

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Revise the Human Health Water Quality Criteria for PCBs in the Delaware Estuary, To Apply the PCB Human Health Water Quality Criterion to Delaware Bay, and To Provide for the Use of Compliance Schedules To Implement Stream Quality Objectives Established by the Commission; Proposed Rulemaking and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Delaware River Basin Commission (DRBC or “Commission”) will hold a public hearing to receive comments on proposed amendments to the Commission’s *Water Quality Regulations, Water Code and Comprehensive Plan* to revise the human health water quality criteria for polychlorinated biphenyls (PCBs) in the Delaware Estuary (DRBC Water Quality Management Zones 2 through 5), extend application of the DRBC’s PCB human health water quality criterion to Delaware Bay (DRBC Water Quality Zone 6) and provide for the use of compliance schedules where implementation of a stream quality objective established by the Commission requires a reduction of the pollutant concentration or loading of a discharge to Basin waters.

DATES: Written comments on the proposed revised human health water quality criterion for PCBs and accompanying implementation plan will be accepted and must be received by 5 p.m. on Monday, October 19, 2009. The public hearing will be held at 1:30 p.m. on Thursday, October 8, 2009. The hearing will continue until all those wishing to testify have had an opportunity to do so. Two informational meetings will be held in late September, 2009. The informational meeting dates will be posted on the Commission’s Web site, <http://DRBC.net>, on or before August 17, 2009.

For more information regarding the procedures for the written comments and hearing, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public hearing will be held at the Commission’s office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please

use the driving directions posted on the Commission’s Web site. The locations of the two informational meetings will be posted on the Commission’s Web site, <http://DRBC.net>, on or before August 17, 2009.

SUPPLEMENTARY INFORMATION: Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609–883–9500, ext. 224. Written comments may be submitted as follows: If by e-mail, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609–883–9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360. In all cases, please include the commenter’s name, address and affiliation, if any, in the comment document and “PCB Rulemaking” in the subject line.

Background. The current DRBC water quality criteria for PCBs in the Delaware Estuary were established in 1996. They pre-date the collection of site-specific bioaccumulation data for the Delaware Estuary and Bay and site-specific fish-consumption data for Zones 2 through 4 that are relevant to the development of human health water quality criteria. They are also inconsistent with current U.S. Environmental Protection Agency (EPA) guidance for the development of such criteria, and they vary by water quality zone. One consequence of the current varied criteria is that in order to ensure that the current water quality criterion of 7.9 picograms per liter in the downstream portion of Zone 5 can be achieved, the allowable PCB loading to Zones 2 and 3, where the applicable criterion currently is 44.4 picograms per liter, must be even lower than would be required if the proposed uniform criterion were in place. DRBC currently has no PCB water quality criteria for the Delaware Bay, a shared interstate water for which the States of New Jersey and Delaware have established a criterion of 64 picograms per liter.

By Resolution No. 2003–11 on March 19, 2003 the Commission directed its executive director to initiate rulemaking on a proposal to revise the Commission’s human health water quality criteria, including those for PCBs, to reflect site-specific data on fish consumption, site-specific bioaccumulation factors, and current EPA guidance on development of human health criteria. Rulemaking was delayed, however, pending the completion of an effort by the Commission’s Toxics Advisory Committee (TAC) to revise the criterion

for PCBs and a separate effort to develop recommendations for achieving reductions in PCB loadings to the river that could be issued in conjunction with the criterion.

Rigorously applying the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current EPA methodology for the development of human health criteria for toxic pollutants (see United States Environmental Protection Agency, *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA–822–B–00–004, October 2000), the TAC in July 2005 completed development of a revised human health water quality criterion for PCBs for the Delaware Estuary and Bay of 16 picograms per liter. Accordingly, by Resolution No. 2005–19 on December 7, 2005, the Commission directed the executive director to proceed with rulemaking to establish the new criterion in DRBC Water Quality Zones 2 through 6.

Elevated levels of PCBs in the tissues of fish caught in the Delaware Estuary and Bay currently prevent the attainment of the designated uses “maintenance and propagation of resident fish and other aquatic life” (Zone 2, Zone 5 below River Mile 70 and Zone 6), “passage of anadromous fish” (Zones 2 through 6), and “maintenance of resident fish and other aquatic life” (Zones 3, 4 and 5 above River Mile 70). (See *DRBC Water Quality Regulations* (WQR), Art. 3, sec’s 3.30.2 B.2, 3.30.3 B.2, 3.30.4 B.2, 3.30.5 B.2 and 3.30.6 B.2 for Zones 2 through 6, respectively). These uses are commonly referred to collectively as “fishable” and are deemed to include human consumption of resident fish. Accordingly, these waters are listed by the bordering States as impaired under Section 303(d) of the Clean Water Act (CWA), which requires that a total maximum daily load (TMDL) be established for them. A TMDL expresses the maximum amount of a pollutant that a water body can receive and still attain water quality standards. Once the load is calculated, it is allocated to all sources in the watershed—point and nonpoint—which may not discharge loads in excess of the share allocated to them in order to achieve and maintain the water quality standards. EPA established TMDLs for PCBs in December of 2003 for the Delaware Estuary and in December of 2006 for the Delaware Bay (“Stage 1 TMDLs”). It is anticipated that EPA will establish revised TMDLs (“Stage 2 TMDLs”) for the Delaware Estuary and Bay to attain

the revised PCB human health water quality criterion if approved.

