

In Re:

**PUBLIC HEARING ON DIVISION OF
WATER AND WASTE MANAGEMNT'S PROPOSED REVISION
TO LEGISLATIVE RULE 47CSR2, REQUIREMENTS
GOVERNING WATER QUALITY STANDARDS**

**JULY 21, 2015
6:00 P.M.**

**WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
601 57TH STREET, S.E.
CHARLESTON, WEST VIRGINIA**

***Dena A. Belisle
Certified Court Reporter***

CAPITOL CITY REPORTING
"PROFESSIONAL STENOMASK FOR THE RECORD"

APPEARANCES

**ON BEHALF OF THE WEST
VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

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P R O C E E D I N G S

MR. GLANCE: Good evening. Before we get started, I'd like to remind everyone if you haven't signed the sign-in sheet and you want to speak, sign up in the back there by Mr. Ramey. There's several sheets left to sign up on.

I'm Jake Glance from the Department of Environmental Protection, Public Information office. I'm the facilitator for tonight's public hearing to discuss the Division of Water and Waste Management's Proposed Revisions to Legislative Rule 47CSR2, Requirements Governing Water Quality Standards.

Also here tonight from the DEP are Scott Mandirola, Cabinet Secretary and Director of the Division of Water and Waste Management; Laura Cooper, the Assistant Director of Water Quality Standards within the Division of Water and Waste Management; Mike Sheehan, the Assistant Director of the DEP's Division of Land Restoration; and Chris Smith, an environmental resource analyst in water quality standards.

The Rule 47CSR2 establishes requirements governing standards of surface water quality from water to the state. These standards are developed to

1 help protect and preserve water quality necessary to
2 meet and maintain designated or assigned uses such as
3 swimming, recreation, public water supply and/or
4 aquatic life.

5 The DEP's proposed revisions to the rule
6 include changes to aquatic life criteria for aluminum
7 and selenium, and also the inclusion of two site-
8 specific water quality standard variances.

9 The purpose of tonight's hearing is to
10 give you the opportunity to share your comments with
11 DEP about this proposed rule. Tonight's hearing is
12 being recorded by a court reporter to give you -- so
13 that the comments that are shared can be part of the
14 public rulemaking record. I do ask when you do come
15 up, even though I'm going to say your name to bring
16 you up, when you get up to the podium, if you can say
17 your name and she might ask you to spell your name
18 just so we get it right.

19 To ensure that we successfully achieve
20 the purpose of this hearing, we ask that everyone be
21 respectful and considerate of each other by refraining
22 from interrupting others while they're speaking and
23 keeping your comments on topic so that our time
24 together is used most efficiently.

1 We do have several people who are signed
2 up to speak with the potential that more could come
3 in, so we are going to limit each person's speaking
4 time to five minutes.

5 For those wishing to speak, when I call
6 you up to provide your comments, please state your
7 name and say if you're representing any groups or
8 organizations. If you have written comments that you
9 would like to submit in addition to or in lieu of your
10 spoken comments, please hand them to me after you
11 speak or at the conclusion of this hearing.

12 If you did not sign up to speak when you
13 come in, again you can still sign up in the back of
14 the room near the sign that says public comments and
15 please sign in. If no one has any questions about the
16 hearing format -- yes, sir?

17 UNKNOWN SPEAKER: Written comments may be
18 sent to you after tonight?

19 MR. GLANCE: Yes. If you want to talk to
20 me after the meeting, I'll give you the address and
21 also the email. So any other questions about the
22 format? Okay. We'll get started. The first speaker
23 is Rupie Phillips. Come on up.

24 MR. PHILLIPS: Ladies and gentlemen, my

1 name is Rupie Phillips. I'm a delegate out of Logan
2 County representing the 24th District. I would like to
3 tell you, I'm so glad to see so many friends here in
4 stripes. That's great. I am also the lead sponsor of
5 the house bill that kicked this all off. One of your
6 own inspired me, Christopher Jeffrey, about two-and-a-
7 half years ago to get this started, along with Roger
8 Horton and I pushed. I pushed Jason Bostic to get me
9 something so I could introduce it and, yes, I'm the
10 one who told the tree huggers, you know, the coal
11 association to give me a vehicle and I put it in four-
12 wheel drive and I drove it to the top.

