

A RESOLUTION concerning control of certain toxic substances in the Delaware Estuary.

WHEREAS, Article 5 of the Delaware River Basin Compact enjoins the Delaware River Basin Commission (“Commission”) to control future pollution and to abate existing pollution in the waters of the Basin whenever it determines that the effectuation of the Comprehensive Plan so requires and further authorizes the Commission to issue orders upon any person or public or private corporation or other entity to cease the discharge of sewage, industrial or other waste into the waters of the Basin which it determines to be in violation of Commission rules and regulations for the abatement of pollution; and

WHEREAS, pursuant to Article 5 of the Compact the Commission has adopted and periodically updates Water Quality Regulations for the Delaware River Basin that govern the review of proposed new projects and action by the Commission to control and abate pollution with respect to existing facilities; and

WHEREAS, the Water Quality Regulations restrict and control the discharge of toxic pollutants, including polychlorinated biphenyls (PCBs), metals, and DDT, into the waters of the Basin and establish stream quality objectives for the protection of human health and aquatic and other wildlife; and

WHEREAS, studies conducted by the Commission and federal and state agencies have detected the presence of PCBs at elevated levels in the sediments, water column, and tissues of resident and anadromous fish collected from the Delaware Estuary; and

WHEREAS, concern regarding these levels in fish tissue has resulted in the issuance of fish consumption advisories by the States of Delaware and New Jersey and the Commonwealth of Pennsylvania; and

WHEREAS, the lack of comprehensive and reliable information concerning the sources contributing PCBs to the estuary and the associated transport pathways has hampered mitigation of the problem; and

WHEREAS, Commission studies further establish that PCBs are contained in point source discharges to the Delaware Estuary and the Commission has reason to believe that existing active loading of PCBs entering the Estuary from such sources is capable of exceeding water quality criteria and causing associated fish contamination; and

WHEREAS, the above three states, in accordance with the requirements of the federal Clean Water Act and its implementing regulations, have identified portions of the Delaware Estuary as waters for which existing regulatory controls are not stringent enough to meet water quality standards for a number of toxic pollutants, including PCBs; and

WHEREAS, in accordance with the Clean Water Act, the three states and the EPA share responsibility for developing total maximum daily loads (TMDLs) for these pollutants in the Estuary; and

WHEREAS, the Commission has been requested by the U.S. Environmental Protection Agency (EPA), the States of Delaware and New Jersey and the Commonwealth of Pennsylvania to take the lead in a cooperative effort to develop a comprehensive strategy that considers all sources of toxics in order to control the discharge of such substances, including PCBs, which could impact human health and aquatic and other wildlife in the Estuary; and

WHEREAS, the Commission has regularly set forth in docket decisions issued to dischargers that their facilities shall be operated at all times to comply with the requirements of the Water Quality Regulations of the Commission; and

WHEREAS, Commission dockets further provide that dischargers shall make wastewater discharges in such a manner as to avoid injury or damage to human health and aquatic and other wildlife and shall avoid any injury to public or private property, and dischargers have a continuing obligation to establish that their discharges comply with Commission rules and regulations; and

WHEREAS, in order to determine what further controls upon the discharge of PCBs into the waters of the Basin are necessary, in February and March 2000 the Executive Director directed 103 industrial, municipal and other point source wastewater dischargers in writing to conduct monitoring at their own expense to provide the Commission with additional data and information concerning the nature and quality of their discharges; and

WHEREAS, the Water Quality Regulations outline protocol for monitoring and among other things specify that: "Samples shall be taken by the discharger in such manner as shall be determined by the Commission . . . sufficient to permit the Commission to determine the quality of waste treatment influents and effluents and evaluate in-plant reductions;" and

WHEREAS, the Commission staff developed monitoring requirements for low level detection of PCBs in wastewater discharges in consultation with the Toxics Advisory Committee and representatives of state permitting agencies; and

WHEREAS, the Commission staff conducted informational meetings in March and April 2000 for all dischargers directed to conduct monitoring for PCBs; worked cooperatively with concerned dischargers and the EPA to resolve the concerns of the former regarding use of EPA Method 1668A for analyzing PCB congeners at low detection limits; worked individually with 50 dischargers to resolve questions about implementing the required monitoring at their facilities; and held meetings on June 26 and July 17, 2000 to hear and work to resolve the general concerns of some dischargers regarding the monitoring request; and

WHEREAS, the overwhelming number of dischargers have agreed to perform the requested monitoring; and

WHEREAS, some dischargers have questioned the authority of the Commission to require them to provide information concerning the nature and quality of their discharges and have specifically advised the Commission in writing of their unwillingness to proceed with the directive of the Commission that they do so; and

WHEREAS, the Commission has concluded that existing policies set forth in dockets controlling discharges into the Delaware River should be reconfirmed and Commission staff should be expressly directed and authorized to take certain actions to ensure compliance by all dischargers with Commission policies and regulations to protect the health and welfare of the users of Basin waters; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. Pursuant to Resolutions Nos. 87-27 and 96-12, the Commission, in consultation with the Toxics Advisory Committee, shall continue its program to control the discharge of certain toxic substances, including PCBs, metals, and DDT, to the Delaware Estuary. The program shall at a minimum include monitoring of toxic substances; modeling and assessment of the contributions of toxics substances from both point and nonpoint sources; and controls to limit the contributions of such substances from all sources to meet water quality standards. As required by the Executive Director, all dischargers shall undertake monitoring of their discharges to measure the magnitude and variability of these toxic pollutants. Such monitoring and any other required data collection shall be provided by dischargers at their own cost and expense.
2. The staff of the Commission shall continue to work cooperatively with the signatory parties, their agencies, and dischargers to control the discharge of toxic substances that could adversely affect human health and aquatic and other wildlife in the Delaware Estuary.
3. Any discharger who willfully fails and refuses to provide PCB monitoring data or other information as directed by the Commission and such failure or refusal has prevented the collection of such information on a timely basis shall be deemed a source of PCB pollution, included in the wasteload allocation for these pollutants, and directed to proceed with such further collection of data and documentation as the Executive Director shall require. Moreover, if any discharger fails to provide data or information the Executive Director deems necessary, the Commission may conduct the appropriate monitoring and the cost shall be borne by the discharger.
4. The Executive Director and the General Counsel are hereby directed and authorized to take such action as may be required to insure compliance with the provisions of this Resolution by all persons discharging into the waters of the Basin.
5. If the Executive Director shall determine that further regulation is necessary to control the discharge of toxic substances, the Executive Director is directed and authorized to prepare appropriate proposed amendments to the Commission's Comprehensive Plan and/or the Commission's Water Quality Regulations. The Executive Director may schedule a public hearing or hearings as may be required to ensure the earliest consideration of such matters by the Commission.
6. This Resolution shall take effect immediately.

  
Kevin C. Donnelly, Chairman pro tem

  
Pamela M. Bush, Secretary