

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-6934-8]

Withdrawal of Certain Federal Human Health and Aquatic Life Water Quality Criteria Applicable to Vermont, the District of Columbia, Kansas and New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: In 1992, EPA promulgated Federal regulations establishing water quality criteria for toxic pollutants for fourteen States and jurisdictions, including Vermont, the District of Columbia, Kansas and New Jersey. These States have now adopted, and EPA has approved, human health and aquatic life water quality criteria for many of these pollutants. In this action, EPA is proposing to amend the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States. EPA is providing an opportunity for public comment on the proposed withdrawal of the Federal criteria applicable to these States because the States' adopted criteria are less stringent than the Federal criteria.

DATES: EPA will accept public comments on its proposed withdrawal

of these criteria until May 25, 2001. Comments postmarked after this date may not be considered.

ADDRESSES: An original and three copies of comments should be submitted to W-00-23, WQCR Comment Clerk; Water Docket (MC-4101), 1200 Pennsylvania Ave NW, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats to OW-Docket@epa.gov. Hand delivered comments should be submitted to W-00-23, WQCR Comment Clerk, Water Docket, EB 57, 401 M St. SW, Washington DC 20460.

The administrative record for consideration of Vermont's human health criteria is available for public inspection at EPA Region 1, Office of Water, 1 Congress Street, Suite 1100, Boston MA 02114-1505 during normal business hours of 9:00 a.m. to 5:00 p.m. The administrative record for consideration of the District of Columbia human health criteria is available at EPA Region 3, Water Protection Division, 1650 Arch St, Philadelphia PA 19103-2029 during normal business hours of 9:00 am to 5:00 pm. The administrative record for consideration of Kansas' human health and aquatic life criteria is available for public inspection at EPA Region 7, Water, Wetland and Pesticides Division, 901 North 5th Street, Kansas City, Kansas 66101 during normal business hours of 8:00 a.m. to 4:30 p.m. The administrative record for consideration

of New Jersey's human health and aquatic life criteria is available for public inspection at EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 during normal business hours of 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Gardner at EPA Headquarters, Office of Water (4305), 1200 Pennsylvania Ave NW, Washington, D.C., 20460 (tel: 202-260-7309, fax 202-260-9830) or email gardner.thomas@epa.gov. Alternatively, for questions regarding Vermont, contact Bill Beckwith in EPA's Region 1 at 617-918-1544; for questions regarding the District of Columbia, contact Garrison Miller in EPA's Region 3 at 215-814-5745; for questions regarding Kansas, contact Ann Jacobs in EPA's Region 7 at 913-551-7930; and for questions regarding New Jersey, contact Wayne Jackson in EPA's Region 2 at 212-637-3807.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Citizens concerned with water quality in Vermont, Kansas, the District of Columbia and New Jersey may be interested in this proposed rulemaking. Entities discharging toxic pollutants to waters of the United States in these States could be affected by this proposed rulemaking since criteria are used in determining NPDES permit limits. Potentially affected categories and entities include:

| Category | Examples of potentially affected entities |
|----------------------|--|
| Industry | Industries discharging toxic pollutants to surface waters in Vermont, the District of Columbia, Kansas and New Jersey. |
| Municipalities | Publicly-owned treatment works discharging toxic pollutants to surface waters in Vermont, the District of Columbia, Kansas and New Jersey. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in section 131.36 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

In 1992, EPA promulgated a final rule (known as the "National Toxics Rule", or "NTR") to establish numeric water quality criteria for 12 States and two Territories (hereafter "States") that had not complied fully with section 303(c)(2)(B) of the Clean Water Act ("CWA") (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw its criteria. If the State's

criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary (see 65 FR 19659). However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will withdraw the federally promulgated criteria after notice and opportunity for public comment. (see 57 FR 60860)

In today's action, EPA is proposing to amend the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States, and providing an opportunity for

public comment. In addition, this action proposes certain non substantive revisions to the regulatory language at 40 CFR 131.36 to make it more user-friendly and to reflect format changes in water quality standards that have occurred in the corresponding state regulations cited at 40 CFR 131.36.

Vermont

On July 12, 1994, Vermont adopted revisions to its surface water quality standards (Appendix C, *Vermont Water Quality Standards*, effective August 1, 1994). EPA Region 1 approved the State's adoption of criteria for all toxics contained in the NTR on December 5, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131.11. EPA Region 1 requested that the Agency withdraw the Federal criteria applicable to Vermont for which the State now has numeric criteria.

In an earlier action, EPA withdrew Vermont from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). Today's action addresses an arsenic criterion Vermont adopted that is less stringent than the corresponding Federal criteria in the NTR, but that nonetheless meets the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. In reviewing Vermont's submission, EPA Region 1 concluded that the State's calculation of the arsenic human health criterion for the consumption of fish (organisms only) of 1.5 ug/L was scientifically defensible. EPA solicits comment on removing the Federal organism only human health criterion for arsenic applicable to Vermont (see column D2 of the table at 40 CFR 131.36 for the currently applicable Federal criterion).

District of Columbia

On March 4, 1994, the District of Columbia adopted revisions to its surface water quality standards [amended Chapter 11 of Title 21 DCMR pursuant to the authority set forth in Section 5 of the Water Pollution Control Act of 1984, D.C. Law 5-188, effective March 16, 1985, D.C. Code Section 6-924(1988) and Mayor's Order 85-152, September 12, 1985], adopting human health criteria to protect from effects related to fish consumption and removing the public water supply use designation. EPA Region 3 approved these revisions on November 4, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131.11. EPA

Region 3 requested that the Agency withdraw the Federal human health—water and organism criteria and human health—organism only criteria applicable to the District (see columns D1 and D2, respectively, of the Table at 40 CFR 131.36) now that the District no longer has any waters designated as public water supply.

In an earlier action, EPA withdrew the District of Columbia from the NTR for human health—organism only criteria where the District adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). Today's action addresses the District's removal of the public water supply use designation and the human health criteria for water and organisms. The District no longer has any waterbodies designated for public water supply and therefore no longer has need for human health criteria for water and organisms. EPA solicits comment on removing the District from the NTR for human health water and organism criteria (See column D2 of the Table at 40 CFR 131.36 for the currently applicable Federal criteria).

Kansas

On June 28, 1994, Kansas adopted revisions to its water quality standards (K.A.R. 28-16-28) regarding both human health and aquatic life criteria, and submitted them to EPA Region 7 for review and approval on October 31, 1994. On February 19, 1998, EPA Region 7 approved certain new or revised water quality criteria for the protection of human health and aquatic life because they are consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11, and requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria. Also, on June 29, 1999, Kansas adopted new and revised ambient water quality criteria for additional pollutants. They were submitted to EPA for review and approval on August 10, 1999. On January 19, 2000, EPA Region 7 approved these additional criteria because they are also consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11, and requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria.

In an earlier action, EPA withdrew Kansas from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria. (See 65 FR 19659, April 12, 2000) Today's action addresses arsenic and cadmium criteria Kansas adopted that are less

stringent than the corresponding criteria in the NTR, but that nonetheless meet the requirements of the CWA and EPA's implementing regulation at 40 CFR 131.11. In reviewing Kansas's submission, EPA Region 7 concluded that the State's calculation of an arsenic human health criteria for the consumption of fish (organisms only) of 20.5 ug/L was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Maximum Concentration) of 4.5 ug/l was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Continuous Concentration) of 2.5 ug/L was scientifically defensible, and that these criteria meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. In today's action, EPA is soliciting comment on removing the Federal human health—organisms only criteria for arsenic (see column D2 of the table at 40 CFR 131.36 for the currently applicable Federal criteria) and acute and chronic cadmium criteria (see columns B1 and B2, respectively, of the table at 40 CFR 131.36 for the currently applicable Federal criteria) for Kansas.

New Jersey

On August 4, 1994, New Jersey submitted to EPA Region 2 adopted revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for some of the toxic pollutants contained in the NTR and reorganized certain designated use classifications and requirements pertaining to the Delaware River and Bay. EPA Region 2 approved the State's criteria (with the exception of the State's PCB human health criteria) on March 17, 2000, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 2 requested that the Agency withdraw the Federal criteria applicable to New Jersey for which the State now has numeric criteria.

For many pollutants, New Jersey adopted water quality criteria as stringent as the Federal criteria. In a separate upcoming final action, EPA will withdraw without public comment those criteria that are no less stringent than the Federal criteria. Today's action addresses the criteria New Jersey adopted for aquatic life and human health that are less stringent than the promulgated Federal criteria, but that nonetheless meet the requirements of

the CWA and EPA's implementing regulations at 40 CFR Part 131.11. New

Jersey adopted the following less stringent criteria (ug/L):

| A | | B Freshwater | | C Saltwater | | D Human health | |
|---------------------------------|------------|-----------------|------------|----------------|------------|--------------------------|------------------------|
| (#) Compound | CAS number | CMC (ug/L) | CCC (ug/L) | CMC (ug/L) | CCC (ug/L) | Water & organisms (ug/L) | Organisms only (ug/L) |
| | | B1 | B2 | C1 | C2 | D1 | D2 |
| 7 Lead | 7439921 | | b, c 16.0 | | | | |
| 14 Cyanide | 57125 | | | | | ^a 768 | |
| 21 Carbon Tetrachloride | 56235 | | | | | ^a 0.363 | ^a 6.31 |
| 27 Dichlorobromomethane | 75274 | | | | | ^b 0.559 | ^b 55.7 |
| 30 1,1-Dichloroethylene | 75354 | | | | | ^a 4.81 | |
| 33 Ethylbenzene | 100414 | | | | | ^b 3120 | |
| 39 Toluene | 108883 | | | | | ^a 7440 | ^b 201,000 |
| 42 1,1,2-Trichloroethane | 79005 | | | | | ^a 13.5 | |
| 49 2,4-Dinitrophenol | 51285 | | | | | | ^b 14,300 |
| 54 Phenol | 108952 | | | | | | ^b 4,620,000 |
| 67 Bis(2-Chloroisopropyl) Ether | 39638-32-9 | | | | | | ^b 17,400 |
| 75 1,2-Dichlorobenzene | 95501 | | | | | | ^b 17,400 |
| 76 1,3-Dichlorobenzene | 541731 | | | | | ^a 2620 | ^b 22,200 |
| 77 1,4-Dichlorobenzene | 106467 | | | | | 419 | ^a 3870 |
| 80 Dimethyl-Phthalate | 131113 | | | | | | ^b 2,990,000 |
| 81 Di-n-Butyl Phthalate | 84742 | | | | | ^a 3530 | ^a 15,700 |
| 82 2,4-Dinitrotoluene | 121142 | | | | | ^a 69.2 | ^b 5670 |
| 86 Fluoranthene | 206440 | | | | | ^a 310 | ^a 393 |
| 87 Fluorene | 86737 | | | | | ^a 1340 | |
| 89 Hexachlorobutadiene | 87683 | | | | | ^a 6.94 | |
| 90 Hexachlorocyclopentadiene | 77474 | | | | | | ^b 17,400 |
| 91 Hexachloroethane | 67721 | | | | | ^a 2.73 | ^a 12.4 |
| 93 Isophorone | 78591 | | | | | ^a 552 | ^b 2590 |
| 102 Aldrin | 309002 | | | | | ^a 0.00189 | ^b 0.0226 |
| 109 4,4'-DDE | 72559 | | | | | ^b 0.0054 | ^b 0.00585 |
| 110 4,4'-DDD | 72548 | | | | | ^b 0.00432 | ^b 0.00436 |
| 112 alpha-Endosulfan | 959988 | | | | | ^b 111 | ^b 239 |
| 113 beta-Endosulfan | 33213659 | | | | | ^b 111 | ^b 239 |

^a Number applies statewide. More restrictive criteria may apply in portions of the Delaware River and its tributaries.