13 Ladies and gentlemen, it is very
14 important that this issue goes through. I'm not real
15 happy with the proposed limits, but I think it's a
16 start. All you all coalminers are affected. My
17 district is affected. I'm actually in sales in the
18 coal industry too. My job is affected. It hurts. It
19 hurts. Every day I get calls, I need a job. I need a
20 job. And Obama said it himself, if you can't
21 legislate the coal industry out of business, he'll
22 regulate them out of business. And I tell you what,
23 I'm ready to fight. I just left Savannah to get here
24 today and I proposed a resolution down there to draw

1 the line in the sand down there and 15 states agreed
2 to tell Obama no on his EPA.

3 I'm so glad to see you all tonight. But
4 at any rate, the selenium level, you know, and
5 everybody knows it, if you bottle the water, if
6 anybody's got a bottle -- I see a bottle back here --
7 there of 50 parts per billion and they want to limit
8 it to less than five parts per billion. That is
9 absurd. Your body has got to have selenium. Why
10 don't you drink water that's less than five parts per
11 billion and see what it does to your body, the ones
12 that's here that's against this.

13 Back in the spring, I looked at Secretary
14 Huffman, I ask him every time I see him. He said,
15 Rupie how is it going, where we at, it's going good.
16 It's going good. I looked at him back in the spring
17 and I said, hey, if you don't have something now --
18 this was three sessions ago in the past -- if you
19 don't have something soon, don't worry about it,
20 because there's not going to be any coalmines here to
21 affect, because we are getting shut down.

22 But I hope and pray a new administration
23 will change and we can get it back to where we need it
24 and protect our coal jobs. You all are family. We

1 stick together. I'm with you. And this ain't no
2 political speech because like I said it affects my
3 job. The families that are hurting over this issue
4 and these other issues, don't give up. Stick
5 together. Thank you.

6 MR. GLANCE: Next up is Larry Orr and
7 after Larry, we'll have Connie Gratop Lewis.

8 MR. ORR: Thank you. My name is Larry
9 Orr. I'm the past Chairman of the West Virginia
10 Council of Trout Unlimited. My son, Lee, is the
11 current chairman. I'm speaking on behalf of him and
12 the 1500 dues paying members of Trout Unlimited in
13 West Virginia.

14 West Virginia Council of Trout Unlimited
15 is a conservation organization. We're not an
16 environmentalist organization. Our mission is to
17 protect -- is to conserve, protect and restore the
18 cold-water fisheries of West Virginia. Conserve,
19 protect and restore.

20 Water is the most important natural
21 resource in West Virginia, not coal, not oil, not gas,
22 not timber or the product of any of the extractive
23 industries. Water is the most important natural
24 resource.

1 West Virginia Council of Trout Unlimited
2 opposes weakening the standards on aluminum and
3 selenium. These are both known toxins and the only
4 reason for proposing the weakening of the standards is
5 to reduce mining costs. If it costs more to mine with
6 the current standards in order to protect water
7 quality, then let the industry bear those costs.

8 Thank you for your consideration.

9 MR. GLANCE: Connie is up next and after
10 Connie will be Leroy Stanley.

11 MS. LEWIS: I'm Connie Gratop Lewis of
12 Charleston. I'm a legislative coordinator for the
13 West Virginia Environmental Council and I wish to
14 speak to the rule that is being proposed.

15 The West Virginia Environmental Council
16 is not satisfied with the limits as they have been
17 proposed. We do not believe that the science that was
18 used in creating the selenium standard is the right
19 science for West Virginia streams.

20 We do not believe that the aluminum
21 standard is protective of human health, which should
22 be of interest to all of us, even as we desperately
23 try to hang on to any jobs that remain within the
24 industry.

1 I understand your pain as the coal
2 industry is in a time of contraction. Where I come
3 from, the UAW was once the largest union and the auto
4 industry was the largest employer. I saw the
5 devastation in my hometown and I also see now that new
6 industries are coming in using the skills that the
7 auto workers had and that the glass workers had and
8 that my hometown is in a time of fitful but steady
9 resurgence. I know that the coalminers are tough and
10 that they can, in fact, recover from this if they are
11 given the opportunity to do so. I hope that you will
12 join us at some point in the future when we work to
13 diversify and strengthen the economy of the state.
14 Thank you.

15 MR. GLANCE: By the way, if anybody has
16 come in and wants to speak, if you would sign up in
17 the back just on the kind of the rightmost column,
18 just put yes if you know that you want to have your
19 comments heard.

20 MR. STANLEY: I'm Leroy Stanley. I'm a
21 retired construction worker. I spell my name L-e-r-o-
22 y, S-t-a-n-l-e-y. We're here today on a different
23 issue. We're here today to save the Tygart Watershed
24 Association where the Tygart River runs in north

1 central west Virginia.

