



## DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

### NOTICE OF FINAL RULEMAKING

Amendments to the *Water Quality Regulations, Water Code and Comprehensive Plan* to Revise the Human Health Water Quality Criteria for PCBs in Zones 2 through 6 of the Delaware Estuary and Bay

AGENCY: Delaware River Basin Commission

ACTION: Final Rule

SUMMARY: By Resolution No. 2013-8 on December 4, 2013, the Delaware River Basin Commission (“DRBC” or “Commission”) approved amendments to the Commission’s *Water Quality Regulations, Water Code and Comprehensive Plan* to establish a uniform water quality criterion of 16 picograms per liter for polychlorinated biphenyls (PCBs) in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects.

DATES: This regulation is effective [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of the publications listed in this

rule is approved by the Director of the Federal Register of Regulations as of [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Pamela M. Bush, Commission Secretary and Assistant General Counsel by phoning 609-883-9500 Ext. 203, or by email to [pamela.bush@drbc.state.nj.us](mailto:pamela.bush@drbc.state.nj.us).

**SUPPLEMENTARY INFORMATION:** The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

Notice of the proposed amendments appeared in the **Federal Register** (78 FR 47241) on August 5, 2013 as well as in the Delaware Register of Regulations (17 DE Reg. 143) on August 1, 2013, the New Jersey Register (45 N.J.R. 1907) on August 5, 2013, the New York State Register (page 3) on August 14, 2013 and the Pennsylvania Bulletin (43 Pa.B. 4740) on August 17, 2013. Notice of the proposed changes also was published on the Commission's web site on August 2, 2013. A public hearing was held on September 10, 2013 and written comments were accepted through September 20, 2013.

The uniform water quality criterion of 16 picograms per liter for polychlorinated biphenyls (PCBs) in the Delaware Estuary and Bay for the protection of human health from carcinogenic effects is the product of more than a decade of data-gathering, assessment, debate and consensus-building involving dischargers, regulators, scientists, policy-makers and other stakeholders from across the region. The criterion is the product of a rigorous application of the

most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current U.S. Environmental Protection Agency (EPA) methodology for the development of human health criteria for toxic pollutants (*see* EPA-822-B-00-004, October 2000). The criterion will replace the Commission's current PCB criteria for the Estuary and Bay, which are inconsistent with the current EPA methodology and pre-date the collection of site-specific data that are relevant to the development of human health water quality criteria. The current data also vary by water quality zone, adding undue complexity to application of the criteria in these tidal waters.

In addition to proposing the criterion, the Commission's notice of proposed rulemaking in August 2013 invited comment on a draft strategy for implementing the criterion for both point and non-point sources. Developed by the DRBC in partnership with the environmental agencies of the states of Delaware, New Jersey and Pennsylvania, EPA regions II and III and EPA Headquarters (collectively, "the co-regulators"), the draft strategy sets forth detailed approaches for reducing PCB loadings from point and non-point sources over the coming decades. A key objective of the strategy is to provide uniformity and a degree of certainty to NPDES permits that will be issued by the states bordering the Estuary and Bay. Notably, no Commission action on the draft implementation strategy was or is proposed. As DRBC's Notice of Proposed Rulemaking indicated, new total maximum daily loads ("Stage 2 TMDLs") for PCBs in the Delaware Estuary and Bay will be established by EPA on behalf of the Estuary states and at their request following publication of this Final Rule. The strategy document will be included as an Appendix to the Stage 2 TMDL report when issued. Until Stage 2 TMDLs based upon the new criterion are established the co-regulators will apply the existing NPDES permit approach, which was published as an appendix to the 2003 (Stage 1) TMDLs for PCBs in the Delaware Estuary.

The complete text of Resolution No. 2013-8, the *Water Code*, the *Administrative Manual Part III - Water Quality Regulations*, the basis and background document setting forth the technical basis for the new criterion, the response-to-comment document addressing comments received by DRBC on the proposed criterion and the draft implementation strategy, and additional documents concerning the control of PCBs in the Delaware Estuary all are available on the Commission's website, DRBC.net. Copies also may be obtained from the Commission's Secretary and Assistant General Counsel at the telephone number and email address listed above. A charge for printing and mailing may apply.

List of Subjects in 18 CFR Part 410

Incorporation by reference, Water audit, Water pollution control, water reservoirs, Water supply, Watersheds.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends part 410 of title 18 of the Code of Federal Regulations as follows:

**Part 410 – BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL – PART III WATER QUALITY REGULATIONS**

1. The authority citation for Part 410 continues to read:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. In § 410.1 revise paragraph (c) to read as follows:

**§ 410.1 Basin regulations – Water Code and Administrative Manual – Part III Water Quality Regulations.**

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(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to

regulations contained within the Delaware River Basin Water Code with Amendments Through December 4, 2013 and the Administrative Manual – Part III Water Quality Regulations with Amendments Through December 4, 2013. Both the Delaware River Basin Water Code and the Administrative Manual – Part III Water Quality Regulations are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect copies at the Delaware River Basin Commission (DRBC), 25 State Police Drive, West Trenton, New Jersey 08628-0360, 609-883-9500, <http://www.drbc.net>, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: May 1, 2014

PAMELA M. BUSH, ESQ.

Commission Secretary and Assistant General Counsel

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