jersey Register* (45 N.J.R. 1907) on August 5, 2013, the *New York State Register* (page 3) on August 14, 2013, and the *Pennsylvania Bulletin* (43 Pa.B. 4740) on August 17, 2013. Notice of the proposed changes also was published on the Commission's web site on August 2, 2013. A public hearing was held on September 10, 2013 and written comments were accepted through September 20, 2013.

The uniform water quality criterion of 16 picograms per liter for polychlorinated biphenyls (PCBs) in the Delaware Estuary and Bay for the protection of human health from carcinogenic effects is the product of more than a decade of data-gathering, assessment, debate and consensus-building involving dischargers, regulators, scientists, policy-makers and other stakeholders from across the region. The criterion is the product of a rigorous application of the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current U.S. Environmental Protection Agency (EPA) methodology for the development of human health criteria for toxic pollutants (see EPA-822-B-00-004, October 2000). The criterion replaces the Commission's current PCB criteria for the Estuary, which date from 1996. It supersedes less stringent state criteria in effect for Delaware Bay and eliminates the undue complexity associated with the application in tidal waters of criteria that vary by water quality zone.

In addition to proposing the new criterion, the Commission's notice of proposed rulemaking in August 2013 invited comment on a draft strategy for implementing the criterion for both point and non-point sources. Developed by the DRBC in partnership with the environmental agencies of the states of Delaware, New Jersey and Pennsylvania, EPA Regions II and III and EPA Headquarters (collectively, "the co-regulators"), the draft strategy sets forth detailed approaches for reducing PCB loadings from point and non-point sources over the coming decades. A key objective of the strategy is to provide uniformity and a degree of certainty to National Pollutant Discharge Elimination System (NPDES) permits that will be issued by the states bordering the Estuary and Bay. Notably, no Commission action on the draft implementation strategy was or is proposed. As DRBC's Notice of Proposed Rulemaking indicated, new total maximum daily loads ("Stage 2 TMDLs") for PCBs in the Delaware Estuary and Bay are expected to be established by EPA on behalf of the Estuary states following publication of this Final Rule. The strategy document will be included as an Appendix to the Stage 2 TMDL report when issued. Until Stage 2 TMDLs based upon the new criterion are established, the NPDES permitting authorities have indicated they intend to apply the existing permit approach, which was published as an appendix to the Stage 1 TMDLs for PCBs established by EPA Regions II and III for the Delaware Estuary in 2003 and for the Delaware Bay in 2006.

Rule Text: The affected section of the Commission's *Water Code and Water Quality Regulations* is Section 3.30, Table 6: Stream Quality Objectives for Carcinogens for the Delaware River Estuary and Bay. Specifically, in accordance with this Final Rule, for the parameter "PCBs (Total)", in the column headed "Freshwater Objectives (ug/l): Fish & Water Ingestion," the number "0.0000444" is replaced by "0.000016"; in the column headed "Freshwater Objectives (ug/l): Fish Ingestion Only," the number "0.0000448" is replaced by "0.000016"; and in the column headed "Marine Objectives (ug/l): Fish

Ingestion Only," the number "0.0000079" is replaced by "0.000016".

Related Materials, Contact: The complete text of Resolution No. 2013-8, the *Water Code*, the *Administrative Manual Part III - Water Quality Regulations*, a basis and background document setting forth the technical basis for the new criterion, the response-to-comment document addressing comments received by DRBC on the proposed criterion and the draft implementation strategy, and additional documents concerning the control of PCBs in the Delaware Estuary all are available on the Commission's website, DRBC.net. Copies also may be obtained from the Commission's Secretary and Assistant General Counsel by phoning 609-883-9500, ext. 203 or 224. A charge for printing and mailing may apply.

Dated: April 8, 2014

Pamela M. Bush, Esq.
Commission Secretary and Assistant General Counsel

Text of final amendments:

It is proposed to amend the Comprehensive Plan, Article 3 of the Water Quality Regulations (WQR) and Article 3 of the Water Code (WC) as set forth below. Editor's instructions are denoted by underscore thus. Added text is denoted by boldface **thus**.

Amend Table 6 of Section 3.30 of Article 3 of the WQR and WC as follows:

For the parameter "PCBs (Total)", in the column headed "Freshwater Objectives (ug/l): Fish & Water Ingestion," remove the number "0.0000444" and insert "**0.000016**"; in the column headed "Freshwater Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000448" and insert "**0.000016**"; and in the column headed "Marine Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000079" and insert "**0.000016**".

17 DE Reg. 1056 (05/01/14) (Final)