2 MR. GLANCE: You need to speak up.

3 MR. STANLEY: The Tygart River runs from
4 north central west Virginia. It's one of the two,
5 three rivers to make up the Mon. It goes all the way
6 to Pittsburgh and then the Ohio River. About 14 years
7 ago, we decided that we was going to do some things
8 with the acid mine drainage that had been done, not
9 now, not in coalmines going on now, but 90 years ago
10 this one stream that's in issue here today was
11 impacted with acid mine drainage, we're going to try
12 to put lime dosers on it. We did this same process
13 four years ago on another stream which was highly
14 impacted with acid mine drainage at Three Fork Creek
15 and it worked. A lot of people don't like lime
16 dosers. Some of the people like to strain gnats and
17 swallow camels, you know what I mean. They're
18 questioning this process. This has nothing to do with
19 this water standard issue that's here today. I'm glad
20 to see all of my friend coalminers here.

21 But we have two watershed groups involved
22 in this cleaning this stream up. One of them is Save
23 the Tygart and the other one is Laurel Mountain. I've
24 got a signed letter here I'd like to read into the

1 record and then submit it for evidence.

2 We believe the DEP has been working
3 diligently to try to recover this stream. Yesterday I
4 was on that other stream that I spoke of, Three Fork
5 Creek, and it's loaded with trout now. Put these lime
6 dosers on it and cure what they did 100 years ago and
7 that has nothing to do with now, you understand. We
8 want to put these dosers on Three Fork Creek, or on
9 Sandy Creek like we did on Three Fork Creek. Number
10 one, it's going to improve drinking water for half a
11 million West Virginians in north central West
12 Virginia, not counting when the water gets over there
13 towards Pittsburgh, over there in western
14 Pennsylvania, the same water. Half a million West
15 Virginians, because of the aluminum, the iron,
16 manganese and other things that's in the river is
17 going to fall out. It precipitates, just like rain,
18 the iron does, the sulfur. We have that problem in
19 mining coal in north central West Virginia. The
20 present coal companies and coalmines are taking care
21 of it or are attempting to take care of it and this is
22 a way to cure something that happened long before
23 anybody in this room was born. We're going to cure
24 this. DEP wants to try them lime dosers temporarily

1 and see how they work. The Save the Tygart Watershed
2 Association and Laurel Mountain, there's a slew of
3 coalminers that belong to it too. They know that
4 we're not against coal. We're trying to fix something
5 that was done long before -- long before any of us was
6 born, I say again. This process involves putting
7 lime, a natural substance, in the water and then the
8 iron and the sulfur fall out, within they say a
9 quarter a mile. We haven't seen it. We see it
10 falling out from Three Fork Creek. It falls out very
11 close to the doser and then you have clean water. The
12 state buys this lime and puts it in these dosers.

13 The coalmine, which is Leer Number One, I
14 think, Taylor County, they invited us over, a couple
15 months ago. We went through the mines and everything.
16 It didn't bother me a bit. I've been there before.
17 But what I'm saying is, we need this process to go
18 forward and clean up this old mine water, to clean up
19 this old mine water.

20 MR. GLANCE: Sir, you might want to
21 wrap it up.

22 MR. STANLEY: Okay. Just a minute. Let
23 me finish. This old mine water we're going to take
24 care of and this is a good proven, effective way of

1 having it both ways, clean water, doing away with the
2 sulfur and the iron and all that. Thank you.

3 MR. GLANCE: Next up is Angie Rosser and
4 after Angie is Cindy Rank.

5 MS. ROSSER: Good evening. I'm Angie
6 Rosser. I'm the executive director of the West
7 Virginia Rivers Coalition and we've set out to ensure
8 that our rivers are there for us and future
9 generations to enjoy fishing, swimming, drinking from.

10 Delegate Phillips pointed out that there
11 are people drinking bottled water in here and our goal
12 is to make sure that our water resources are protected
13 so that we can feel like we are competent in that our
14 tap water is a safe to drink and our water supplies
15 are healthy enough to rely on for our survivals.

