United States Environmental Protection Agency | Office of Water 4305 | EPA-823-00-008 April 2000

# FACT SHEET

## Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California

### Summary

*The U.S. Environmental Protection Agency today promulgated numeric water quality criteria for priority toxic pollutants and other water quality standards provisions to be applied to waters in the State of California. EPA promulgated this rule based on the Administrator's determination that the numeric criteria are necessary in the State of California to protect human health and the environment.*

*EPA promulgated this rule to fill a gap in California water quality standards that was created in 1994 when a State court overturned the State's water quality control plans containing water quality criteria for priority toxic pollutants. Thus, the State of California has been without numeric water quality criteria for many priority toxic pollutants as required by the Clean Water Act, necessitating this action by EPA. These Federal criteria are legally applicable in the State of California for inland surface waters, enclosed bays and estuaries for all purposes and programs under the Clean Water Act.*

### Background

Under section 303(c)(2)(B) of the Clean Water Act, states must adopt numeric criteria for the priority toxic pollutants listed under section 307(a) if those pollutants could be reasonably expected to interfere with the designated uses of States' waters. In April 1991 California adopted numeric criteria for priority toxic pollutants in the State's Inland Surface Water Plans and Enclosed Bays and Estuaries Plans. In 1994, a California State court ordered California to rescind these water quality control plans. Today's final rule promulgated numeric water quality criteria to replace the criteria that were rescinded by the State court. California also remains in the National Toxics Rule promulgated in 1992 for certain waters and pollutants.

### Today's Action

Today's final rule promulgated 1) ambient aquatic life criteria for 23 priority toxics; 2) ambient human health criteria for 57 priority toxics; and 3) a compliance schedule provision which authorizes the State to issue schedules of compliance for new or revised NPDES permit

limits based on the federal criteria when certain conditions are met. The State must use the criteria together with the State's existing water quality standards when controlling pollution in inland waters and enclosed bays and estuaries. The numeric water quality criteria contained in the final rule are identical to EPA's recommended Clean Water Act section 304(a) criteria for these pollutants published in December 1998 (see 63 FR 68353).

EPA did not receive any substantive comments during the public comment period which warranted significant changes to the proposed rule. The CTR will serve as a place holder until the State re-adopts its own numeric criteria for toxics. However, as a result of consultation with the National Marine Fisheries Service and the Fish and Wildlife Service under the Endangered Species Act, EPA did not include the following proposed numeric criteria in the final rule: acute and chronic criteria for mercury to protect freshwater and saltwater aquatic life; and acute criteria for selenium to protect freshwater aquatic life. The final rule also does not contain numeric criteria for chloroform. For these reasons, EPA's final rule is narrower in scope than the proposed rule.

**Costs and Benefits**

At present, State Basin Plans contain a narrative water quality criterion stating that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. Thus, to the extent that the State is implementing the narrative as required by EPA's permitting regulations at 40 CFR § 122.44(d)(1)(vi)/40 CFR § 123.25, this rule would not impose any incremental costs.

In addition, the ambient water quality criteria in this rule do not directly impose economic impacts by themselves. The Clean Water Act requires the State to implement the criteria by ensuring that NPDES permits result in discharges that will meet the criteria. In so doing, the State will have considerable discretion. Until the State implements these water quality standards, there will be no effect of this rule on any entity.

Despite the requirement that the State implement its narrative criteria and the considerable discretion the State has in implementing the federal numeric criteria, EPA attempted to estimate the potential indirect costs and benefits of this final rule. The analysis calculated costs using two approaches. The first approach used existing, actual discharge data. (Actual discharge levels are usually lower than the level set by current NPDES permit limits.). Using this approach, annual costs are $33.5 million (up from $15 million for the proposal). The second approach used a sample of existing permit limits, assuming that dischargers are actually discharging the full levels contained in their permits. The second approach also assumes that none of the discretionary mechanisms that would enhance flexibility (e.g., site specific criteria, mixing zones, phased TMDLs) would be granted by the State. Under the second approach, annual costs are $61 million (down from $87 million for the proposal). EPA refined the estimated costs for the final rule based on facility-specific information submitted as part of the public comments. EPA believes that the second approach overstates actual costs because it does

not take into account the discretionary mechanisms that are often used, and frequently result in use of cheaper control technologies. Further, EPA believes that basing costs on current permit limits rather than actual discharge data overstates the actual costs to comply with new limits because most facilities discharge pollutants in concentrations well below current permit limits.

Total monetized annual benefits were estimated in the range of $6.9 to $74.7 million. By category, annual benefits were $1.3 to $4.6 million for avoided cancer risk, $2.2 to $15.2 million for recreational angling, and $3.4 to $54.9 million for passive use benefits. In addition, EPA could not put dollar values on several other categories of benefits, such as

- Improvements in water-related (in-stream and near stream) recreation apart from fishing.
- Improvements in consumptive and non-consumptive land-based recreation, such as hunting and wildlife observation.
- Improvements in human health resulting from reduction of non-cancer risk.
- Human health benefits for saltwater anglers outside of San Francisco Bay were not estimated.

Therefore, the monetized values presented above are likely to underestimate the full benefits of the new criteria.

**Additional Information**

For more information, please call Diane E. Fleck at 415-744-1984, or Philip Woods at 415-744-1997, U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105.

You may view the *Federal Register* notice, Response to Comments Document, and the Economic Analysis Document for this final rule on the Internet at: http://www.epa.gov/OST/rules. The *Federal Register* notice gives complete information on how to obtain additional information and how to review the complete administrative record for this final rule.