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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

Division of Water Quality

Watershed Permitting Element

Pollutant Discharge Elimination System – Monitoring and Pollutant Minimization Plans for Polychlorinated Biphenyls

Proposed New Rules: N.J.A.C. 7:14A-11.13, N.J.A.C. 7:14A-14.4

Authorized By: Bradley M. Campbell, Commissioner
Department of Environmental Protection

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11
et seq., 58:11-64 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:12A-1 et
seq., 13:1B-3 et seq., 26:2C-1 et seq., 40:55D-1 et seq., 58:11-23 et seq.,
and 26:3A2-21

Calendar Reference: See Summary below for exception to calendar requirement

DEP Docket Number: 40-05-11/565

Proposal Number:

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Expiration Date:

A **public hearing** concerning this proposal will be held on:

Date: January 30, 2006

Time: 2:00 p.m.

Location: New Jersey Department of Environmental Protection
 401 East State Street
 Hearing Room, First Floor, East Wing
 Trenton, New Jersey

Submit written comments by February 17, 2006 to:

New Jersey Department of Environmental Protection

Alice A. Previte, Esq., Legal Specialist

ATTN: DEP Docket No.40-05-11/565

Office of Legal Affairs

PO Box 402

Trenton, New Jersey 08625

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The New Jersey Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, the commentator's name and affiliation following the comment.

Copies of this rule proposal can be downloaded electronically from the Department's web page at <http://www.state.nj.us/dep/rules>.

The agency proposal follows:

SUMMARY

As the Department is providing a 60-day comment period on this proposal, the proposal is exempted from rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Introduction

Polychlorinated biphenyls (PCBs) harm the health of humans and wildlife. PCBs are probable human carcinogens, and have been linked to other serious health problems.

Human beings are most frequently exposed to PCBs by eating fish and shellfish from contaminated waters, and by eating other types of animals that feed on those organisms.

Because of the way that PCBs persist in the environment and accumulate up the food chain, PCB concentrations in aquatic organisms can be as much as one million times higher than the concentration in surface waters, leading to the health problems described below.

Reducing the amount of PCBs discharged to surface waters will help to reduce PCBs in those waters, to reduce PCBs in future generations of aquatic life, and to reduce the extent to which humans and wildlife are exposed to PCBs.

Background

PCBs are man-made organic compounds that are chemically stable, non-flammable, have a high boiling point, and have electrical insulating properties. Due to these properties, PCBs were used in hundreds of industrial and commercial applications, including electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics, and rubber products; in pigments, dyes and carbonless paper; and in many other applications. PCB-laden oil is frequently associated with electrical transformers. More than 1.5 billion pounds of PCBs were manufactured in the United States until federal law required PCB production to cease in 1977.

The United States Environmental Protection Agency has concluded that PCBs are probable human carcinogens. The USEPA's assessment was peer-reviewed, and the reviewers agreed with the USEPA's conclusion. The International Agency for Research on Cancer has also declared PCBs as being probable human carcinogens to humans. The National Toxicology Program has stated that it is reasonable to conclude that PCBs are carcinogenic in humans.

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PCBs have also been shown to adversely affect the immune system, reproductive system, nervous system, and endocrine system. [See "PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures," National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, EPA/600/P-96/001F, September 1996. See also <http://www.epa.gov/pcb/effects.html>.]

The primary non-occupational source of human PCB exposure is food, especially fish and shellfish from contaminated waters. PCBs persist in the environment, accumulate in the tissue of fish and other animals, and biomagnify through the food chain. In other words, the concentration of the pollutant increases as it is transferred up the food chain.