16 And we do have concerns about all three
17 or four of the revisions that are proposed in this
18 rule. The aluminum change is drastic and it follows a
19 path that this state has gone down for 20 years now.
20 In 1998, we weakened the criteria. In 2000, we went
21 from a total -- looking at total recoverable aluminum
22 to a dissolved criteria. In 2004, we saw a big
23 weakening of the standards of 87 to 750 micrograms per
24 liter for the warm water chronic criteria. In 2013,

1 we saw the emergency rule come in that was rejected by
2 the legislature because of concerns about weakening
3 water quality in the state, and here we are in 2015
4 with another emergency and I beg of you to consider
5 what is the emergency here. Is it really that our
6 streams are too clean? Are we really hearing from
7 your neighbors that they're concerned that our streams
8 might be too clean and that we should allow more
9 pollution in them. And I worry about this
10 mischaracterization that weakening this one water
11 quality criteria too is going to solve all of our
12 problems.

13 And I'm quite overwhelmed by the turnout
14 tonight and I'm feeling your fear and your urgency. I
15 don't want to put that aside that you're concerned
16 about your livelihood and your families, but it's your
17 all's communities that are going to bear the burden of
18 this pollution. It's the people living in the mining
19 communities that are going to see an aluminum increase
20 and selenium increase and who's going to be cleaning
21 it up?

22 And we just heard from the gentleman from
23 the Tygart Watershed who was begging the DEP to help
24 clean up these legacy issues and it's costing the

1 taxpayers millions and millions of dollars.

2 So what is our future going to look like
3 in West Virginia? What is water going to look like?
4 And I don't know how we start this dialogue, but we
5 need to. And I'm worried we're taking risks that are
6 going to put us in a position of paying the price down
7 the line. I mean, we will submit written comments on
8 this, technical comments, looking at the research
9 because the science is important here. The science is
10 important we consider the biological effects of
11 aluminum that is hard to predict depending on stream
12 chemistry, what happens to it, how it is ingested by
13 insects that the fish depend on, that we depend on.
14 It just goes up the food chain. These are heavy
15 decisions that are being made right now and I just
16 caution us in light of the -- there is urgency in the
17 state to do something. I just don't think that this
18 is the fix-it and we should think about the long-term
19 consequences. We're talking about allowing more
20 selenium in our streams. We're talking about moving
21 to fish tissue sampling that we don't know if it will
22 work. What if there are no fish to sample, then what
23 happens? How are we going to control the bad actors
24 in this? Most mining operators are responsible. What

1 are we going to do about the ones who are
2 irresponsible and we all have to pay the price? What
3 kind of oversight will there be? What kind of
4 enforcement will there be? How will we do that?

5 And I'll just close by mentioning the
6 variances. You'll hear from other folks, but we're
7 setting a precedent here with these Tygart and Cheat
8 variances I'm concerned about. There's just a lot of
9 questions left unanswered. There's an open time
10 limit, well, a ten-year time limit on this, a lack of
11 detail on the applications, legal questions, a public
12 meeting that got cancelled, lack of consult from other
13 experts who know this watershed well.

14 So I just invite a dialogue and listening
15 to each other and trying to find a way forward that
16 doesn't set us up for more pollution in our waters and
17 more cost to the state and more concern about will our
18 kids even want to live here.

19 MR. GLANCE: Cindy Rank is up now and
20 after that we have a Mike Becker. Mike Becker?

21 MR. BECKER: Yeah. Right here.

22 MR. GLANCE: Okay.

23 MS. RANK: I'm Cindy Rank with the West
24 Virginia Highlands Conservancy. I know a lot of you

1 in this room and have seen a lot of you in court and
2 down the road. I just want to say that we will be
3 submitting written comments by the end of next week in
4 conjunction with Rivers Coalition and several other
5 groups on a lot on all of the aspects of this.

6 Tonight I'd just like to say a few words
7 on variances. And with all due respect to Leroy and
8 to the Office of Special Reclamation, I really think
9 that as much as we would all love to fix and improve
10 Sandy Creek and Muddy Creek and Martin Creek, I just
11 don't believe that this is the way, the way that's
12 being proposed is the way we should go about it.

13 One thing that Conservancy has done with
14 several other people is, as you all know by being in
15 court, and for the first time in years, we have been
16 able to have a court order that said the DEP should,
17 in fact, take care of the forfeited mining sites,
18 those that were abandoned after the 1977 Surface Mine
19 Act and actually get the NPDES and complete the
20 reclamation in the water treatment that the mining
21 industry is required to do through their permits.
22 That was a big step forward. And in the Tygart and on
23 Muddy, we have two very large mines that should be
24 treated with two standards and the money is there in

1 the special reclamation fund, which isn't very well
2 funded, but that should be used first and then see
3 what happens and then use a lot of the other funds
4 that might be available. We've got not necessarily
5 the special reclamation fund, we've got the AML fund,
6 we've got the stream restoration fund, we've got the
7 water fund, all of which are underfunded given what's
8 out there and what needs to be done, but in the long
9 run and in the priority list, if we do the forfeited
10 sites first and then look at other ways to deal with
11 the older sites, the abandoned mines, the ones that
12 were abandoned prior to the 1977 Act, we'll be able to
13 do it with the dosers what Leroy talked about.

