

February 17, 2006

**VIA REGULAR MAIL/ E-MAIL**

Ms. Alice A. Previte, Esq.  
Attn: DEP Docket Number 40-05-11/565  
New Jersey Department of Environmental Protection  
Office of Legal Affairs  
P.O. Box 402  
Trenton, New Jersey 08625-0402

**Re: Comments on Proposed New Rules  
Pollutant Discharge Elimination System – Monitoring and Pollutant Minimization  
Plans for Polychlorinated Biphenyls (PCBs)  
Chemistry Council of New Jersey (CCNJ)**

Dear Ms. Previte:

The Chemistry Council of New Jersey (CCNJ), on behalf of our members, appreciates the opportunity to provide comments on the above-referenced rule proposal. The CCNJ represents over 100 companies involved in the business of chemistry (pharmaceuticals, chemicals, flavors and fragrances, petroleum refining, etc.) in New Jersey. The business of chemistry directly employs over 94,000 persons in New Jersey and is responsible for over \$29 billion dollars in revenues each year. Our members continually strive to improve their environmental performance while maximizing their ability to compete in a global marketplace.

The CCNJ supports in general, the use of pollution minimization plans (PMPs), in lieu of numerical limits, in the case of contaminants which may be present at very low levels but are difficult to quantify in facility effluents. In such a case, positive steps can be developed and adopted to mitigate potential discharges, without putting dischargers in immediate jeopardy of violating very stringent limits due to false positives or other analytical artifacts.

We also support a flexible approach, which the proposed rule on PCB PMPs endorses in concept. Thus, dischargers who are responding to the rule may develop practical site-specific plans which best meet the needs of their particular facility. This is a sound approach in general.

We support the need to address PCBs in the environment, and we recognize that PCBs create concerns because of their potential persistence and toxicity. We applaud the Department for attempting to take a practical and flexible approach to the issue. However, we have several concerns with the details of the approach the Department proposes, which are outlined below. In general we believe that, based on the lessons learned in the Delaware River PCB TMDL, regulating point sources is both premature and unlikely to have any significant impact. The Department needs to focus efforts elsewhere first before assuming a need to regulate the point sources.

1. The Department has not demonstrated that the proposed new rules will materially affect conditions in surface waters. The rules purport to “reflect the experience gained in developing and implementing the Delaware Estuary TMDL”. However, during that regulatory process, it was acknowledged that point sources are a small contributor relative to air sources, nonpoint source runoff, tributaries, and the ocean boundary (source: 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).

The Department’s proposed regulation fails even to establish the relative contributions of point sources, area sources, nonpoint sources, and others.

The burden of this program is unsupported and unjustified if no measurable impact on the receiving waters will result. The Department should first demonstrate the impact on receiving water quality which will be achieved by regulating point sources.

Under the Clean Water Act (Section 303), water quality-based requirements are justified, to the extent that they are necessary<sup>1</sup> to achieve water quality standards. The Department should first be developing TMDLs to make this demonstration<sup>2</sup>. It is entirely possible, as demonstrated by the Delaware River TMDL, that point sources are de minimis contributors to current problems. Thus, even if point sources were brought to zero, the standard would not be achieved. This demonstrates that regulating the point sources is not necessary to achieve the standard – rather, the appropriate action is to address non-point sources, air deposition, and/or sediment quality.

2. The proposed rule should include the decision process that the Department will use in determining which facilities will be required to prepare a PMP. At present, the subjective terms “more elevated levels”, and “close to background” are used as the dividing line. Since the preparation of a PMP will be an added burden on facility resources, a specific process is called for to establish the threshold.
3. The Department’s economic analysis is incomplete in that it does not offer a cost estimate for the preparation of PMPs. While it may be true that this cost is a range, that should not preclude the Department from estimating the ends of the range and the average cost to a facility. The experience of facilities subject to the Delaware River TMDL should provide a ready source of this cost data.
4. A second deficiency is that the Department estimates the maximum costs of monitoring, but does not acknowledge that these costs are only the first stage of an ongoing burden. Specifically, the PMP guidance document section 10.4 conveys the Department’s expectation that facilities will monitor on an ongoing periodic basis. These ongoing costs need to be included in the economic impact. The economic impact and costs of monitoring also need to consider costs for quality assurance and control, such as duplicate samples and field blanks, for sample collection protocol training, and for the costs of contractors/consultants to collect samples at sites without personnel trained in environmental sample collection.
5. The Department’s jobs impact analysis is incomplete for the same reason, namely that the costs of preparing the PMP, implementing the PMP, and of the ongoing monitoring are excluded.

