

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
PUBLIC NOTICE**

**[25 Pa. Code Chapter 16]
Water Quality Toxics Management Strategy
Statement of Policy**

The Department of Environmental Protection (Department) is amending 25 Pa. Code Chapter 16, Water Quality Toxics Management Strategy – Statement of Policy. The final changes are described below.

A. Effective Date

These amendments will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information contact Thomas A. Barron, Chief, Standards Section, Division of Water Quality Standards, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, Harrisburg, PA 17105-8774, (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 (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rulemaking is available electronically through the Department of Environmental Protection's (DEP or Department) website (<http://www.dep.pa.gov>).

C. Background and Summary

The Commonwealth's water quality standards in Chapters 16 and 93 and Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) implement sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Chapter 16 is a water quality toxics management strategy, establishing policy for regulating toxic pollutants in Pennsylvania's surface waters. It sets forth the guidelines for development and modification of water quality criteria for toxic substances. Chapter 16 is directly referenced as a supporting policy document in the Department's toxic substances regulations in §§ 93.8a and 93.8c (relating to toxic substances; and human health and aquatic life criteria for toxic substances).

The amendments update Chapter 16 to be consistent with the amendments to Chapter 93, as related to the Commonwealth's triennial review of water quality standards. This statement of policy may affect persons who discharge wastewater into surface waters of the Commonwealth or otherwise conduct activities which may impact these waters.

D. Summary of Amendments

In Section 16.21, amendments have been made to the language to clarify endpoints, magnitude, and duration.

Section 16.23 has been updated to include the ECOTOX website as a source for aquatic life information. Reference to the Aquire database has been removed because it is no longer available.

In Section 16.24, the Department incorporated the use of the Biotic Ligand Model (BLM), to determine new and updated site-specific criteria, which is only available for copper in freshwater systems.

In Section 16.32, the Department added Benchmark Dose (BMD) Modeling as an alternative way of calculating adverse effect levels for human health criteria development. Also, the reference to the United States Environmental Protection Agency (EPA) 2004 publication *National Recommended Water Quality Criteria* (EPA-822-H-04-001, 2004), and Exhibit 3-1 of EPA's 1994 *Water Quality Standards Handbook, Second Edition* (EPA 823-0-94-005A), August, 1994, as sources of developing water quality criteria were removed. The Department uses EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000) (EPA-822-B-00-004, October 2000) as its source for method development.

In sections 16.33, 16.51, and 16.61, in order to maintain the consistency of the ambient water quality criteria throughout the state, the Department removed language pertaining to criteria from Appendix A, Table 1A and Chapter 93 Table 5, not applying to the Great Lakes System. Current criteria available in Chapter 93, Table 5 are applicable to the final water quality guidance for the Great Lakes System (final guidance) at 40 FR 15336 (March 23, 1995) in which the Department agreed to create criteria as protective as the criteria created using the Great Lakes Initiative (GLI) guidelines.

In Section 16.102, the Department proposed to remove language that pertains to Tables 1A, 2B, and 3. The site-specific criteria originally contained in Appendix A, Table 1A were proposed to be moved to an online resource that includes an online table on the Department's website. The online resource for site-specific criteria was developed, containing the proposed online table and further details to serve as site-specific criteria guidance and reference.

The EPA-approved analytical methods and guidelines are referenced in Section 16.102, and are found in the following federal regulations as amended and updated: 40 CFR Parts 122, 136, 141, 143, 430, 455, and 465, *Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; National Secondary Drinking Water Regulations; Analysis and Sampling Procedures* (Final Rule, April 11, 2007).

In Appendix A, Table 2A is titled, "Approved DEP Analytical Methods" and contains methods developed and approved by the Department. The other analytical methods in Tables 2A and 2B were removed. The information in Table 3 is redundant, and is also found in 40 CFR Parts 122,

136, 141, 143, 430, 455, and 465. It is therefore no longer necessary to have Table 3. Section 16.102 has been updated to compliment the changes made to the tables.

E. Public Hearings and Comments

The Department presented the proposed statement of policy to the Environmental Quality Board (Board) at the Board's April 18, 2017 meeting as a companion to the proposed Triennial Review of Water Quality Standards rulemaking, amending 25 Pa. Code Chapter 93. Public notice for the proposed statement of policy was published in the *Pennsylvania Bulletin* on October 21, 2017 (47 Pa.B. 6703) with provisions for 70-day public comment period, which was set to end on December 29, 2017. The Department published a supplemental correction in the *Pennsylvania Bulletin* on October 28, 2017 (47 Pa.B. 6730) to correct an error that was published in the October 21 *Bulletin* notice for the date and location for the public hearing to be held at the Northeast Regional Office on December 6, 2017.

The Board and Department held back-to-back public hearings for the purpose of accepting comments on the proposed rulemaking and statement of policy on December 6, 8, and 14, at the Department's Northeast Regional Office in Wilkes-Barre, the Southcentral Regional Office in Harrisburg, and the Southwest Regional Office in Pittsburgh, respectively.

In response to requests for an extension of the public comment period and to add a public hearing in the southeast region of Pennsylvania, a public notice was also published in the *Pennsylvania Bulletin* on December 30, 2017 (47 Pa.B. 7861). An additional public hearing was held on January 30, 2018, at the Department's Southeast Regional Office in Norristown, for both the Proposed Regulation and Proposed Statement of Policy. The extended public comment periods for these concurrent proposals closed on February 16, 2018.

As a result of the public hearings and extended public comment period, the Department received comments on the proposed statement of policy from five commenters, including from EPA.

Patrick McDonnell
Secretary
Department of Environmental Protection