14 I was impressed with the Fork Creek
15 dosers. I think there's a different -- I think it's
16 different, a different situation in both Muddy and in
17 Sandy and I think we have a different way to approach
18 that before we get to just the dosers.

19 In terms of policy, the actual variance
20 that's suggested in this proposed rate is so wide
21 open, it's just not supported by the information
22 that's there. It's not supported by the assessments
23 of what could be there if we do the reclamation site
24 first and then consider the whole watersheds. We just

1 don't believe that it's -- it's substantiated enough
2 to support things. There's some general concerns.
3 One is the willingness to give up on major portions of
4 streams that are impacted, whether it be by old, old
5 mines or old mines or recently forfeited mines. When
6 you put a dam in, you're going to forget about the
7 streams that are above it and what comes below it
8 turns into a very large mixing pool, a very large
9 treatment pond because of the sediment and the
10 settling out of the iron and the magnesium. We just
11 don't think that that's necessary. We don't think
12 that is wise. We don't think that would be the basis
13 for these variance. And the precedent that these set
14 is amazing. I mean the limits that are in the
15 variances that are suggested, Muddy Creek would have a
16 pH between two and nine, 2.1 and nine, iron limit of
17 179 milligrams per liter, aluminum of 48, and in Sandy
18 Creek pH of 2.59, iron of 21 and aluminum of 34. We
19 just think that it's so wide -- so wide open for
20 anything to be going on in either of those watersheds
21 and it's a bad precedent to set for any treatment
22 mines down the line that we just can't accept those as
23 effluent limits or instream limits in these two
24 streams. It's just putting off for ten years

1 something that we're going to have to deal with in a
2 different way is my feeling. It's a license to
3 pollute for an experiment in these watersheds that
4 aren't necessarily going to happen the way Leroy hopes
5 they will happen. And I know people in the Fellowship
6 area will worry about the sediment and the actual
7 dropping out of metals in the mine on downstream in
8 Sandy and they're concerned about that. Rightly so.

9 Up in the Cheat, we're worried the Cheat
10 canyon how far down will these sediments go and how
11 much will that impact the actual streambed in terms of
12 ability to support biological aquatic insects down
13 into the future.

14 MR. GLANCE: Can you wrap it up?

15 MS. RANK: Uh-huh. So I will leave the
16 rest for our written comments that we can elaborate
17 more, but I will just say now that we believe that is
18 good to clean up every stream in the state when and
19 how that we really can, but we just don't think this
20 is the best, the most supported or the wisest way to
21 move forward in Sandy Creek or in Muddy Creek. Thank
22 you.

23 MR. GLANCE: Mike Becker? After Mike is
24 Jason Bostic.

1 MR. BECKER: Good evening. My name is
2 Mike Becker. I work with Appalachian Mountain
3 Advocates. I actually came prepared tonight to talk
4 about the site-specific variances, which is a fairly
5 discreet issue, but I can't help myself from
6 addressing a little bit of the other issues on the
7 table, especially the politics that are involved with
8 some of these that we started off with tonight.

9 I would just like to say there's no doubt
10 in anyone's mind that the coal industry is hurting
11 right now. You can't read the newspaper or open your
12 eyes in the state without seeing it. But I do think
13 there is a misguided effort to focus everything on a
14 black and white issue of whether you are for or
15 against coal.

16 This state is going through a major
17 change in the next few years. I think we're rapidly
18 than anybody expected and it's not going to get
19 anywhere simply by blaming politicians or blaming
20 environmental activists for the decline of coal jobs.
21 The reality is much more complicated than that and
22 it's going to take a much more complicated solution.

23 I myself and Appalachian Mountain
24 Advocates would backup what many of the other

1 environment groups here have said on selenium and
2 aluminum. I think part of the solution to West
3 Virginia's future is not -- has got to be not racing
4 to the bottom and relaxing standards to a point where
5 we are losing resources we do have. I think that's
6 going to be critical.

