

STATEMENT OF POLICY

TITLE 25 – ENVIRONMENTAL PROTECTION DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 16]

Water Quality Toxics Management Strategy

The Department of Environmental Protection (Department) is amending Chapter 16 (relating to Water Quality Toxics Management – Statement of Policy). These proposed amendments compliment the triennial review and revision of Chapter 93 (relating to water quality standards). See ___ Pa.B. ___ (_____, 2008) for the text of the final-form rulemaking.

A. Effective Date

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

B. Contact Persons

For further information contact Richard H. Shertzer, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P.O. Box 8467, (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 proposal is available electronically through the Department of Environmental Protection's (Department) website (<http://www.depweb.state.pa.us>).

C. Statutory Authority

These amendments are made under the authority of Sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement provisions of The Clean Streams Law and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, Section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and the Federal regulations in 40 CFR 131.32 (relating to Pennsylvania) set forth certain requirements for portions of the Commonwealth's antidegradation program and the Federal regulation in 40 CFR 131.41 (relating to Bacteriological criteria for those states not complying with Clean Water Act section

303(i)(1)(A)) sets forth bacteria criteria for coastal recreation waters in the Commonwealth.

D. Background and Summary

The Commonwealth's water quality standards in Chapters 16 and 93 implement the provisions of section 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act. Water quality standards consist of the uses of the surface waters of this Commonwealth, the specific numeric and narrative criteria necessary to achieve and maintain those uses and antidegradation regulations. Chapter 16 is a water quality policy for managing toxic pollutants. It sets forth the guidelines for development of criteria for toxic substances, and lists the water quality criteria and analytical methods and detection limits for toxic substances. Chapter 16 is directly referenced as a support policy document § 93.8a (relating to toxic substances).

The revisions to Chapter 16 will consolidate the location of water quality criteria by incorporating the updated criteria into Chapter 93 water quality standards, streamline and clarify requirements, update the policy to be consistent with Federal requirements and preserve Pennsylvania-specific requirements to serve the citizens of the Commonwealth. This statement of policy may affect persons who discharge wastewater into surface waters of this Commonwealth, or otherwise conduct activities, which may impact the waters.

The Department's Water Resources Advisory Committee (WRAC) was briefed on the proposed regulation at its May 10, 2006, October 13, 2006, and May 9, 2007 meetings. In addition, the Department presented the proposed amendments to the Agricultural Advisory Board on August 22, 2007.

The proposed amendments were shared with the Environmental Quality Board (EQB) as a companion to the triennial review of water quality standards rulemaking at its October 16, 2007 meeting, although the EQB is not required to act on the revisions to the Department's Statement of Policy for toxic substances. The proposed amendments were published in the *Pennsylvania Bulletin* on January 12, 2008 (38 Pa.B. 258) with provision for a 45-day public comment period, which closed on February 26, 2008. Comments were received from two commentators as a result of the public comment period and the public meetings. The Department considered all the public comments received on its proposal in preparing for the final amendments to the statement of policy. The draft final amendment was discussed with and approved by WRAC on July 22, 2008. The comments received on the proposed regulation are summarized in Section E below.

E. Summary of Responses to Comments and Changes to the Proposed Amendment

A total of three comments were received concerning the proposed amendments. Changes were made to §§ 16.11, 16.32, 16.33, and 16.51(a) of the amendment based on the comments received.

In § 16.11 Toxic substances, § 16.32 Threshold level toxic effects and § 16.33 Nonthreshold effects (cancer), the Department is proposing to add citations to clarify that EPA has added new methodologies for the development of human health criteria. This section mentions the *National Recommended Water Quality Criteria: 2002*. EPA suggests that the structure of the sentence could imply that this document is guidance for developing criteria, whereas it actually housed EPA's specific criteria recommendations. EPA recommends the sentence be modified to read: "The EPA has updated the criteria or issued new criteria since 1980 based on new data, and more recently, new methodologies for developing human health criteria as summarized in the *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (EPA-822-B-00-004, October 2000). EPA's current criteria recommendations can be found in the National Recommended Water Quality Criteria (EPA-822-H-04-001, 2004), as amended and updated."

The Department has modified the sentences pertaining to the referenced documents as suggested by EPA.

In § 16.32(b), it was noted that EPA now recommends the use of bioaccumulation factors (BAFs) in the 2000 *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*, although until BAFs can be developed, EPA continues to accept the use of bioconcentration factors (BCFs). The Department intends to follow these recommendations regarding BAF's and BCF's.

It was requested that the Department clarify what will be included in Appendix A, Table 1. In § 16.51(a) it is stated that this Appendix will list site-specific human health and aquatic life criteria that have been developed or reviewed and approved by the Department. The Summary of Amendments for Chapter 16 indicates that "site-specific criteria that are developed or approved by the Department will be housed in Appendix A, Table 1 until a time that there is an opportunity for a final rulemaking by the Board that incorporates the criteria into Chapter 93, Table 5." The Department has provided additional clarification in Chapter 16, as well as Chapter 93, that the site-specific criteria from Appendix A, Table 1 will be incorporated into the appropriate portion of §§ 93.9a – 93.3z that relates to "Exceptions to Specific Criteria" unless, during rulemaking, it is determined that the same criterion has general statewide applicability, whereas at that time it will be included into Table 5 in Chapter 93.

Changes to proposed amendments for Chapter 16

A detailed description of the comments and revisions to the Chapter 16 proposal follows:

§§ 16.11 Toxic substances, 16.32. Threshold level toxic effects and 16.33 Nonthreshold effects (cancer).

In §16.11 Toxic substances, § 16.32 Threshold level toxic effects and § 16.33 Nonthreshold effects (cancer), the Department has modified the sentences pertaining to the referenced documents as suggested by EPA, which will read as follows:

“The EPA has updated the criteria or issued new criteria since 1980 based upon new data, and more recently, new methodologies for developing human health criteria as summarized in the *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (EPA-822-B-00-004, October 2000). EPA’s current criteria recommendations can be found in the National Recommended Water Quality Criteria (EPA-822-H-04-001, 2004), as amended and updated.”

§ 16.51(b)

The reference to Appendix A Table 1 in §16.51(b) will not be added as originally proposed because it is not applicable to a natural quality determination.

§ 16.102 General, Appendix A. Table 1.

It was requested that the Department clarify what will be included in Appendix A, Table 1. The Summary of Amendments for Chapter 16 indicates that, “site-specific criteria that are developed or approved by the Department will be housed in Appendix A, Table 1 until a time that there is an opportunity for a final rulemaking by the Board that incorporates the criteria inot Chapter 93, Table 5.”

The Department has added the following language to the introduction to the table, “A criterion placed in Chapter 16, Appendix A Table 1 will remain a site-specific criterion as originally developed and be incorporated into the appropriate portion of §§ 93.9a – 93.3z that relates to “Exceptions to Specific Criteria” unless, during rulemaking, it is determined that the same criterion has general statewide applicability”.

The Department has prepared a Comment and Response document for the proposed amendments. Copies are available from the Division of Water Quality Standards at the address in Section B.

JOHN HANGER
Acting Secretary