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<sup>1</sup> See 40 CFR 122.44(d)(1), which expressly uses the term “necessary”.

<sup>2</sup> In any case, TMDLs are required by CWA 303(d) for all waters, whether or not they are in compliance with current standards.

6. The first step in any program such as this one, or any TMDL, should be to revisit whether the water quality standard which drives the program is being appropriately applied. Many standards were set years ago, if not decades ago, and all stakeholders have grown far more sophisticated over the years. As a result, it is now evident that some standards (either beneficial uses or water quality criteria) were inappropriately established. In some cases they can not be achieved.

The appropriate remedy for this, and the appropriate first step in any program to address stringent standards such as these for PCBs, is a Use Attainability Analysis to assess whether the standards are actually appropriate and achievable. The outcome of the PCB TMDL on the Delaware River (where achieving the standard, if it is achievable at all, will take somewhere between decades and centuries) strongly suggests that a Use Attainability Analysis is the appropriate first step for New Jersey's waters.

EPA recognizes that Use Attainability Analyses are an appropriate and important part of managing water quality standards. Indeed, EPA is currently holding workshops around the country (e.g., Chicago, Feb. 8 – 9, 2006) to address the UAA program and EPA is attempting to streamline the UAA process.

7. The Department proposes to require use of EPA Method 1668A. However, EPA has chosen not to promulgate this method at 40 CFR 136.

EPA regulations at 40 CFR 122.44(i)(iv) require the use of methods promulgated at 40 CFR 136 when such methods exist. Consequently, the Department should require use of the 40 CFR 136 method with the lowest method detection or quantitation level, rather than an unapproved unpromulgated potentially unreliable method.

Alternatively, the Department should postpone this program until EPA properly validates and promulgates the method in accordance with 40 CFR 136 requirements and appropriate notice and comment. Assuming that PCBs are an important group of contaminants under the Clean Water Act, it is EPA's duty to do so [CWA §304(h)] and the Department should await EPA's appropriate action on this. According to EPA's semi-annual regulatory agenda, EPA is scheduling a notice of proposed rulemaking for Method 1668, at a date to be determined [see 70 FR 65349 Item 3388, 31 October 2005].

8. The Department proposes to require the "maximum practical reduction in accordance with the PMP Technical Manual..." However, maximum practical reduction is not clearly defined in the proposed rule or the Technical Manual. Section 6 of the Technical Manual does list some minimization actions, but does not define what is practical. Factors such as technical feasibility, potential benefit, cost, and cost effectiveness should be explicitly considered in establishing what is practical.
9. Section 6 of the Technical Manual addresses "reduction of discharges to the air, soil and water." While we do not dispute the Department's authority over air, soil and water, this spectrum of media seems inappropriate for a proposed rule pertaining to water quality. Discharges to water would seem to be the appropriate focus. Discharges to air or soil should be regulated pursuant to the appropriate statutes and regulations germane to those media, after appropriate notice and comment.
10. Some potential sources of PCBs may be beyond the ability of dischargers to control. The proposed rule should allow for credit for such sources. For example, the discharger should be able to subtract PCBs in the intake water, or PCBs present in stormwater due to air deposition on the site, from PCBs in the effluent. If the effluent with appropriate credits demonstrates compliance with water quality criteria, the discharger should be exempt from the rule.

CCNJ Comments on PCB Sampling Rule  
Ms. Alice Previte, Esq., NJDEP  
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11. Reading the proposed rule language, it was unclear to me at which point a reduction in sampling could be requested.
12. The rule should also state whether cooling water commingled with storm water is exempt from sampling or required to be sampled. For example, when it is not raining, the cooling water stream would appear to be exempt from sampling.

Finally, CCNJ supports any and all comments submitted by our membership. If you have any questions or if you need additional information, please contact me at (609) 392-4214.

Sincerely,

Anthony Russo, Director  
Regulatory Affairs  
CCNJ

cc: CCNJ Membership (via e-mail)