7 I also say those issues that I am
8 prepared to talk about the site-specific variances, in
9 my mind are very related. These site-specific
10 variances are necessary specifically because of legacy
11 mines that were not regulated or were not well
12 regulated and mines that went belly up leaving water
13 pollution problems.

14 I don't want to see a new set of
15 regulations and a new set of legacy problems that West
16 Virginia taxpayers have to address in the future and I
17 think that relaxing selenium and aluminum standards is
18 on the path to do that.

19 One issue I came to speak about are the
20 variances in Little Sandy Creek and Martin Creek. I
21 want to say from the outset that, you know, I don't
22 think that these -- I think the intentions behind the
23 variances are good. I think that these are greatly
24 impacted streams that do need help and recognize that

1 the money to help these streams is limited. However,
2 I do have, you know, several serious concerns about
3 the variances, particularly about the precedence they
4 set.

5 First and foremost, these variances
6 require the use of removing the designated uses of
7 fishable, swimmable waters from certain sections of
8 the streams and that's something that's at the very
9 heart of the Clean Water Act. In fact, the very first
10 few lines, the purpose of the Clean Water Act is to
11 maintain fishable and swimmable uses and it's not
12 something that should be taken away lightly.

13 In fact, if you look at the federal
14 regulations, there are specific sets of criteria that
15 must be followed, including the use attainability
16 analysis that must be followed to remove those types
17 of designated uses. It requires documenting sources,
18 the infuseability of treatment of sources and the
19 reasons why those water quality standards can be met.

20 I have looked over the applications. I
21 know from talking with folks, like Mike Sheehan, that
22 a lot of work has been done here, but I will say that
23 I've not seen the necessary steps that are needed to
24 do that use attainability analysis and to prove the

1 unattainability of those fishable, swimmable uses have
2 been done here.

3 Again, I'm also more concerned than the
4 specific sites about the example this will set. I
5 think taking a stream and saying because it has bad
6 water quality now is difficult to correct and we
7 should relax the standards. It sets a really
8 dangerous precedence across the state.

9 MR. GLANCE: Mr. Bostic is up now. After
10 Jason is Roger Horton.

11 MR. BOSTIC: Good evening, everyone.
12 Thank you to DEP, Scott and the members of the staff
13 to give me the opportunity to speak tonight. Before I
14 touch on the technical issues associated with aluminum
15 and selenium standards, let me first thank the room
16 full of coal miners around the state that have come
17 out tonight to support these rule changes. I can't
18 begin to tell you how important it is that our state
19 agencies and our elected leaders understand the
20 importance of this issue for those of you in this room
21 that earn a living mining and producing America's
22 energy. It is also so terribly important that you are
23 here unlike the activists and the lawyers that are
24 very, very proud of the fact that they have cost your

1 communities, your industry billions of dollars in
2 unneeded water treatment to address essentially
3 meaningless standards and that you all are here as the
4 true representatives of our coalfield communities.
5 These changes are terribly important to restore sanity
6 and rationale to the regulations of the West Virginia
7 coal industry.

8 I also want to specifically thank the
9 members of the West Virginia Legislature that came
10 out, Rupie Phillips, Kelly Sobonya, Senator Art
11 Kirkendoll, because in the end, it's the West Virginia
12 Legislature that has the responsibility for enacting
13 West Virginia's Water Quality Standards and it was the
14 West Virginia Legislature that after ten years of
15 everybody from our state agencies to the federal
16 counterparts knowing that these standards were wrong
17 that took legislative action to finally enforce
18 opposed changes to the water quality water standards.

19 I'm going to spare you, for the most
20 part, on the technical comments. We will submit those
21 as part of our written package, but there are a couple
22 of key points that I think need to be addressed
23 tonight.

24 The methodology used by our DEP for both

1 the aluminum and selenium standards that are proposed
2 is entirely consistent with the way the federal
3 Environmental Protection Agency recommends that water
4 quality standards be calculated. And our standards --
5 West Virginia's proposed standards go even further by
6 applying even more restrictive factors of safety and
7 surely these two standards are protective of aquatic
8 life in the streams.

9 As I mentioned, West Virginia's federal
10 counterpart, the EPA, realized the current selenium
11 standards of five micrograms per liter is wrong and
12 it's been wrong and they've known it has been wrong
13 for ten years. It's taken us that long to finally
14 spur the agency to take some kind of action.