PCBs continue to enter the state's surface waters today from a variety of sources. Industrial sites discharge PCBs resulting largely from known and probable sources including historical usage, electrical transformers and other electrical equipment, and the resulting contamination of nearby soil areas or sediment areas within a facility site. Although not known to occur at a facility in New Jersey, certain industrial processes have been documented to result in the inadvertent generation of PCBs. Sewage treatment facilities discharge PCBs that are conveyed to the treatment facility from known or unknown contaminated sites, industrial facilities with historic contamination or possibly inadvertent by-products of an industrial process, historic or ongoing leakage from electrical transformers and other equipment, and stormwater runoff from sites contaminated from historic usage, or from air deposition. Combined Sewer Overflows (CSOs) are also potential sources of the PCBs discharged by sewage treatment facilities.

Proposed new rules

The Department is therefore proposing new rules that will reduce discharges of PCBs to New Jersey's surface waters from industrial facilities and from sewage treatment facilities.

The proposed new rules affect all major facilities that discharge to a PCB-impaired waterbody segment. "Major facilities" are those described in the definition of the term in existing N.J.A.C. 7:14A-1.2. PCB-impaired waterbody segments are those listed on Sublist 5 of the New Jersey List of Water Quality Limited Waters (also known as the 303(d) List or as the Impaired Waterbodies List), as being impaired or threatened for one or more designated uses due to PCBs. The current list of Water Quality Limited Waters is included in the New Jersey Integrated Water Quality Monitoring and Assessment Report (Integrated Report), which can be found on the Department's web site at <http://www.state.nj.us/dep/wmm/sgwqt/wat/integratedlist/2004report.html>. Segments remain on the list until a total maximum daily load (TMDL) for the segment has been completed, until applicable water quality criteria are met, or until the original basis for the listing is found to be flawed. The State may also add segments to the list, for example during the biennial update of the list required under the Federal Clean Water Act. If a segment is added to the list as being impaired or threatened for designated uses due to PCBs, major dischargers to that segment would become subject to the rule.

A major facility subject to the proposed new rules will be required first to monitor its discharge for PCBs, using the more sensitive method capable of detecting very small amounts of PCBs. With the exception of the more recent data collected under the Delaware River PCB TMDL, most PCB monitoring was performed using EPA method 8082A. The proposed new rules require PCB monitoring with Method 1668A, which will detect PCBs at levels that were non-detectable using method 8082A.

PCBs are a class of synthetic compounds that were typically manufactured through the progressive chlorination of batches of biphenyl to achieve a target percentage of chlorine by weight. Individual PCB compounds called congeners can have up to 10 chlorine atoms attached to a basic biphenyl structure consisting of two connected rings of six carbon atoms each. There are 209 patterns in which chlorine atoms may be attached, resulting in 209 possible PCB congeners. The proposed new rules require monitoring for all 209 congeners.

Based on the results of the monitoring described above, the Department will determine whether each facility subject to the rule will be required to develop and implement a PCB pollutant minimization plan (PMP). The purpose of the PMP is to lead to the identification and elimination of discrete sources of PCBs. For some facilities, the PMP approach is unlikely to be effective. Since PCBs have been dispersed throughout the environment by human activity, and have continually cycled among the sediment, the water column and the atmosphere to some degree, it is expected that diffuse background levels of PCBs will commonly be found in effluents. A facility discharging at or close to those background levels is far less likely than a facility discharging at significantly higher levels to be able to identify discrete sources of PCBs.

Accordingly, the Department will be requiring PMPs for dischargers with more elevated levels of PCBs in their effluent, but not for those that have PCB levels at or close to background.

The proposed new rules reflect the experience gained in developing and implementing the Delaware Estuary PCB TMDL (U.S. Environmental Protection Agency, Regions II And III, "Total Maximum Daily Loads For Polychlorinated Biphenyls (PCBs) For Zones 2 - 5 Of The Tidal Delaware River," December 2003). In the Delaware Estuary, New Jersey, Pennsylvania, Delaware, the Delaware River Basin Commission, and the USEPA worked together in consultation with a broad range of stakeholders to develop an approach similar to that of the proposed new rules. Specifically, in the Delaware Estuary TMDL these government entities are using the results of Method 1668A monitoring to identify which dischargers would have a reasonable chance of successfully implementing a PMP. The experience in the Delaware Estuary has not only guided the Department in developing the proposed new rules, but will also help to guide the Department in determining which dischargers will be required to develop and implement PMPs under the proposed new rules. The PMP would include actions to minimize the contribution of PCBs in the discharge from known and probable sources, and to track down and identify potential sources that may also contribute to PCB loading.

