

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7507-2]

Notice of Approval of Submissions to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System for the Commonwealth of Pennsylvania**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Notice is hereby given of approval of submissions by the Commonwealth of Pennsylvania to prohibit mixing zones for bioaccumulative chemicals of concern (BCCs) in the Great Lakes System pursuant to section 118(c) of the Clean Water Act and the Water Quality Guidance for the Great Lakes System, as amended.

DATES: EPA's approval is effective on June 3, 2003.

FOR FURTHER INFORMATION CONTACT: Denise Hakowski, U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103, or telephone her at (215) 814-5726. Copies of materials considered by EPA in its decision are available for review by appointment at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103. Appointments may be made by calling Ms. Hakowski.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance). See 60 FR 15366. The 1995 Guidance established minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the 1995 Guidance specified numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provided methodologies to derive numeric criteria for additional pollutants discharged to these waters. The 1995 Guidance also contained minimum implementation procedures and an antidegradation policy.

The 1995 Guidance, which was codified at 40 CFR part 132, required the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with

the Guidance. 40 CFR 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act (CWA) or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days after the notification, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

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.

The Commonwealth of Pennsylvania's regulation banning mixing zones for BCCs is found at 25 Pa. Code Chapter 93, section 93.8a. It was adopted on September 17, 2002, and the revisions were published in the Pennsylvania Bulletin on December 14, 2002. The Department of Environmental Protection's Office of Chief Counsel certified on January 23, 2003, that these regulatory changes were adopted pursuant to the Commonwealth's legal procedures, and that the Office of Attorney General and the Governor's Office of General Counsel have also approved the final regulatory changes for form and legality. In accordance with section 303(c)(2)(A) of the Clean Water Act (CWA) and 40 CFR 131.20(c), the Pennsylvania Department of Environmental Protection (PADEP) forwarded the amended regulation to the U.S. Environmental Protection Agency on February 7, 2003, and we received it on February 19, 2003.

EPA has conducted its review of Pennsylvania's submission to prohibit mixing zones for BCCs in the Great Lakes System 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 the Commonwealth's standards, policies and procedures, as well as any additional information provided by Pennsylvania clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed the Pennsylvania's submission to determine its 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