

payments. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007-1866.

**DATES:** Comments must be submitted on or before September 12, 2003.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007-1866. Comments should reference the Amenia Town Landfill Superfund Site located in the Town of Amenia, Dutchess County, New York, Index No. CERCLA-02-2003-2029. To request a copy of the proposed settlement agreement, please contact the individual identified below.

**FOR FURTHER INFORMATION CONTACT:** George A. Shanahan, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3171.

Dated: July 31, 2003.

**George Pavlou, Director,**

*Emergency and Remedial Response Division,  
U.S. Environmental Protection Agency,  
Region 2.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7543-4]

### Notice of Approval of Submission 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 State of New York

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of approval of the submission by the State of New York 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 August 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Wayne Jackson, U.S. EPA, Region 2, 290 Broadway, New York, NY, or telephone him at (212) 637-3807. Copies of materials considered by EPA in its decision are available for review by appointment at U.S. EPA Region 2, 290 Broadway, New York, NY. Appointments may be made by calling Mr. Jackson.

**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.

New York's regulations banning for mixing zones for BCCs are found at 6NYCRR Part 750 State Pollutant Discharge Elimination System (SPDES) Permits, Subparts 750-1.11(a)(5)(i) and 750-1.11(a)(5)(ii), "Application of standards, limitations and other requirements." They were adopted on February 11, 2003, and the revisions were filed with the New York State Department of State on April 11, 2003, and became effective on May 11, 2003. In accordance with Section 303(c)(2)(A) of the Clean Water Act (CWA) and 40 CFR 131.20(c), the New York State Department of Environmental Conservation (NYSDEC) forwarded the amended regulation to the U.S. Environmental Protection Agency (EPA)

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