Implementing a PMP is the most productive way for a discharger to reduce its releases of PCBs to the state's surface waters. As the USEPA stated in promulgating the Delaware River PCB TMDL (U.S. Environmental Protection Agency, Regions II And III, "Total Maximum Daily Loads For Polychlorinated Biphenyls (PCBs) For Zones 2 - 5 Of The Tidal Delaware River," December 2003):

EPA is aware that PCBs are no longer being produced for commercial purposes.

The overall loading to the Delaware River of PCBs is thought to be primarily from contamination in and around the areas of the dischargers or from unknown sources during the industrial process, either directly from old leaking equipment or produced as an unwanted byproduct. An NPDES condition to eliminate the sources of the PCBs is a more effective and efficient method by which to reduce PCB loadings to the Delaware River than codifying end-of-pipe wastewater treatment to meet a numeric limit. [Response-To-Comment Document for the Proposed Total Maximum Daily Loads for PCBs for Zones 2-5 of the Tidal Delaware River, December 15, 2003, p. 12]

The same reasons that led the USEPA, New Jersey, Pennsylvania, Delaware, and the Delaware River Basin Commission (DRBC) to agree upon the PMP approach for the Delaware River apply equally to PCB-impaired waters elsewhere in New Jersey. Accordingly, the proposed new rules follow the example set in the implementation of the Delaware PCB TMDL. DRBC adopted a rule and PMP technical guidance documents similar to the approach in the proposed new rules and in a companion technical manual that the Department is issuing for public comment at the same time as this proposal.

In November 2002, the Department had proposed rules containing New Jersey specific wildlife criteria for PCBs to address these concerns as expressed by the United States Fish and Wildlife Service (USFWS) in its 1996 Biological Opinion. However, the Department did not

adopt the proposed criteria, in response to concerns raised during the public comment period about the absence of a plan to implement the new more stringent criteria.

The concern about implementation was especially acute, because there is currently no available treatment technology to meet the criteria. To assist the Department in developing its implementation plan, USEPA Region 2 obtained contractor support to conduct an evaluation of the technical feasibility of wastewater treatment at NJPDES point sources to meet these very stringent criteria. Science Applications International Corporation (SAIC) concluded that treatment to meet the criteria proposed in 2002 is not readily available and that additional testing of available end-of-pipe treatment technologies is necessary to ensure that installation of a particular technology will achieve the proposed criteria. Pollution prevention was found to be a potentially more cost-effective strategy and could produce gains toward achieving standards without imposing the costs of unproven end-of pipe technologies. These findings were published in a report entitled *Technological Feasibility of Proposed Water Quality Criteria for New Jersey*, dated March 2005 prepared for USEPA Region 2 by SAIC (EPA contract No. 68-C-99-252).

The existing human health criteria for PCBs in fresh and saline waters in New Jersey is 0.00017 ug/l (N.J.A.C. 7:9B). Like the proposed (but not adopted) wildlife criteria for PCBs, treatment technology to achieve that criteria end-of-pipe is not available. As a result for those PCB impaired segments on List 5 of the Department's Integrated Water Quality Monitoring and Assessment Report, the Department faces the same implementation issues that have occurred with the Delaware Estuary TMDL for PCBs. Like the Delaware Estuary, it will be more effective and efficient to impose in NJPDES permits conditions to identify and eliminate sources

of PCBs to reduce loadings to those segments (i.e., pollutant minimization plans) then to impose numeric effluent limits that are not attainable. Since development of a TMDL, specifically the wasteload allocations that determine the numeric effluent limits, is not necessary to trigger PMP requirements for PCBs, the Department has determined that it can move forward to require effluent characterization and where appropriate PMPs for PCBs in advance of a TMDL.

