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ENVIRONMENTAL PROTECTION

WATER RESOURCE MANAGEMENT

Notice of Action on Petition for Rulemaking

Ground Water Quality Standards, N.J.A.C. 7:9C

Practical Quantitation Limit and Ground Water Quality Standard for bis (2-chloroethyl) ether; N.J.A.C. 7:9C, Appendix, Table 1

Petitioner: Ernie Risha

Take notice that the Department of Environmental Protection (Department) has determined to refer the petition for rulemaking filed by Ernie Risha (petitioner) for further deliberation.

The petition was received by the Department on March 27, 2015. Notice of receipt of the petition was published in the May 4, 2015, New Jersey Register (47 N.J.R. 913(c)).

The Petition

The petitioner requests that the Department amend the Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C. Specifically, petitioner requests that the Department amend Table 1 in the Appendix to the GWQS to reduce the practical quantitation limit (PQL) and ground water quality standard applicable to bis (2-chloroethyl) ether (BCEE). The petitioner asserts that BCEE is an extremely toxic and persistent contaminant as evidenced by a 2002 federally recommended maximum contaminant level (MCL) of 0.03 parts per billion (ppb). Consistent with this toxicity, the petitioner points out that the Department has promulgated a health-based ground water quality standard of 0.03 ppb in Table 1 of the Appendix to the GWQS rules. In addition, the GWQS set a practical quantitation level (PQL) for BCEE at 7 ppb. As the higher of the PQL and the ground water quality criterion is the standard applied in the context of an applicable regulatory program to determine whether a contravention of a standard has occurred (see N.J.A.C. 7:9C-1.9(c)), in the context of a clean-up of BCEE contamination, the applicable standard to be met is 7 ppb, which petitioner asserts is inadequate.

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Petitioner asserts that the 7 ppb standard was based on the technology that was available at the time these standards were set many years ago which could not identify BCEE below 7 ppb. Petitioner asserts that advances in technology have resulted in the greatly improved ability to detect BCEE at significantly lower levels. Based upon these advances, petitioner requests that Table 1 in the Appendix to the GWQS be amended to include a PQL for BCEE based upon the most recent version of USEPA Method 8270 select ion monitoring from USEPA's Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods, also known as SW-846. Petitioner expresses an opinion that the current minimum detection limit (MDL) which can be obtained is 0.02 ppb and, based upon this, suggests that a more representative PQL for BCEE of 0.1 ppb should be adopted. Petitioner further requests that the column in Table 1 for BCEE reflecting the higher of PQL and ground water quality criterion be amended to reflect the current laboratory detection limits with the current 7 ppb changed to 0.1 ppb. Petitioner asserts that this level corresponds to the requested, obtainable PQL of 0.1 ppb and would be more protective of human health and the environment.

Petitioner suggests amending these standards is particularly important as application of what the petitioner asserts is an outdated standard to the clean-up of contaminated sites in the State can result in clean-up occurring to a level that is not protective of human health or the environment. Petitioner cites examples of clean-ups that he indicates have inappropriately utilized the current 7 ppb ground water standard as the primary remediation goal for BCEE. Petitioner submitted a variety of attachments in support of his petition including toxicity information on BCEE, the above referenced USEPA National Recommended Water Quality Criteria from 2002, information on current (2014) BCEE detection limits and documents related to several contaminated sites.

The Department's Response to the Petition

The GWQS are used in the implementation of various Department programs, including discharge to ground water permitting and for the clean-up of contaminated sites. The

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Department is analyzing the information submitted by the petitioner and other available data to determine whether an adjustment to the BCEE PQL is appropriate. In accordance with N.J.S.A. 52:14B-4(f), the Department is referring the matter for further deliberation in order to provide time for this analysis to be completed.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-4.2. In accordance with N.J.A.C. 7:1D-1.1, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.