When the Commission directed the executive director in 2005 to initiate rulemaking on updated PCB criteria, in accordance with a recommendation of the TAC, it also asked her to work with State regulatory agencies and EPA (collectively, "co-regulators") to develop recommendations for implementing criteria for bioaccumulative toxic pollutants such as PCBs that would be "consistent with the existing Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework while * * * reflecting principles of adaptive management" and to solicit public comment on these recommendations (DRBC Resolution No. 2005-19 par's. 3-4). It is expected that Stage 2 TMDLs issued by EPA will include as an appendix a TMDL implementation plan developed by DRBC and its co-regulators. The implementation plan, which will take the form of a guidance document, will explain how the load allocations assigned by the TMDL to nonpoint sources and the wasteload allocations assigned to point sources can be achieved consistent with the Clean Water Act and principles of adaptive management.

According to the 2003 and 2006 TMDLs, actual loadings of PCBs to the Delaware Estuary and Bay respectively are in some cases orders of magnitude above those needed to allow attainment of the designated use. The EPA's 2003 Delaware Estuary TMDL report projects that "due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades." (U.S. Environmental Protection Agency Regions II and III, *Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River*, December 15, 2003, p. xiii). As required by Section 4.30.9 of the DRBC *Water Quality Regulations*, adopted by DRBC Resolution No. 2005-9 on May 18, 2005, the largest point source dischargers of PCBs to the Delaware Estuary and Bay have already undertaken pollutant minimization plans designed to locate the sources of PCBs entering their wastewater and stormwater systems and contain or remove them. The TMDL implementation plan developed by the co-regulators recognizes that many point source dischargers already have reduced their PCB loadings in an effort to meet their TMDL wasteload allocations assigned by the Stage 1 TMDLs. Some point source dischargers are expected to achieve their required reductions soon; however, others will require an

extended period of time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations. The implementation plan developed by the co-regulators will accommodate these dischargers through the use of compliance schedules consistent with the Clean Water Act and applicable regulations. It is understood that those dischargers who cannot achieve their wasteload allocations within a single five-year permit cycle notwithstanding good faith efforts to do so as soon as possible will be given additional time, even if this requires compliance schedules extending well beyond a single five-year permit cycle.

Subjects on which Comment is Expressly Solicited. Public comment is solicited on all aspects of the proposed rule. Without limiting the foregoing, the Commission has identified certain subject matters on which it expressly seeks comment. First, comments are solicited on the assumptions applied in developing the criterion, including the appropriate cancer risk level. (See DRBC Resolution No. 2005-19, par. 2). In accordance with current DRBC regulations, that level is 10^{-6} , or one additional cancer in every one million humans exposed for 70 years. (See WQR, § 3.10.3 D.4). The assumptions applied in developing the revised PCB criterion of 16 picograms per liter are set forth in a basis and background document that is available on the DRBC Web site, <http://DRBC.net>. The second area on which the Commission expressly seeks comment is best approaches for implementing water quality criteria for bioaccumulative pollutants consistent with the NPDES framework and principles of adaptive management. (See DRBC Resolution No. 2005-19, par. 4). The third is the implementation plan developed by the co-regulators, which is posted on the Commission's Web site, <http://DRBC.net>.

FOR FURTHER INFORMATION CONTACT: The text of the proposed rule, relevant DRBC resolutions, the basis and background document and the co-regulators' implementation plan for the proposed criterion will be available on the DRBC Web site, <http://DRBC.net>, on or before August 17, 2009. For further information, please contact Commission Secretary Pamela M. Bush, 609-883-9500 ext. 203.

Dated: August 4, 2009.

Pamela M. Bush,

Commission Secretary.

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DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 103]

RIN 1105-AB16

Procedures Governing Administrative Review of a United States Trustee's Decision To Deny a Chapter 12 or Chapter 13 Standing Trustee's Claim of Actual, Necessary Expenses

AGENCY: Executive Office for United States Trustees ("EOUST"), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking ("rule") sets forth the procedures for a chapter 12 or chapter 13 standing trustee ("trustee") to obtain administrative review of a United States Trustee's decision to deny a trustee's claim that certain expenses are actual and necessary for the administration of bankruptcy cases. Section 1231(b) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), codified at 28 U.S.C. 586(e), requires that: Trustees exhaust all administrative remedies pertaining to a denial of a claim of actual, necessary expenses before seeking judicial review; and the Attorney General prescribe procedures for administrative review of such denials. This rule ensures that the process for administratively reviewing a United States Trustee's denial of a trustee's request for expenses is fair and effective.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Comments on the rule may be submitted via <http://www.regulations.gov>, by telefax to (202) 307-2397, or by postal mail to EOUST, 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference "Docket No. EOUST 103—Trustee Expenses" on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Ramona D. Elliott, General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307-1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit