

**RULE FOR ESTABLISHING POLLUTANT MINIMIZATION PLAN
(PMP) REQUIREMENTS FOR POINT AND NON-POINT SOURCE DISCHARGERS
OF TOXIC POLLUTANTS FOLLOWING ISSUANCE OF A TMDL OR
ASSIMILATIVE CAPACITY DETERMINATION**

4.30.9 Pollutant Minimization Plans for Toxic Pollutants

- A. Applicability. Following either (i) a determination of assimilative capacity by the Commission for a toxic pollutant in accordance with Section 4.30.7 of these regulations or (ii) the issuance of a total maximum daily load (TMDL) by the U.S. Environmental Protection Agency or a Basin State for a toxic pollutant in accordance with Section 304(d)(1)(C) of the Clean Water Act, the Commission may add such pollutant to the list established at Section 4.30.9A.1, and in accordance with Section 4.30.9.A.2, may require classes of point or non-point dischargers or individual dischargers to prepare pollutant minimization plans (PMPs) to reduce or prevent releases of the toxic pollutant to Basin waters.
1. In accordance with Section 5.2 of the *Delaware River Basin Compact*, the Commission has determined that the effectuation of the Comprehensive Plan requires control and abatement of the pollutants listed below, through the PMP requirements set forth herein.
 - (a) Total Polychlorinated Biphenyls (PCBs).
 2. The following classes of dischargers or individual dischargers shall be subject to Section 4.30.9 of these Regulations and shall be so notified in writing by the Executive Director:
 - (a) any discharger to which the Commission has assigned an individual allocation for a pollutant listed at Section 4.30.9.A.1., in accordance with an assimilative capacity determination issued under Section 4.30.7 of these Regulations
 - (b) any discharger that has received an individual wasteload allocation in a TMDL established by the U.S. Environmental Protection Agency or a Basin State for a pollutant listed at Section 4.30.9.A.1.

Provided, however, that dischargers listed in Group 2 of Tables 3-2 through 3-5 of Appendix 3 of the document, *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 15, 2003) (“Group 2 dischargers”), shall only be subject to Section 4.30.9 in the event that the presence of PCB congeners is confirmed through monitoring in accordance with the requirements set forth in Appendix 3 of the same document.

- (c) any discharger or class of dischargers of a pollutant listed at Section 4.30.9.A.1 that the Commission determines after public notice and a hearing, has an adverse effect on the water resources of the Basin
 3. Until such time, if any, as the NPDES permitting authority issues a permit in accordance with Section I, the Commission may relieve a discharger of the requirements of Section 4.30.9 for a pollutant, effective upon written notice to the discharger, if the Commission determines, in consultation with the State in which the discharger is located, that the discharger has (a) achieved the maximum practicable reduction of releases of the pollutant to the air, soil or water in accordance with Section 4.30.9.E.9; and (b) is not having or has ceased to have an adverse effect on the water resources of the Basin,. Notice of a determination in accordance with this section shall be published by the Commission in the applicable state register and on the Commission's website.
- B. Purpose. For toxic pollutants listed in Section 4.30.9.A.1, implementation of a comprehensive set of measures, including trackdown studies, process modifications, materials substitutions, treatment technologies, best management practices and/or procedures tailored to the facility or site may be necessary to achieve required loading reductions. Owners and operators, who possess the greatest knowledge of their operations and site conditions, are in the best position to develop and implement such measures. The pollutant minimization plan requirements of Section 4.30.9 may be used to require owners and operators to perform a systematic analysis of their facilities and sites in order to locate pollutant sources and to design and implement measures to achieve the necessary reductions. The elements of a PMP set forth at Section 4.30.9.E of the rule are intended to ensure that similarly situated dischargers make comparable efforts, and that progress in implementing plans and reducing pollutant loadings is measured and reported. Within these constraints, creative approaches to pollutant trackdown and reduction are encouraged.
- C. Definitions. For the purposes of Section 4.30.9 of these Regulations, key terms are defined as follows:
1. **Adverse Effect.** A point or non-point source of a toxic pollutant has an "adverse effect" on the water resources of the Basin if it is causing or contributing to a violation of applicable stream quality objectives or water quality standards in Basin waters for which, in accordance with Section 4.30.9.A., a TMDL or assimilative capacity determination has been established.
 2. **Maximum Practicable Reduction.** The "maximum practicable reduction" of releases of a toxic pollutant is the maximum degree of reduction in releases of the pollutant to the air, soil and water (including elimination of such releases where achievable), taking into account economic and technological feasibility and any new environmental impacts that would result, that is achievable for a

given site or facility through the application of equipment, technology, process or procedure modifications; reformation or redesign of products; substitution of raw materials; or changes in management practices, materials handling, inventory control, or other general operational phases of the site or facility, either alone or in combination. If the pollutant is present within a site or facility but is contained, maximum practicable reduction includes the implementation of measures to prevent its future release. For municipal wastewater treatment plants, maximum practicable reduction shall include system trackdown and analysis and may include, among other things, reductions achieved through education and outreach and coordination with other local, state, and federal regulatory agencies.

3. **Service Area.** A “service area” is the area served by a municipal or industrial wastewater treatment plant. It includes the geographic area served by the plant’s collection system, plus any sites or facilities outside the collection system that transport waste to the plant for treatment.
4. **Toxic pollutant.** A “toxic pollutant” is any pollutant defined as toxic in a federal or Basin state statute or a regulation issued by the Commission, the U.S. EPA or a Basin state.

D. Procedures for Submission, Review, Implementation and Continuation of PMPs. The following procedures shall apply to a discharger required to develop, submit and implement a PMP in accordance with Section 4.30.9, until such time, if any, as the NPDES permitting authority issues a permit in accordance with Section I:

1. Time of Submission. The discharger shall develop and submit the PMP to the Commission and the permitting agency (if any) within 90 days of receipt of notice from the Executive Director.
2. Completeness Determination. The Commission staff, in consultation with permitting agency staff (if applicable), shall review each PMP for completeness, and the Executive Director shall issue a completeness determination to the discharger, copied to the permitting agency, confirming that a PMP is complete or identifying deficiencies in the PMP. The completeness determination shall not be construed as a determination of the adequacy of the PMP to achieve the maximum practicable reduction of pollutant discharges to the air, soil or water in accordance with Section E.9.
3. Cure of Deficiency. Within 30 days of receipt of a completeness determination in accordance with Section 4.30.9.D.2., above, dischargers shall submit a PMP to the Commission and the State in which the discharger is located that reflects a good faith effort to cure any deficiency identified in the determination. If the revised PMP is satisfactory, the Executive Director shall issue a second determination of completeness stating that the deficiency has been cured. If the revised PMP is still incomplete, the Executive Director in

her discretion may either grant the discharger additional time to cure the deficiency or commence an enforcement action and/or seek penalties against the discharger, unless for good cause shown the Executive Director grants a waiver in accordance with Section 4.30.9.E. The Executive Director may commence an enforcement action and/or seek penalties in accordance with Section 14.17 of the *Compact* and Section 4.30.9.D.9 below in the event of persistent or bad faith failure by the discharger to submit a complete PMP.

4. Commencement of PMP Implementation. The discharger shall commence implementation of its PMP as submitted, within 60 days of receipt of a determination of completeness under Section 4.30.9.D.2 or D.3.
 5. Initial Term of PMP. Each PMP shall be designed for an initial term of five years.
 6. Additional Term of PMP. The term of the PMP shall be reviewed by the Commission staff in consultation with the State in which the discharger is located prior to the expiration of the PMP, and an additional term shall be determined by the Executive Director.
 7. Plans Deemed Non-Compliant. If the Commission determines at any time, upon the recommendation of the Executive Director, that a PMP being implemented or to be implemented in accordance with Section 4.30.9 is not likely to achieve the maximum practicable reduction of pollutant discharges to the air, soil and water, then the Commission may require the discharger to submit a revised PMP to more aggressively reduce pollutant loading. The discharger shall submit a revised PMP responsive to the Commission's request within 60 days of receipt of the request. The time periods provided in Sections 4.30.9.D.2 through D.4., with respect to curing a deficiency and commencing implementation, shall apply.
 8. Persistent or Bad Faith Failure to Comply. The Executive Director is authorized to commence an enforcement action against a discharger in accordance with Article 7 of the Commission's *Rules of Practice and Procedure* for persistent or bad faith failure to submit a complete plan, to modify a plan deemed non-compliant, or to implement a plan.
- E. Plan Elements. A PMP prepared in accordance with these regulations shall contain the following elements:
1. Good Faith Commitment. A signed and dated statement by the highest ranking official having day-to-day managerial and operational responsibilities for the facility, expressing the company's good faith commitment to reducing discharges of the target pollutant through the PMP process.

2. Discharger Contact. Name and contact information for an individual who will serve as the contact for information concerning the PMP.
3. Description and Maps of Facility
 - a. For Industrial Facilities:
 - company and facility name and address;
 - raw materials and industrial processes used, and products generated that either contain the pollutant or that may be related to the generation or release of the pollutant;
 - for facilities accepting non-facility wastes, a description of all such wastes;
 - a map of all point and nonpoint source releases from the facility or site and a description of such releases;
 - all local, state and federal discharge permits and permit numbers for permits that relate to releases of the pollutant; and
 - receiving stream for all discharges, including River Mile in instances where the receiving stream is the main stem Delaware River.
 - b. For Municipal Wastewater Treatment Plants (WWTPs):
 - facility name and address;
 - description and map of the facility's service area;
 - description and map or schematic diagram of the collection system;
 - description of any wastes accepted from outside the collection system (e.g., wastes trucked or transported by rail to the collection system for treatment);
 - map of all point and nonpoint source releases from the facility or site and description of the nature of such releases;
 - all local, state and federal permits and permit numbers for permits that relate to releases of the pollutant;
 - receiving stream for all discharges, including River Mile in instances where the receiving stream is the main stem Delaware River; and
 - a list of all known industrial users of the collection system and pretreatment permit numbers if any.
4. Description and Map of Known Sources
 - a. Description of all materials, equipment, processes, soil areas or sediment areas within a facility, site, or service area, from which the pollutant is released directly or indirectly into a wastewater treatment system, sewage collection system, stormwater collection system, stream or river, including a description of the pathways if known.

- b. Site map or collection system map showing location of known sources and pathways.

5. List of Potential Sources

- a. For industrial dischargers, identify any material, equipment, process, soil area, sediment area or facility on the site known to contain or generate the pollutant, but that is not deemed a source because it is not known to be releasing the pollutant or because no pathway to surface water or groundwater exists. Provide estimate of the mass of the pollutant present, if known.
- b. For municipal WWTPs, identify any material, equipment, process, soil area, sediment area or facility that is part of the collection system or that is within the service area and that is known to contain the pollutant, but that is not deemed a source because no pathway to surface water or groundwater exists. Provide estimate of the mass of the pollutant present if known.

6. Strategy for Identifying Unknown Sources of the Pollutant (Trackdown)

- a. For industrial dischargers, the strategy for identifying pollutant sources may include, but shall not be limited to, investigation of an industrial process used by the discharger that is similar to one known to have generated the pollutant elsewhere; investigation of historic activities on the site; or investigation of possible soil or sediment contamination or stormwater management system contamination as a result of historic or ongoing activities.
- b. For municipal WWTPs, trackdown strategy may include, but shall not be limited to, identification, through screening, of any portions of the collection system containing higher concentrations or masses of the pollutant; identification of industrial users of the collection system that are likely to have used or generated the pollutant in the past; industrial processes known to be in use that could generate the pollutant; sites containing equipment that is likely contaminated with the pollutant, and sites that have been used to dispose of the pollutant.
- c. Trackdown efforts may rely upon analytical methods other than those required under Section 4.30.9.E.13, below, for purposes of screening or identification of pollutant sources.

7. Previous, Ongoing or Planned Minimization Activities Undertaken Voluntarily or Required by Other Regulatory Programs. Previous, ongoing or planned pollutant minimization activities underway or to be undertaken voluntarily or in accordance with a federal or state requirement for the

pollutant that is the subject of the PMP, including the level of pollutant reduction attained, level of pollutant reduction targeted, measures completed, measures underway, and the schedule for planned activities.

8. For Municipal WWTPs Only, Recommendations for Action Under Other Regulatory Programs. Based on information known at the time of PMP submission or identified during implementation of the PMP, recommendations for remediation activities to be undertaken under the auspices of other local, state or federal regulatory agencies or programs.
9. Pollutant Minimization Measures. A description of measures to be taken to achieve the maximum practicable reduction of discharges to the air, soil or water.
10. Source Prioritization. Prioritization of known and potential sources, either individually or in categories, from most to least significant, on the basis of available information. Factors to be considered in prioritizing known sources should include, but shall not be limited to, available information on pollutant mass (or volume of the discharge and concentration of the pollutant), and likelihood of release into Basin waters. Factors to be considered in prioritizing potential sources may include, but shall not be limited to, current or past industrial activity, presence and type of equipment containing the pollutant, waste management activities and overall condition of the site and facilities.
11. Key Dates. Date of submission of waste implementation plan; date by which initiation of plan activities is required; and schedule for implementation of each of the measures described in Section 4.30.9.E.9 above.
12. Measurement of Progress
 - a. Loading Baseline and Reductions. A PMP shall contain a loading baseline as set forth below, and shall provide for the measurement of mass loadings on a biennial basis using methods listed at Section 4.30.9.E.13. In addition to biennial monitoring using methods listed in Section 4.30.9.E.13, a PMP shall contain alternative methods for estimating loading reductions for all non-point sources and may contain such alternative methods for point sources.

