

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance (*American Iron and Steel Institute, et al. v. EPA*, 115 F.3d 979 (D.C. Cir. 1997)); however, the Court vacated the provisions of the Guidance that would have eliminated mixing zones for BCCs (115 F.3d at 985). The Court held that EPA had “failed to address whether the measure is cost-justified,” and remanded the provision to EPA for an opportunity to address this issue (115 F.3d at 997). In response to the Court’s remand, EPA reexamined the factual record, including its cost analyses, and published the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern in the **Federal Register** on October 4, 1999 (64 FR 53632). EPA received numerous comments, data, and information from commenters in response to the proposal.

After reviewing and analyzing the information in the rulemaking record, including those comments, on November 13, 2000, EPA published the final rule amending the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, to be codified in appendix F, procedure 3.C of 40 CFR part 132. As amended, the Guidance requires that States adopt mixing zone provisions that prohibit mixing zones for new discharges of BCCs effective immediately upon adoption of the provision by the State, and to prohibit mixing zones for existing discharges of BCCs after November 15, 2010, except where a mixing zone is determined by the State to be necessary to support water conservation measures and overall load reductions of BCCs or where a mixing zone is determined by the State to be necessary for technical or economic reasons. Under the amended Guidance, States were given two years to adopt and submit revised water quality standards conforming with the amended Guidance.

EPA has conducted its review of the States’ submissions to prohibit mixing zones for BCCs in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are “consistent with” the Guidance. EPA has interpreted the statutory term “consistent with” to mean “as protective as” the corresponding

requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State’s provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State’s standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed the States’ submissions to determine their consistency only with respect to appendix F, procedure 3.C of 40 CFR part 132. EPA has not reopened part 132 in any respect, and today’s action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

Today’s notice identifies the elements of the States’ Great Lakes BCC mixing zone provisions that EPA is approving today. Additional explanations of EPA’s review of and conclusions regarding the States’ submissions on this issue are contained in the administrative record for today’s actions in documents prepared for each State.

1. The State of Illinois

Illinois’ regulations for mixing zones for BCCs are found at Title 35: Environmental Protection, Subtitle C: Water Pollution, Chapter I: Pollution Control Board, Part 302: Water Quality Standards, Subpart E: Lake Michigan Basin Water Quality Standards, Section 302.530: Supplemental Mixing Provisions for Bioaccumulative Chemicals of Concern. Illinois adopted its BCC mixing zone provisions at the same time it adopted its other Great Lakes water quality standards. Illinois’ supplemental mixing provisions for BCCs at 302.530 prohibit mixing zones for new discharges of BCCs commencing on or after December 24, 1997, prohibit mixing zones for existing discharges after March 23, 2007 except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings to the Lake Michigan Basin or where a mixing zone is determined to be necessary based on technical or economic grounds. EPA reviewed Illinois’ rules at 302.503 and determined that they are consistent with the requirements of the amended Guidance.

EPA therefore approves of Illinois’ rules at 302.530.

2. The State of Indiana

Indiana’s mixing zone provisions for BCCs are found at 327 IAC 5–2–11.4(b)(1). Indiana’s rules prohibit mixing zones for BCCs for new discharges of BCCs and existing and new discharges of BCCs to the open waters of Lake Michigan. Mixing zones for existing discharges of BCCs to waters other than the open waters of Lake Michigan will be prohibited beginning January 1, 2004 with the exceptions allowed under the amended Guidance for water conservation measures and technical and economic considerations. Indiana adopted its rules prohibiting mixing zones at the same time it adopted its original Great Lakes rules. EPA reviewed Indiana’s rules at 327 IAC 5–2–11.4(b)(1) and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Indiana’s rules at 327 IAC 5–2–11.4(b)(1).

3. The State of Michigan

Michigan’s regulations for mixing zones for BCCs are found at R 323.1082(6). Michigan adopted its BCC mixing zone provisions at the same time it adopted its other Great Lakes water quality standards. Michigan’s mixing provisions for BCCs at R 323.1082(6) prohibit mixing zones for new discharges of BCCs, prohibit mixing zones for existing discharges after March 23, 2007 except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings or where a mixing zone is determined to be necessary based on technical or economic grounds. EPA reviewed Michigan’s rules at R 323.1082(6) and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Michigan’s rules at R 323.1082(6).

4. The State of Minnesota

Minnesota’s regulations for mixing zones for BCCs are found at 7052.0210, subpart 3, of Minnesota’s administrative code. Minnesota adopted its BCC mixing zone provisions at the same time it adopted its other Great Lakes water quality standards. Minnesota’s mixing provisions for BCCs at 7052.0210, subpart 3 prohibit mixing zones for new discharges of BCCs as of March 9, 1998 and for existing discharges after March 23, 2007, except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings or where a mixing zone is determined