

on June 6, 2003, and we received it on June 6, 2003.

EPA has conducted its review of New York'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 State's standards, policies and procedures, as well as any additional information provided by New York clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed New York'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 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.

With regard to the element of the State's regulation submitted for EPA approval, EPA is approving this provision as a revision to the State's water quality standards under Section 303 of the CWA. EPA is also approving this submission under Section 118 of the CWA. EPA's approval is based on the fact that the State regulations require that the provisions of each issued SPDES permit ensure compliance with the requirements of 40 CFR part 132. The State's submission satisfies the requirements of part 132 by directly incorporating these requirements into the State regulations by reference. While New York does not explicitly require wasteload allocations (WLAs) in total maximum daily loads (TMDLs) to be consistent with part 132, the State does require that all water quality-based effluent limitations (WQBELs) must comply with the BCC mixing zone ban by operation of the new SPDES regulation at 750-1.11(a)(5)(i), regardless of what the TMDL says. This

is sufficient for EPA approval because, under EPA's regulations at 40 CFR .122.44(d)(1)(vii), WQBELs must always be based on whichever is more stringent: (A) limitations that are derived from and comply with water quality standards (in this case, the BCC mixing zone ban); or (B) limitations that are consistent with the requirements and assumptions of an approved TMDL. By requiring limitations "necessary to meet water quality standards, guidance values, effluent limitations or schedules of compliance established pursuant to any state law or regulation consistent with Section 510 of the Act, or the requirements of 40 CFR part 132 (see section 750-1.24 of this part)," the state ensures that water quality-based effluent limitations will comply with the BCC mixing zone ban. In addition, EPA expects that TMDLs for BCCs will be consistent with the BCC mixing zone ban because this requirement is part of the state's water quality standards, and all TMDLs must be calculated at levels necessary to implement the applicable water quality standards. EPA is taking no action at this time with respect to other revisions that New York may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

William Muszynski,

Acting Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

[OW-2003-0063; FRL-7542-9]

Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comment.

SUMMARY: In a July 11, 2003, memorandum, the Environmental Protection Agency (EPA) issued, as an Interim Statement and Guidance, an interpretation of the Clean Water Act (CWA) to resolve jurisdictional issues pertaining to pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that are applied to waters of the United States. The interpretation addresses two sets of circumstances for which EPA believes that the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA

does not constitute the discharge of a pollutant that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act: the application of pesticides directly to waters of the United States in order to control pests (for example mosquito larvae or aquatic weeds that are present in the water) and the application of pesticides to control pests that are present over waters of the United States that results in a portion of the pesticide being deposited to waters of the United States (for example when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when insecticides are applied for control of adult mosquitoes). EPA issued this statement pursuant to its authority under Section 301 of the Clean Water Act. EPA is soliciting and will consider comment on this interim statement and guidance before determining a final Agency position.

DATES: Comments on this notice must be received or postmarked on or before midnight October 14, 2003.

ADDRESSES: Public comments regarding this notice may be submitted electronically, by mail, or through hand delivery/courier. Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0063. For additional information on other ways to submit comments, see **SUPPLEMENTARY INFORMATION**, How May I Submit Comments?

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Louis Eby, Office of Wastewater Management, at (202) 564-6599, or Arty Williams, Office of Pesticide Programs, at (703) 305-5239.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2003-0063. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and