^b Number applies only in certain portions of the Delaware River.

^c The freshwater criterion for this metal is expressed as a function of hardness in the water column. The value given here corresponds to a hardness of 100 mg/l.

In reviewing New Jersey's submission, EPA Region 2 concluded that the State's adopted criteria are scientifically defensible. EPA solicits comment on removing the Federal criteria for these pollutants in New Jersey (see the currently applicable Federal criteria for the individual pollutants in the table at 40 CFR 131.36).

In 1994, NJ reorganized certain use classification requirements pertaining to the Delaware River and Bay, including a definition of the appropriate points of application for criteria in these waters. EPA is here proposing corresponding revisions to 40 CFR 131.36 (d)(3) to be consistent with the State regulations that the Federal regulations are intended to augment. In addition, on November 9, 1999, EPA amended the NTR criteria for PCBs-human health (columns D1 and D2 of the table at 40 CFR 131.36) to provide for a total criteria for this pollutant, in lieu of criteria for individual isomers (see 64 FR 61181). EPA is here proposing corresponding revisions to 40 CFR 131.36 (d)(3) to be

consistent with this change. These proposed changes do not result in any substantive changes to the Federal criteria applicable to New Jersey. These proposed revisions clarify the existing Federal regulations.

Administrative Requirements

This proposed withdrawal of Federal criteria is deregulatory in nature and would impose no additional regulatory requirements or costs on anyone. Therefore, it has been determined that this proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget. For the same reason, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that this action contains no Federal mandates for State, local or tribal governments, or the

private sector, nor does it contain in regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203 and 205 of the Unfunded Mandates Reform Act (Pub. L. 104-4). Further, this rule does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 20, 2001.

Christine Todd Whitman, Administrator.

For the reasons set out in the preamble title 40, Chapter I, part 131 of

the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.36 is amended by:

- a. Revising the table in paragraph (d)(2)(ii).
b. Revising the table in paragraph (d)(3)(ii).
c. Revising the table in paragraph (d)(5)(ii).

d. Revising the table in paragraph (d)(9)(ii).

The revisions read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act section 303(c)(2)(B).

* * * * *

(d) * * *

(2) * * *

(ii) * * *

Table with 2 columns: Use classification, Applicable criteria. Row: Class A, B and C Waters. Criteria: Column B2-#105

* * * * * (ii) * * *
(3) * * *

Table with 2 columns: Use classification, Applicable criteria. Row: Freshwater Pinelands, FW2. Criteria: Column B1, B2, D1, D2 with various risk levels and exceptions.

Table with 2 columns: Use classification, Applicable criteria. Row: PL (Saline Water Pinelands), SE1, SE2, SE3, SC, Delaware Bay Zone 6. Criteria: Column C1, C2, D2 with various risk levels and exceptions.

Table with 2 columns: Use classification, Applicable criteria. Row: Delaware River zones 1C, 1D, 1E, 2, 3, 4, and 5. Criteria: Column B1, B2, D1, D2 with various risk levels and exceptions.

Table with 2 columns: Use classification, Applicable criteria. Row: Delaware River Zones 3, 4, and 5. Criteria: Column C1, C2—all.

* * * * * (5) * * *

(ii) * * *

| Use classification | Applicable criteria |
|--------------------|---|
| Class C | This classification is assigned the additional criteria in: Column B2: #10, 118, 126. |

* * * * *

- (9) * * *
- (ii) * * *

| Use classification | Applicable criteria |
|--|--|
| Sections (2)(A), (2)(B), (2)(C), (4) | These classifications are each assigned criteria as follows: Column B1, #2. Column D2, #12, 21, 29, 39, 46, 68, 79, 81, 86, 93, 104, 114, 118. |
| Section (3) | This classification is assigned all criteria in: Column D1, all except #1, 9, 12, 14, 15, 17, 22, 33, 36, 39, 44, 75, 77, 79, 90, 112, 113, and 115. |

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