15 In the meantime, millions of dollars have
16 been spent to comply with what is essentially a
17 meaningless standard. One of the earlier speakers
18 mentioned that science is important and I couldn't
19 agree more. That's one of the things that frustrates
20 me the most about the representation that speaks to a
21 water quality standard of a weakening of that
22 standard. It's not a weakening. Those who respect
23 the selenium standard, which is a tissue based
24 approach, and the aluminum standard, which is an

1 harvest measurement, that reflects the current state
2 of the science and the current understanding of how
3 those particular metals behave in West Virginia and
4 Appalachian streams.

5 And the aluminum standard that was
6 mentioned earlier was rejected by the legislature that
7 is not true. The West Virginia Legislature did not
8 reject the aluminum standard previously proposed. It
9 was withdrawn.

10 Another thing to remember with respect to
11 the comment about weakening West Virginia's water
12 quality standards, we are acutely aware, as I think
13 the agency is, there are certain industrial
14 discharges, including coal mines in the State of West
15 Virginia, that will receive lower permit limits for
16 aluminum based on the enactment of the new standard.
17 Again, it's about what is most protective for the
18 streams. So it's not a weakening of the standards by
19 any stretch of the imagination.

20 That concludes my remarks and we will
21 have pretty extensive technical comments submitted for
22 the record. Again, thank you all for coming out
23 tonight to support this terribly important rule.

24 MR. GLANCE: Roger Horton is up now and

1 after Roger is Tim Hudley; is that correct?

2 MR. HORTON: Thanks to the DEP for
3 holding this very important hearing and thank all
4 these brothers and sisters in the coal industry for
5 being here. I am just pleased and proud to be a part
6 of this. We're thankful you're here.

7 As Jason alluded to, the comments
8 specifics, technical aspects will all be presented to
9 you folks forthwith. They will be coming and I'm sure
10 they've done a very good job.

11 I want to talk specifically about 200
12 people, 200 people that were my employees, brothers
13 and sisters that are no longer working. There were
14 closed down because of a standard that cost millions
15 and millions of dollars at the Apogee Coal Mine to
16 build a selenium treatment plant that is was
17 absolutely of no value. And then I'm looking at the
18 500 individuals who are going to lose their jobs very
19 shortly because of the selenium standards that is
20 outdated and the ability to use whatsoever at the
21 Hobet operation because of the massive amount of money
22 that this company had to spend on a worthless, an
23 absolutely worthless system. You could argue that
24 what they're doing is sound and just and when you see

1 500 families leave an area, there's no just about
2 that, none whatsoever.

3 No one with any money even wants to look
4 at Hobet or Apogee because of that liability, you know
5 what I'm saying. They do not want to look at it, so
6 it's absolutely just of no use whatsoever. And there
7 has been many, many of you who have worked your entire
8 life in this industry and gave it your most and I
9 thank you for that and I want you to continue to work
10 and continue to work safely. I want to let you know,
11 too, that everything that I can do, I will continue to
12 do to make sure your jobs are there and we can return
13 our industry's people back to work. I thank you for
14 your time.

15 MR. GLANCE: Tim Hudley is up next and
16 after Tim is, I think, it's Amanda Pitzer; is that
17 right?

18 MR. PITZER: Yeah.

19 MR. HUDLEY: Actually my name is Terry
20 Hudley. I was born and raised down in Chapmanville.
21 I worked for the coal industry and I want to tell you
22 a little bit from my personal perspective. Jason and
23 I worked together. He's good in giving the
24 perspective in the industry as far as the regulations

1 and rules.

2 I go down this road and I see stripes and
3 I hear people talking about the damage to these water
4 systems and one thing I'd like to say is there's
5 nobody in this room -- I would say this without any
6 hesitation, there's nobody in this room that wants
7 dirty water, nobody, coal miners, anybody in this
8 room, so let's get beyond that. Let's quit talking
9 about the purview and let's talk about what actually
10 happens to people and the people I'm concerned about,
11 the people that I represent are these guys in stripes
12 and their families and right now there's about 80,000
13 of them laid off in West Virginia. There's about
14 35,000 other jobs that are probably lost as a result
15 of the layoffs in the coal industry, and I looked
16 around and the headlines today and the West Virginia's
17 unemployment rate raised to 7.4 percent. That's
18 nothing. McDowell County is 15 and a half percent.
19 Mingo County is 15 percent. All across the southern
20 coalfields and there's no reason for that other than
21 the fact that our industry is suffering and it's
22 suffering because of policies. And we can talk all
23 about the cost of the price of natural gas. We can
24 talk about the price of coal in other competing

1 countries, other fuels. We can talk about the shift
2 in markets of power plants, but when you peel away the
3 onion -- when you peel away the onion in every
4 situation, you come back to policy, and a good policy
5 is a policy that's balanced. It's a balance of needs.
6 And I don't see these guys -- these guys in stripes, I
7 don't see their needs coming into the balance.
8 They're not being weighed at all. Somebody's hand is
9 on the scale and that's President Obama and the Obama
10 administration.

