

Summary

Triennial Review of Water Quality Standards

TR17 Proposed Rulemaking

Federal regulations at 40 CFR Section 131.20 require that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. Pennsylvania's Water Quality Standards are set forth in 25 *Pa Code* Chapter 93 (Water Quality Standards) and Chapter 16 (Water Quality Toxics Management Strategy – Statement of Policy).

Pennsylvania's most recent triennial review of water quality standards (TR13) was approved by EPA on May 22, 2014; received by letter at DEP on June 14, 2014. Therefore, the next triennial review of the Commonwealth's water quality standards will be due, in final-form, to EPA by 2017. The Department of Environmental Protection (DEP) has developed proposed rulemaking that will lead to fulfilling this federal requirement for the triennial review of water quality standards, as mandated by the Federal Clean Water Act. The triennial review of water quality standards proposed rulemaking (TR17) is expected to be presented to the Environmental Quality Board (EQB) early Spring 2016.

This proposed rulemaking is being 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 the provisions of The Clean Streams Law (35 P.S. §§ 691.1 – 691.1001), 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 DEP. In addition, section 303 of the federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards.

The following is a summary of what DEP will recommend to EQB as revisions, updates, and amendments for the Commonwealth's triennial review of water quality standards:

- Adopt the U.S. Environmental Protection Agency's (EPA) 2013 Ammonia Aquatic Life Criterion (NOTE: EPA made specific mention in TR13 approval letter)
- Adopt EPA's 2012 Bacteria / Recreation Use Criteria (NOTE: EPA made specific mention in TR13 approval letter)
 - Adopt criteria for *E. coli* indicator, replacing current fecal coliform criteria.
 - Clarification for Coastal Rec Waters – §93.9x Lake Erie; the federal promulgation at 40 CFR 131.41 under the BEACH Act will no longer apply to Pennsylvania.
 - 2012 Recommended criteria for statewide application to primary contact recreation only; does not relate to secondary contact or non-swimming season; EPA still working on recommendations for secondary contact recreation use
- Adopt new Chloride Aquatic Life Criteria; being developed by DEP, to include new data approved by EPA and on sensitive mayflies from research conducted on Pennsylvania waters and mayflies, by Stroud Water Research Center
- Remove lingering reference to 40 CFR 131.32(a) at §93.8a(j)(3); this federal promulgation (re: Antidegradation Policy) has been withdrawn by EPA and the reference will be removed from Chapter 93.

- Review and adopt EPA’s 2015 Updated Human Health Criteria for 94 toxic substances, at §93.8c, Table 5, which are based on the latest science and implementation of new health and risk input factors for human health criteria development. Review and update other criteria in Table 5, where sufficient data exists to recalculate criteria based on these new risk factor inputs.
- Clarification and specific reference (in §93.8d(c)) to the use of the Biotic Ligand Model (BLM) for development of site-specific water quality criteria for copper; describe any specific conditions and prerequisites for use of BLM or related to site-specific Copper criteria. Currently, BLM is only available for copper in freshwater systems.
- Delete references to Appendix A, Table 1A throughout Chapter 93 (Sections 93.1, 93.8a(b), and 93.8c(a)), since DEP is proposing to delete Table 1A in Chapter 16.
- Clarify in Section 93.8d(f)(2), that DEP has developed a new on-line resource to maintain a publicly available list of site-specific criteria that have been developed, and are being used by the Department in permitting and other pollution control measures. This new on-line resource to house site-specific / provisional criteria is similar to the Existing Use List, also located on the Division of Water Quality Standards (DWQS) webpage.
- Great Lakes WQ Criteria – recommend we default to statewide (Table 5) criteria if none are available in Table 6. This is more appropriate now that statewide fish consumption rate is 17.5 g/day; closer to GLWQA’s rate of 15 g/day than when our earlier statewide rate was just 6.5 g/day. Note, the following would need to change or be clarified:
 - §93.8c(b) – “The criteria in Table 5 do not apply to the Great Lakes System.”
 - §93.8e(b) – “For any pollutant not listed in the table (Table 6), criteria ... will be developed, ... in accordance with ...” Ch 93 and §16.61
- Clarification in §93.2(b) & §93.9(b) about application of WQS established under interstate or international compacts or agreements such as the Delaware River Basin Commission (DRBC), Ohio River Valley Sanitation Commission (ORSANCO), Great Lakes Water Quality Agreement (GLWQA), regarding “... the more stringent apply.” and “Exceptions to Specific Criteria”

