

A RESOLUTION directing the Executive Director and DRBC staff to complete Stage 2 Total Maximum Daily Loads (TMDLs) for polychlorinated biphenyls (PCBs) for Water Quality Management Zones 2 through 6 of the Delaware River and Bay; and on behalf of the Estuary States and the DRBC, requesting that Regions II and III of U.S. Environmental Protection Agency establish the Stage 2 TMDLs.

WHEREAS, in accordance with Section 303(d) of the federal Clean Water Act (“CWA”), in the mid- and late 1990s, Delaware, New Jersey and Pennsylvania each identified the segments of the Delaware River and Bay within their boundaries as having a water quality impairment due to PCB contamination in fish. These actions triggered the requirement that TMDLs be established for PCBs for these river segments; and

WHEREAS, on May 16, 2000 staff of U.S. EPA Regions II and III (collectively “EPA”), the Delaware Department of Natural Resources and Environmental Control (DNREC), the New Jersey Department of Environmental Protection (NJDEP), and the Pennsylvania Department of Environmental Protection (PADEP) jointly on behalf of EPA and the estuary states requested that DRBC develop the TMDLs, on grounds that DRBC possessed the necessary expertise and mission scope required to perform this shared obligation placed on the states and EPA by the federal Clean Water Act; and

WHEREAS, upon recommendations of an Expert Panel formed in 2000 to advise DRBC, its Toxics Advisory Committee (TAC), DRBC member state agencies and the EPA (DRBC, the states and EPA collectively hereinafter are referred to as “co-regulators”), the co-regulators agreed that the estuary PCB TMDLs should be established in two stages, with Stage 1 to be completed by December 15, 2003 and Stage 2 to be established thereafter on the basis of additional regulatory action, data collection and model refinements, which ultimately included: adoption by the Commission of a revised human health water quality criterion for PCBs, collection of additional effluent data for PCBs using a single, sensitive analytical method, completion of additional refinements to the water quality model developed by Commission staff, and agreement through the TAC on a more equitable wasteload allocation procedure for point sources; and

WHEREAS, as set forth in detail in DRBC Resolution No. 2003-19, the Commission in 2003 delivered a final Stage 1 TMDL report to EPA Regions II and III, and on December 15, 2003 the two EPA regions in turn established the Stage 1 TMDLs for Zones 2 through 5 of the Delaware River Estuary; and

WHEREAS, on December 15, 2006, on the basis of additional technical work performed by the DRBC, U.S. EPA Regions II and III established Stage 1 TMDLs for Zone 6 (Delaware Bay); and

WHEREAS, in order to implement the Stage 1 TMDLs for point source discharges and gather needed data, DRBC approved Resolution No. 2003-27, authorizing and directing the Executive Director to require dischargers to perform additional effluent monitoring for PCBs;

and Resolution No. 2005-9, adopting regulations that required PCB point source dischargers identified in TMDLs to develop and implement Pollutant Minimization Plans (“PMPs”) to reduce their PCB loadings; and

WHEREAS, by 2011, the 10 point sources contributing 90 percent of total point source loadings of PCBs to the Delaware Estuary and Bay had reduced their collective PCB loadings by 46 percent through a variety of measures undertaken by each in accordance with discharge-specific PMPs; and

WHEREAS, as set forth in detail in Resolution No. 2013-8, between 2003 and 2013, DRBC in consultation with the TAC and co-regulators, developed and promulgated a revised uniform criterion for total PCBs for the protection of human health from carcinogenic effects in Water Quality Zones 2 through 6 (the Delaware Estuary and Bay) of 16 picograms per liter, based on site-specific fish consumption data, site-specific bioaccumulation factors, and current EPA guidance on the development of human health water quality criteria, to replace outdated DRBC criteria that varied by Water Quality Management Zone; and

WHEREAS, also as set forth in detail in Resolution No. 2013-8, between 2005 and 2013, DRBC in consultation with co-regulators and stakeholders developed further recommendations for implementing the revised criterion for PCBs, consisting, in particular, of a refined approach to point source permitting to ensure consistency with the Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework, while also reflecting principles of adaptive management; and

WHEREAS, in December of 2013, DRBC determined by Resolution No. 2013-08 that it concurred with the implementation strategy proposed by the co-regulators, including the issuance of requirements in NPDES permits consistent with that strategy (subject to any necessary technical refinements made in response to comments received prior to the adoption of Resolution No. 2013-08 or in any subsequent comment period), and further concurred with the co-regulators’ recommendation that the existing NPDES permit approach, which was published as an appendix to the Stage 1 TMDLs, continue to be used until the Stage 2 TMDLs are established based on the revised criterion; and

WHEREAS, DRBC, its member states and EPA seek to continue the excellent progress achieved by dischargers and co-regulators to date in reducing PCB loadings to the Delaware Estuary and Bay, and to this end, desire to see the Stage 2 TMDLs established and an appropriate implementation strategy for point source discharges implemented; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

- 1) The Executive Director is authorized and directed to
 - a. prepare and submit to EPA Regions II and III the final documentation for the Stage 2 TMDLs for PCBs for Water Quality Zones 2 through 6 (the Delaware Estuary and Bay); and

- b. provide technical support to EPA in the public process required to establish the Stage 2 TMDLs, including participation by DRBC staff in an informational meeting and public hearing on the Stage 2 TMDLs, and assistance in preparing a response to comments document and any revisions to the TMDL documentation that may be appropriate after the close of the comment period.
- 2) EPA Regions II and III are respectfully requested to establish the Stage 2 TMDLs to replace the Stage 1 TMDLs, with the understanding that in doing so, EPA will receive the technical assistance of DRBC staff, as set forth above.
- 3) The Executive Director is directed to continue to work closely with member states and EPA on implementation of the PCB TMDLs, including but not limited to, the review of Pollutant Minimization Plans; the review, compilation and assessment of monitoring data submitted by NPDES dischargers; and the development and implementation of other elements of the state NPDES permitting strategy that accompany the establishment of the Stage 2 TMDLs.

/s/ Angus Eaton

Angus Eaton, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, J.D., M.R.P.

Commission Secretary & Assistant General Counsel

ADOPTED: September 10, 2014