The Department committed to develop an implementation plan before reproposing the wildlife criteria. The two-pronged approach to PCB reduction in the proposed new rules, with improved monitoring followed by the development and implementation of PMPs as appropriate, is an important part of that implementation plan. This rule will serve as the initial component of an implementation plan which will be developed further in the future.

Proposed N.J.A.C. 7:14A-11.13 outlines the PCB monitoring requirements discussed above, call for the Department to evaluate the monitoring data and determine whether a PMP is required, and explain which facilities will be subject to the requirements of the proposed new rule. This section also exempts facilities that are already subject to an adopted PCB TMDL (such as the facilities included in the Delaware River TMDL discussed above) from the proposed new rules.

The rules governing New Jersey Pollutant Discharge Elimination System (NJPDES) permits enable the Department to modify multiple NJPDES permits by promulgating a rule (N.J.A.C. 7:14A-16.3(j)). The proposed new rules therefore will also serve as a draft permit modification for the NJPDES permits listed in the rules (satisfying the requirement for a draft

permit under N.J.A.C. 7:14A-15.6), and as a fact sheet (satisfying the requirement for a fact sheet under N.J.A.C. 7:14A-15.8). The modification will incorporate the requirements for PCB monitoring and for the development and implementation of a pollutant minimization plan discussed above. The Department will provide the holders of the affected permits with a copy of this proposal. The modification will become a final permit action upon adoption of the proposed new rules.

Under the Federal Clean Water Act and the NJPDES rules at N.J.A.C. 7:14A-4.2(e)3, a permittee who files a timely renewal application can continue discharging under the authority of a NJPDES permit after the expiration date, until the Department takes action on the renewal application. However, the USEPA has advised the Department that it cannot modify an expired permit. Accordingly, the proposed new rules will not modify a permit that is in expired status as of the date that the proposed new rules are adopted. The Department will incorporate the requirements of the proposed new rules into those expired permits as they are renewed.

Proposed N.J.A.C. 7:14A-14.4 establishes the monitoring frequency requirements for PCBs for effluent characterization for the purposes of determining if a PMP is required.

In an effort to provide for collection of a sufficient number of samples to be representative without being overly burdensome, the Department has established six as the maximum number of samples to be collected for effluent characterization for the purpose of determining whether a PMP should be required. To reduce costs further, the Department has also included a condition that allows the permittee to request a reduction of the monitoring of

PCBs are non-detectable or if they are clearly present. The rationale for reducing the frequency where it is known that PCBs are present is to enable the permittee to commit more resources to the development and implementation of a PMP.

Sampling under both wet and dry conditions is required for sanitary wastewater treatment plants, publicly-owned treatment works, and industries that commingle process wastewater with stormwater, as stormwater is a known source of PCB contamination. Conversely, sampling is required under dry conditions for industries that discharge process wastewater. Discharges consisting of non-contact cooling water only are not subject to this rule. The intent of this rule is to achieve PCB pollutant load reduction and this task will be made simpler and less costly if the source of PCB contamination is determined quickly. A grab sample has been specified as the most appropriate method for sampling PCBs.

Social Impact

The Department expects the proposed new rules to have a positive social impact for the State's residents, as well as for those whose work in or visit the State since such would be enhanced by reducing the amount of PCBs in the waters, fish, and wildlife of the State. The proposed new rules will help to establish the quantity of PCBs that major facilities are discharging to PCB-impaired waters, and have the appropriate facilities develop and implement plans that will reduce both the quantity of PCBs entering those facilities as well as the quantity of PCBs that they discharge.

The reduction will result in less accumulation of PCBs in the aquatic food chain. The reduction will serve as an essential part of the state's overall strategy to reduce the number of fish-consumption advisories and to mitigate the effect of PCB exposure on the health of fish, wildlife, and humans. Since PCBs are classified as a probable human carcinogen, reduction of PCB loading in the environment should have a positive impact on public health both directly and indirectly via fish and wild game consumption. These benefits should in turn eventually result in increased recreational opportunities, higher quality sources of potable water, an improved quality of life and increased public health and well being.