Descriptions of the following shall be included in a PMP:

- for point sources, procedures and data obtained utilizing the appropriate method listed in Section 4.30.9.E.13 below, for establishing a loading baseline;
- for non-point sources, procedures and data to be used in establishing a loading baseline;

- procedures and data, in addition to biennial monitoring using methods listed in Section 4.30.9.E.13, to be used to estimate loading reductions. Such measures may include indirect effluent monitoring, direct and indirect monitoring of treatment plant influent, and/or engineering calculations.
 - b. Additional Measures of Progress. A PMP shall contain a description of the methods, other than measurement of loading reductions, to be used to measure and report progress toward achieving maximum practicable reduction of the pollutant. Such measures shall reflect the approaches to be taken to achieve maximum practicable reduction of the pollutant.
13. Sampling and Analytical Methods. The following sampling and analytical methods shall be used to establish a loading baseline for point sources and to establish pollutant reductions for point and non-point sources, in accordance with section 4.30.9.E.12.a., above.
- a. PCBs – EPA Method 1668, Revision A, including sampling and analytical requirements specified in the document entitled, *Delaware River Estuary Stage 2 PCB TMDL – Polychlorinated Biphenyls – EPA Method 1668A – Project Quality Control Requirements* (DRBC, 2004).
- F. Annual Report. Each year, commencing one year from the date by which initiation of PMP activities is required to begin in accordance with Section 4.30.9.D.4 above, or such other date as may be specified in a NPDES permit issued in accordance with Section 4.30.9.I, and continuing through the fifth year of the plan, the discharger shall submit to the Commission and the State in which the discharger is located an annual report that:
- 1. describes any material modifications to the facility’s operations, site boundary, service area, or waste streams in the course of the preceding year that might affect releases of the pollutant, along with appropriate revisions made to the PMP;
 - 2. outlines measures under way and completed to achieve maximum practicable reduction of pollutant releases since the last report and since initiation of the PMP;
 - 3. reports incremental and cumulative changes from the pollutant loading baseline established in accordance with Section 4.30.9.E.12.a., above; and
 - 4. describes progress toward achieving maximum practicable reduction of the pollutant, using measures identified in accordance with Section 4.30.9.E.12.b., above.
- G. Waiver. Until such time, if any, as the NPDES permitting authority issues a permit in accordance with Section I, the Executive Director, in consultation with the State

in which the discharger is located, may modify any of the time requirements of Section 4.30.9.D for a PMP for good cause and may waive any of the plan element requirements of Section 4.30.9.E for a PMP, upon a showing that an element listed at Section 4.30.9.E is inapplicable to or inappropriate for the particular facility or site to which the PMP applies. Any discharger seeking such a waiver must submit such request to the Executive Director in writing.

- H. Guidance. The Commission may develop guidance for the development of PMPs for specific pollutants consistent with the requirements set forth in Section 4.30.9.E.
- I. Relationship to NPDES Permit. Upon issuance of an initial, renewed or modified NPDES permit by the State in which the discharger is located or the U.S. Environmental Protection Agency to a discharger that has been made subject to Section 4.30.9, which permit contains the requirements to develop, submit to the permitting authority and implement a PMP consistent with that Section, then as to that discharger:
 - 1. the Commission shall cease to administer Section 4.30.9 with respect to the discharge of the pollutant to which the PMP requirements of the permit relate, upon the date such requirements become effective; and
 - 2. the NPDES permitting authority shall apply the more stringent of Section 4.30.9 or other applicable state or federal requirements with respect to the discharge of the pollutant to which the PMP requirements of the permit relate.
- J. Reservation of Authority. Nothing in this rule shall limit the authority of the Commission or the Executive Director under the *Compact* to control future pollution, abate existing pollution or require review of a project by the Commission under Section 3.8 of the *Compact*, including through the issuance of docket-specific PMP requirements or other methods.