



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

December 20, 2017

Pennsylvania Department of Environmental Protection
Policy Office
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Sir or Madam:

The U.S. Environmental Protection Agency (EPA), Region III has reviewed the proposed amendments to Chapter 16 of the Commonwealth's environmental regulation. This proposal, which was announced for public review and comment in the Pennsylvania Bulletin on October 21, 2017, is part of Pennsylvania's current triennial review of its water quality standards, as required by the Clean Water Act (CWA or "the Act") Section 303(c)(1). The purpose of this letter is to provide EPA's comments on the proposal. Please note that the comments and recommendations contained in this letter are strictly for the Pennsylvania Department of Environmental Protection's (PADEP) consideration and do not constitute approval or disapproval decisions under CWA 303(c). Neither are these comments a determination by the EPA Administrator under CWA Section 303(c)(4)(B) that revised or new standards are necessary to meet the requirements of the Act. Subject to the comments listed below, EPA is fully supportive of Pennsylvania's proposed revisions.

§16.21. Acute and chronic protection

The revision states "Basis for the magnitude, duration and frequency is described in criteria development rationale or other appropriate supporting documentation." However, the unrevised portion of the section states "The frequency of occurrence is accounted for through the specification of factors appropriate to the criteria in Chapter 96 (relating to water quality standards implementation)." This seems to confuse whether the frequency should be defined as in the supporting documentation, or as is § 96.3 which states water quality criteria described in Chapter 93 "shall be achieved in all surface waters at least 99% of the time," unless otherwise specified in Title 25. EPA recommends that PADEP clarify how duration and frequency is defined for aquatic life use criteria in this section and for the acute and chronic criteria in Chapter 93 Table 3. EPA also recommends that PADEP clarify how the duration and frequency in the supporting documentation relates to the frequency presented in Chapter 96.



§16.24. Metals criteria

EPA commends PADEP on inclusion of the freshwater Copper Biotic Ligand Model (BLM) as an approved method in §16.24(c)(3). EPA notes that PADEP states the copper BLM is preferred by the Department but recommends that PADEP state that the Department can require use of the Copper BLM. Further, the text states “The BLM is used in evaluating the differences in the availability and toxicity of metals.” EPA recommends revision to “The BLM is used in evaluating the differences in the bioavailability and toxicity of metals.” The term bioavailability refers to conditions that make the metal available to biota which are to be protected by the freshwater copper BLM criterion.

§16.24 (c) states that “NPDES dischargers may request alternate effluent limitations by using site-specific water quality characteristics in a request to modify an existing water quality criterion, in accordance with §93.8 (d) (relating to development of site-specific water quality criteria)” by using one or more methods including Recalculation Procedure, WER, BLM, or developing a criterion using other guidance approved by department. EPA recommends that PADEP clarify which methods can be combined and which cannot. For example, a WER and a BLM cannot be combined since a WER is a post-derivation adjustment while the BLM is used to derive the criteria. Further, EPA requests that PADEP clarify that a BLM cannot be combined with a recalculation procedure.

§16.24 (d) states that “The discharger may choose to conduct either the WER or BLM. Either the WER or BLM may be combined with a chemical translator study or the Recalculation Procedures. If the Recalculation Procedure is selected, the procedure requires the recalculation of the existing criterion before the WER is applied.” EPA recommends that PADEP clarify that dischargers may choose to conduct either WER or BLM studies, but, that BLM it is the preferred method. PADEP should also specify that the BLM cannot be combined with a recalculation procedure. PADEP should clarify that Pennsylvania regulation at 93.8d(f)(3) indicates that site-specific criteria are to be submitted to EPA for review and approval under CWA Section 303(c).

§16.51 Human health and aquatic life criteria

PADEP is proposing to delete Table 1A in Appendix A, Site-Specific Water Quality Criteria for Toxic Substances. EPA recommends that PADEP maintain this table in Chapter 16.

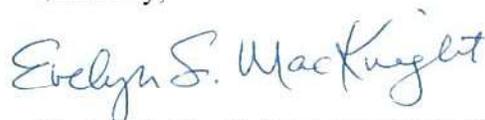
EPA is recommending in our comments on proposed revisions to Pennsylvania’s Chapter 93 that PADEP formalize the establishment of site-specific criteria as revisions to its water quality standards regulations. In order for EPA to take a CWA 303(c) action on site-specific criteria, those criteria must be in state law or regulation. See 40 C.F.R. Section 131.4(i). EPA recommends that PADEP maintains Table 1A, §16 Appendix A, Site-Specific Water Quality Criteria for Toxic Substances to house site-specific water quality criteria. In addition, PADEP does not indicate to where the information currently housed in Table 1A will be relocated if PADEP does remove it from the regulations.

§16.51(b) states that “If the Department determines that the natural quality of a surface water segment is of lower quality than the applicable criteria listed in Chapter 93, Table 5, the natural quality shall constitute the aquatic life criterion for that segment.” EPA recommends that PADEP clarify how “natural quality” will be determined. EPA also notes that this change in criteria would need to be submitted to EPA for review and approval as it represents a change in a water quality standard. EPA

also recommends that the publicly available list of surface waters and parameters where an aquatic life criterion based on natural conditions applies should be maintained and updated in Pennsylvania's water quality standards regulations. It appears that this provision does not apply to the Great Lakes. If that is the case PADEP should clarify that.

Thank you for this opportunity to provide comments on Pennsylvania's triennial review of its water quality standards regulation. EPA would be happy to assist the Commonwealth as necessary to complete this triennial review. If you have any questions concerning this letter, please contact me at (215)814-5452, or have you staff contact Katherine Bentley at (215)814-5762.

Sincerely,

Handwritten signature of Evelyn S. MacKnight in blue ink.

Evelyn S. MacKnight, Associate Director
Office of Standards, Assessment & TMDLs
Water Protection Division

cc: Thomas Barron (PADEP)