Economic Impact

Impact on Affected Dischargers

Monitoring. Major facilities discharging to state waters impaired due to PCBs will incur costs to monitor PCBs using Method 1668A. The cost for this test ranges from approximately \$700 to \$1,200. The Department expects that no permittee will be required to use this method to analyze more than six samples over a two-year period, for a maximum cost ranging from \$4,200 to \$7,200. The proposed new rules require industrial permittees discharging process wastewater (and no stormwater) to perform three samples, for a maximum cost ranging from \$2,100 to \$3,600.

Costs to develop and implement PMPs. Permittees required to develop and implement PMPs will incur costs to perform that work. The cost will range widely, depending upon the

circumstances of each affected facility. The cost will depend upon several factors, such as the extent of contamination affecting the facility, and the complexity and difficulty of identifying known, probable, and potential sources of PCBs affecting the facility's discharge. The cost of implementing the plan will also depend in part upon whether the contamination is present at the facility's site, at other sites where the facility's owner or operator is a responsible party, or only at unrelated sites.

Impact on fishing industry

The United States Environmental Protection Agency has concluded in a peer-reviewed assessment that PCBs are probable human carcinogens. PCBs have also been shown to adversely affect the immune system, reproductive system, nervous system, and endocrine system. [See "PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures," National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, EPA/600/P-96/001F, September 1996. See also <http://www.epa.gov/pcb/effects.html>.]

Non-occupational human exposure to PCBs comes primarily from eating fish and shellfish from PCB-contaminated waters. Since contamination of fish represents a major health concern, it poses a significant economic threat to New Jersey's commercial and recreational fishing industries.

As explained in the Environmental Impact statement below, reducing inputs of PCBs to New Jersey water bodies will eventually lead to lower levels of PCBs in fish and shellfish. There will be many economic benefits from lower levels of PCBs including, potentially, the eventual relaxation or elimination of PCB-based fish consumption advisories that may be aided by the implementation of the proposed new rules. Such relaxation or elimination could lead to greater attractiveness of sport fishing to recreational fishermen, with a corresponding increase in dollars spent in New Jersey on fishing gear, licenses, and travel and lodging for fishing trips. A recent study in New Jersey indicates that party and charter boat captains believe that fish advisories have some negative effect on their business (J. Burger, B.B. Johnson, S. Shukla, and M. Gochfeld, 2003, Perceptions of Recreational Fishing Boat Captains: Knowledge and Effects of Fish Consumption Advisories, *Risk Analysis*, 23, 369-378). The over 260,000 licensed anglers in New Jersey have been estimated to spend nearly \$500.00 each per year on freshwater fishing, for a total of \$130 million per year (NJDEP, DRAFT, Freshwater Fishing in New Jersey 1992: A Survey of License Holders, Division of Fish and Wildlife, Trenton, NJ). Recreational saltwater fishing is estimated to contribute \$1.5 billion per year to the State economy. Lower levels of PCBs in fish caught for sale could increase the marketability of fish and fish products, which would lead to higher value of commercial fishing activities. Commercial saltwater fishing is estimated to contribute over \$590 million to the New Jersey economy (NJDEP, The Economic Impact of Saltwater Fishing in New Jersey during 1996, NJDEP, Division of Fish and Wildlife, Trenton, NJ, 1996).

There also tends to be a greater reliance on subsistence fishing in low-income communities. When residents of those communities are less able to rely on subsistence fishing

(as is the case with the ban on catching and eating blue claw crabs from Newark Bay, the Hackensack, Passaic, Elizabeth, and Rahway Rivers, and the Arthur Kill and Kill Van Kull), they suffer economic harm by being cut off from an inexpensive source of food.