Non-Fishable / Swimmable Re-evaluation:

DEP routinely, and must as part of its triennial review of water quality standards, re-evaluate, the two water bodies where the fishable or swimmable uses specified in Section 101(a)(2) of the federal Clean Water Act uses are not being met in Pennsylvania: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/ Presque Isle Bay and (2) several zones in the Delaware Estuary.

Because the same conditions and hazards exist for the Outer Erie Harbor/ Presque Isle Bay and specified zones of the Delaware Estuary today as during the original use attainability assessments (UAA), no change to the designated use, deleting Water Contact Sports (WC) is anticipated for these waters.

There is new evidence that strongly indicates fish propagation has improved for several key species in portions of the Delaware Estuary, and that the warm water use (WWF) should be restored. Currently, the use is defined as Warm Water Fishes (Maintenance Only) for select waters. However, this evaluation is still in development by DRBC and the member states. Therefore, until a final UAA is completed, which describes the new use designations and related

recommended criteria, no change to the criteria are currently recommended for these Delaware Estuary waters.

Corrections and Clarifications:

DEP also routinely reviews and will make updates, revisions, and corrections to the water quality standards chapters for typographical and translation errors, and missed references associated with prior rulemaking and/or publication activities. This includes corrections to use designations and stream entries found in Drainage Lists at Sections 93.9a-93.9z; for stream redesignations not already being addressed by separate stream redesignation rulemakings.

DEP is also considering Proposed Revisions, Updates, and Amendments to the Chapter 16

– Statement of Policy:

The Chapter 16 – Statement of Policy amendments are provided as a companion and are intended to be a supplement to the TR17 Chapter 93 rulemaking. The Chapter 16 package travels with the triennial rulemaking, but is a DEP action, not an EQB rulemaking. The recommended revisions are summarized as follows:

- Update lingering reference to Chapter 92 at §16.22(1); should reference Ch 92a.
- Updates to Human Health Criteria development methodologies / protocols
 - Incorporate the new health and risk factors at §§16.32 and 16.33 to reflect updates used for body weight, and water and fish intakes in the 2015 updates to human health criteria for 94 toxic substances. (see §93.8c, Table 5):
 - **Body Weight** – From 70 kilograms (154 lbs.) to **80 kilograms** (176 lbs.);
 - **Drinking Water** – From 2 liters per day to **2.4 liters per day**;
 - **Fish Consumption** – From 17.5 grams per day to **22 grams per day**.
 - Correct reference at §16.32(c)(2) to the Water Quality Standards Handbook, Second Edition; should be EPA-823-B-94-005a.
- Delete Table 1A in Appendix A since DEP will now maintain the on-line table of updated site-specific criteria on the DEP webpage.
- Revise Section §16.102 - Approved EPA Analytical Methods and Detection Limits to clarify these are maintained and updated by EPA, so include cross reference to EPA approved methodologies; delete Methods Tables 2A, 2B and 3. Retain reference, repurpose, or create a new table for the few non-EPA developed / approved methods.

Persons with proposed or existing discharges into surface waters of the Commonwealth, including small businesses, industry, municipalities, and agriculture must comply with the regulation. Each activity that will result in pollution to waters of this Commonwealth requires a review that is based on site-specific considerations. National Pollutant Discharge Elimination System (NPDES) permits will be required for discharges to waters and water quality standards identified in the proposed regulations. Existing Department procedures will be used to implement this proposed regulation.