

EXECUTIVE SUMMARY

Amendment to Title 25 Pa. Code, Chapter 93 (Triennial Review of Water Quality Standards)

The Department of Environmental Protection (DEP) recommends the Environmental Quality Board (EQB) adopt amendments to Title 25 Pa. Code Chapter 93 regarding water quality standards, as included in the final-form rulemaking.

PURPOSE OF THE REGULATION: Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. This regulation constitutes Pennsylvania's current triennial review of its water quality standards. Pennsylvania's water quality standards, which are codified in Chapter 93 and portions of Chapter 92, are designed to implement the requirements of Section 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and an antidegradation policy. Thus, water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution. Final amendments to the Triennial Review rulemaking, once approved by the Commonwealth, will be submitted to the U.S. EPA for approval.

SUMMARY OF THE REGULATION: The final form rulemaking being considered will: update the water quality criteria; merge sections of Chapter 16 (Water Quality Toxics Management Strategy – Statement of Policy) into Chapter 93 (Water Quality Standards); add a definition in § 93.1 to clarify the term “conventional treatment” for potable water supply (PWS) that is used in § 93.3, Table 1; clarify in the footnote to Table 3 in § 93.7 that other sensitive “critical uses” may apply; verify current exceptions to fishable/swimmable waters; and correct and change drainage lists and other typographic and grammatical errors.

PUBLIC COMMENT PERIOD: The Environmental Quality Board (EQB) approved the proposed Chapter 93 Triennial Review rulemaking at its October 16, 2007 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on January 12, 2008 (38 *Pa.B.* 236) with provisions for a 45-day public comment period and two public meetings and hearings. The Legislative Reference Bureau (LRB) published a correction in the *Pennsylvania Bulletin* on February 2, 2008 (38 *Pa.B.* 612) to correct the criteria for two chemicals found in the proposed Table 5 of § 93.8c. In order to acquaint the public with the proposed amendments to Chapter 93, the Department conducted two public meetings prior to the start of the EQB public hearings. Both meetings and hearings were held on February 14, 2008, at the Department of Environmental Protection's Southcentral Regional Office in Harrisburg, PA. In response to public request, the public comment period was extended an additional 30 days and closed on March 27, 2008, as published in the *Pennsylvania Bulletin* on February 23, 2008 (38 *Pa.B.* 976).

Comments were received from 10 commentators including the Independent Regulatory Review Commission (IRRC) and Environmental Protection Agency (EPA) Region 3 as a result of the

public comment period. A majority of the comments received involved requests for the Board to justify the proposed statewide criterion for molybdenum (Mo).

In the final form rulemaking, the statewide water quality criterion for Mo is retained. This decision was arrived at after considerable deliberation, and is based on the Department's need to establish a consistent statewide instream criterion to address the discharge of Mo from several major facilities across the state. These include at least four facilities that have active NPDES permits, and a number of facilities where Mo is currently being discharged. Site specific criteria, as opposed to a statewide standard, is not recommended for the discharge limits imposed on Mo, as the biological and chemical conditions of the receiving waters are not unique for those facilities currently known to discharge Mo. Furthermore, multiple site-specific standards to control the discharge of Mo would not be an effective strategy as a statewide approach, which would establish consistent protection from the toxic effects of Mo, including harmful effects to human, animal and plant life when exposed to certain levels or concentrations of Mo. The U.S. EPA Headquarters and EPA Region 3 staff reviewed and concurred that the Department used the appropriate data and methodologies to develop the recommended statewide human health criterion for Mo.

The proposed definition of the term "conventional treatment" is further refined in the final rulemaking. The Board proposed a definition for "conventional treatment" to clarify that the term includes treatment processes required to filter and disinfect surface water for Potable Water Supply (PWS) use. In the final-form rulemaking, the term is modified to retain filtration and add coagulation as part of the conventional treatment process to remove solids prior to disinfection. The definition is also linked to its use in the context of surface water protection as a source of water for the Potable Water Supply (PWS) use.

In Table 3 of § 93.7(a), the footnote pertaining to "Critical Use" is amended in the final form rulemaking. Protected and statewide water uses, identified in §§ 93.3 and 93.4, are protected using criteria in §§ 93.6, 93.7 and 93.8. Based on the activities in the watershed, decisions concerning protected and statewide water uses will be made on a case-by-case basis. Where needed, site-specific criteria may be developed to protect the uses, and it will be these criteria that will determine the "sensitive use." The Department has added language to the footnote to clarify when other "critical uses" will be applied.

ADVISORY GROUPS - The Department discussed the final-form rulemaking with the Water Resources Advisory Committee (WRAC) on July 22, 2008. Although WRAC unanimously approved the rulemaking for consideration by the EQB, it offered suggestions concerning the definition of "conventional treatment" for the protection of the Potable Water Supply (PWS) use, and some members expressed concerns over the development and adoption of the proposed statewide criterion for molybdenum. The Department has reevaluated the proposed recommendations in light of these concerns, and has made the recommended revisions to the definition for "conventional treatment", but continues to believe the proposed statewide criterion for molybdenum is appropriate.

The Department has considered all public comments and suggestions from WRAC in the development of this final-form rulemaking.

DEADLINE FOR ACTION – Final amendments to the proposed regulations must be adopted by the Board by September 2008 to meet the federal deadlines on the triennial review of water quality standards.