Environmental Impact

The proposed new rules will have a positive environmental impact. For those facilities that implement a PMP, the Department expects the proposed new rules to lead to a reduction in inputs of PCBs to major facilities discharging to PCB-impaired New Jersey waters, and therefore a reduction in the amount of PCBs discharged to those waters. The Department expects PCB reduction efforts to eventually lead to lower levels of PCBs in fish and shellfish, and to lower levels of PCBs in non-aquatic, piscivorous (fish eating) organisms.

The tendency of PCBs to persist in the environment and to bioaccumulate and biomagnify up the food chain means that PCBs discharged to surface waters are harmful even at very low levels. Therefore, requiring testing with a method that has a sensitive detection level will enable dischargers and the Department to better determine where PCBs are a significant problem. Development and implementation of PMPs, which includes trackdown of PCB sources followed by mitigation of contamination, will result in an overall reduction of the PCB load discharged to state waters.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt or amend State regulations which exceed any Federal standards or requirements to include in the rulemaking document a Federal Standard Analysis. The proposed new rules would not impose standards or requirements that exceed any Federal standards or requirements.

The proposed new rules set forth requirements for PCB monitoring, and for the development and implementation of PMPs for PCBs. There are no specific comparable federal rules. However, the federal government has made it clear that this method of pollution reduction is appropriate to reduce PCB loadings, because there is no available treatment to meet criteria. In promulgating the Delaware River TMDL discussed in the summary above, the USEPA stated its belief that "it should be reasonable and consistent with TMDL and NPDES regulations that point sources contributing PCB loads be required to reduce PCB discharges through the development and implementation of PCB minimization plans that will be required by the NPDES permitting programs in Delaware, New Jersey, and Pennsylvania." [Response-To-Comment Document for the Proposed Total Maximum Daily Loads for PCBs for Zones 2-5 of the Tidal Delaware River, December 15, 2003, p. 12] Accordingly, the proposed new rules' approach to reducing PCB loadings is consistent with the approach taken by the federal government.

Jobs Impact

The Department does not expect the proposed new rules to have any measurable impact on employment or job creation in the State.

The implementation of the PCB monitoring requirements may result in job opportunities in analytical services, as the need to perform additional sampling will require additional laboratory personnel. Development and implementation of PMPs may result in job opportunities in consulting services as facilities may contract services for the task of developing the required PMP. Permittees then may also maintain these consulting services to implement the PMP. The Economic Impact statement above discusses the cost of complying with the PCB monitoring requirements. The Department has no reason to believe that this cost will cause any affected facility to eliminate jobs.

The Economic Impact statement also explains why the cost of developing and implementing a PMP will range widely, depending upon the circumstances of each affected facility. It is not possible to estimate whether the PMP requirements will affect employment at any affected facility, due to the potentially wide range of costs, the particular economic circumstances and business needs that each permittee faces, and the different options and preferences that each permittee may have in responding to the PMP costs.

Agricultural Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the proposed new rules and has determined that they will have little or no impact upon the agricultural industry. Any impact on the agricultural industry from this new rule should be positive, as it should result in improved water quality. As the overall PCB loading to state waters is reduced, this will further ensure that water used for irrigation of crops and as drinking water for farm animals is not contaminated by PCBs.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping and other compliance requirements that the proposed new rules would impose upon small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” Although the Department believes that most if not all of the permittees subject to the proposed new rule are not small businesses, it is possible that some of them may be small businesses as defined in the Regulatory Flexibility Act.

The Regulatory Flexibility Act provides for approaches to minimize the impact of a proposed rule on small businesses, such as the establishment of differing timetables that take into account the resources available to small businesses. With that in mind, the proposed new rules do not establish a uniform deadline for preparing and submitting a PMP. Instead, the proposed

new rules provide for the Department to specify a deadline for each permittee, either in the NJPDES permit or in other directions given to the permittee.

The Department is also publishing a technical manual describing the preparation and contents of a PMP, pursuant to N.J.S.A. 13:1D-111 et seq. The Department believes that the information provided in the technical manual will assist in the preparation of a PMP, and reduce costs that otherwise could have arisen as a result of uncertainty over what a PMP must contain.

Aside from the measures identified above, the Department has identified no other differing compliance or reporting requirements or timetables, or exemptions from coverage, that could be provided to small business without substantially compromising the goal of reducing PCB loadings to the State's surface waters.

Smart Growth Impact

Executive Order No.4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The proposed new rules are expected to have a minimal effect on Smart Growth and implementation of the State's Development and Redevelopment Plan (SDRP). Any such effect will be positive, as reduction of pollutant loading is beneficial to both the preservation of the environment and to

growth. Reduction in the overall pollutant load of PCBs should result in reduction of the bioaccumulative effect of PCBs on both aquatic and terrestrial endangered species.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 11. PROCEDURES AND CONDITIONS APPLICABLE TO NJPDES-DSW PERMITS

N.J.A.C. 7:14A-11.13 NJPDES/DSW PCB Pollutant Minimization Plans for Major Facilities Discharging to PCB Impaired Waterbodies.

(a) The following conditions apply to any major facility that discharges to a PCB-impaired waterbody segment.

1. PCB-impaired waterbody segments are those listed on Sublist 5 of the New Jersey List of Water Quality Limited Waters (also known as the 303(d) List or as the Impaired Waterbodies List), as being impaired or threatened for one or more designated uses due to PCBs.

The reference in this paragraph to the List of Water Quality Limited Waters includes all amendments, supplements, and updates thereto. The current list of Water Quality Limited Waters is included in the New Jersey Integrated Water Quality Monitoring and Assessment Report, which can be found on the Department's web site at

<http://www.state.nj.us/dep/wmm/sgwqt/wat/integratedlist/2004report.html>.

2. Major facility is defined at N.J.A.C. 7:14A-1.2.

(b) Facilities subject to an adopted TMDL which establishes requirements for PCBs shall be subject to that TMDL. The adopted TMDL shall supercede the requirements of this section.

(c) Monitoring requirements shall be in accordance with N.J.A.C. 7:14A-14.4 and include the following.

1. The permittee shall analyze its effluent for the 209 PCB congeners.

2. Sanitary waste water treatment plants and publicly owned treatment works shall perform 3 dry weather and 3 wet weather samples on the facility's main outfall 24 months after the effective date of proposed new rule. Industrial facilities with discharges consisting of process wastewater, as defined at N.J.A.C. 7:14A-1.2, shall perform 3 dry weather samples by 24 months after the effective date of proposed new rule. Industrial facilities with commingled process wastewater and stormwater discharges shall perform 3 dry weather and 3 wet weather samples by 24 months after the effective date of proposed new rule.

i. Dry weather sampling shall be conducted when less than 0.1 inches of rainfall has occurred within the previous 72 hours.

ii. Wet weather sampling shall be performed within 72 hours after the onset of a precipitation event in which at least 0.1 inches of rainfall has occurred.

iii. Discharges consisting of non-contact cooling water only shall not be subject to this rule.

3. All samples shall be collected at least 30 days after the previous sampling event.

4. All sampling shall be performed during periods which are representative of normal facility operations.

5. All testing shall be performed using Method 1668A, Revision A: Chlorinated Biphenyl Congeners in Water, Soil, Sediment, and Tissue by HRGC/HRMS. EPA-821-R-00-002, December 1999.

(d) After submission of the PCB monitoring required under (c) above and under the facility's permit, the Department will determine whether each permittee must complete a PCB Pollutant Minimization Plan (PMP), and will notify each permittee of this decision in writing.

1. If the Department determines that a permittee is required to complete a PMP, the permittee shall prepare and submit the PMP by the date specified in the permit or as otherwise directed by the Department.

i. The PMP shall be developed to achieve maximum practical reduction in accordance with the PMP Technical Manual, which can be found on the Department's web site at www.state.nj.us/dep/dwq/techmans.

2. The permittee shall implement the PMP within 30 days after written notification from the Department that the PMP is complete.

(e) In accordance with N.J.A.C. 7:14A-16.3(j), the following major DSW permits are modified to incorporate the requirements of N.J.A.C. 7:14A-11.13(a) - (c) and N.J.A.C. 7:14A-14.4. For any permit listed below that is expired as of (adoption date of rule), the requirements set forth at N.J.A.C. 7:14A-11.13 and N.J.A.C. 7:14A-14.4 will be incorporated into the permit at the next renewal of the permit.

<u>NJPDES Permit Number</u>	<u>Facility Name</u>
<u>NJ0000221</u>	<u>CHEVRON PERTH AMBOY ASPHALT FACILITY</u>
<u>NJ0000647</u>	<u>HUDSON GENERATING STATION</u>
<u>NJ0000655</u>	<u>KEARNY GENERATING STATION</u>
<u>NJ0000663</u>	<u>LINDEN GENERATING STATION</u>
<u>NJ0000680</u>	<u>SEWAREN GENERATING STATION</u>
<u>NJ0002348</u>	<u>MERCK & CO INC</u>
<u>NJ0002551</u>	<u>REHEIS INC</u>

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 19, 2005 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

<u>NJ0002747</u>	<u>RELIANT ENERGY SAYREVILLE</u>
	<u>GENERATING STATION</u>
<u>NJ0004456</u>	<u>CURTIS SPECIALTY PAPERS - MILFORD</u>
	<u>MILL</u>
<u>NJ0004952</u>	<u>DSM NUTRITIONAL PRODUCTS INC</u>
<u>NJ0005509</u>	<u>SYBRON CHEMICALS INC</u>
<u>NJ0005517</u>	<u>GILBERT GENERATING STATION</u>
<u>NJ0020028</u>	<u>BERGEN CNTY UTILITIES AUTHORITY</u>
<u>NJ0020141</u>	<u>MIDDLESEX CNTY UA</u>
<u>NJ0020389</u>	<u>CLINTON TOWN WWTP</u>
<u>NJ0020427</u>	<u>CALDWELL WASTEWATER TREATMENT</u>
	<u>PLANT</u>
<u>NJ0020591</u>	<u>EDGEWATER MUA WTP</u>
<u>NJ0020915</u>	<u>LAMBERTVILLE SEWAGE AUTH</u>
<u>NJ0021636</u>	<u>NEW PROVIDENCE WWTP</u>
<u>NJ0022047</u>	<u>RARITAN TOWNSHIP MUA STP</u>
<u>NJ0022489</u>	<u>WARREN TWP SEWERAGE AUTH STAGE I-II</u>
	<u>STP</u>
<u>NJ0024031</u>	<u>ELMWOOD WTP</u>
<u>NJ0024040</u>	<u>WOODSTREAM STP</u>
<u>NJ0024511</u>	<u>LIVINGSTON TWP STP</u>
<u>NJ0024643</u>	<u>RAHWAY VALLEY SEWERAGE AUTH</u>
<u>NJ0024651</u>	<u>CUMBERLAND COUNTY UTILITIES</u>

N.J.A.C. 7:14A-14.4 Monitoring frequency requirements for Polychlorinated Biphenyls (PCBs) effluent characterization.

(a) This section establishes the monitoring frequencies for conducting effluent characterization for PCBs if required by N.J.A.C. 7:14A-11.13.

1. The monitoring frequency for the PCB effluent characterization will be up to 6 samples during a period of 24 months, not to exceed 3 dry samples and/or 3 wet samples. All samples shall be performed using a grab sample type.

2. If monitoring under N.J.A.C. 7:14A-11.13 demonstrates non-detectable levels in the effluent utilizing method 1668A, the permittee may request a frequency reduction in accordance with this subchapter.

3. If, based on part of the PCB monitoring required under N.J.A.C. 7:14A-11.13, the Department determines that a permittee is required to develop and implement a Pollutant Minimization Plan (PMP) in accordance with N.J.A.C. 7:14A-11.13, the Department may suspend, reduce, or eliminate the remaining PCB monitoring.