11 Now, this rule here that we're talking
12 about here tonight, it's a state regulation. It's not
13 directly related to the war on coal, but it's another
14 symptom. It's another thing, another weight on that
15 scale against the guys in stripes and I just want our
16 policymakers to make decisions without tipping that
17 scale. I want our policymakers to look at these guys,
18 look at their families and take everybody into
19 account, everybody.

20 And like I say, these guys in stripes
21 they're more than about the policymakers today. And,
22 you know, ultimately, we'll going to pay the price for
23 that because like I say our grid is going to fail. I
24 really believe that. And it's going to fail because

1 these guys aren't working. Take those coal powered
2 power plants offline and take the miners out of the
3 jobs and they don't go back to work tomorrow. They
4 don't turn those power plants back on tomorrow. And
5 it come down a few weeks ago a representative of AEP
6 said in one of our meetings, said with no reservation
7 at all, if we had another winter like we've had the
8 last couple of winters, that there would be
9 disruptions, there would be blackouts and brownouts,
10 period. So, yeah, this is not directly related, but
11 it's a symptom. It's another weight on the scale and
12 it's time policymakers balance those scales.

13 MR. GLANCE: Amanda Pitzer is up next and
14 after Amanda is Bill Price.

15 MS. PITZER: Thank you. Good evening,
16 everyone. My name is Amanda Pitzer. I'm Executive
17 Director of Friends of the Cheat. We are a watershed
18 group located up in north central West Virginia, not
19 far from Leroy's group, Save the Tygart, and I'm here
20 tonight to comment specifically on the proposed
21 variances in Martin, Glade and Fickey Run, which are
22 the waters that flows into Muddy Creek, which I also
23 will be talking about tonight.

24 So Friends of Cheat has actively been

1 working on the ground for over 20 years to restore
2 streams from acid mine drainage. There are 500
3 abandoned coal mine lands in the Cheat watershed
4 alone. The coal industry has long left the Cheat.
5 We're cleaning up the mess of last regulations from
6 decades ago and we've done that with success. We've
7 done that on the ground. I might be wearing heels
8 today, but typically I have mud boots on. I'm not in
9 the courtroom. I'm out there looking at sludge,
10 looking at dosers, looking at systems on the ground.
11 We've implemented 16 acid mine drainage systems on
12 over 40 properties in the Cheat River watershed and
13 since 2013, we've been actively working closely with
14 the Office of Special Reclamation to maintain 27 of
15 their mine forfeiture sites. It's a unique
16 partnership and through that work with DEP and through
17 our work with the river council over the last 21
18 years, I truly believe that the DEP has good
19 intentions with this variance and wants to restore
20 streams. And I would really like to be able to stand
21 here today and give my unconditional support for this
22 variance; however -- well, I'll tell you why. Why
23 won't I support it, because Friends of Cheat knows
24 that it's going to take an outside of the box strategy

1 to clean up the Muddy Creek watershed, no doubt? With
2 over 500 abandoned mine lands and no one footing that
3 bill, we are not going to restore Muddy Creek without
4 some other way and instream dosing may be that way.

5 However, given ample opportunity, Friends
6 of Cheat has not been convinced that the proposed
7 ultimate restoration measures that are associated with
8 this variance are being implemented in the most well
9 thought out and responsible way. We have many
10 questions about the particulars, which we will submit
11 in written comments and will be further addressed
12 tonight by another one of our staffers, but more
13 broadly, we question the implications for a variance
14 for an entire set of streams versus the site-specific
15 request, and more broadly, I just have to question the
16 overall logic of rolling back water quality standards
17 to improve water quality.

18 We believe there is a better and more
19 transparent and collaborative means to this end to the
20 shared goal and we encourage the DEP to think of
21 another way potentially working with the plaintiffs to
22 ask for more time to try their experiment. Requesting
23 more time would allow for the studies to be completed
24 and evaluated without making a ten-year modification

1 to water quality standards.

2 DEP could continue their innovative work
3 with the EPA on into the permits from all the
4 stakeholders who have worked so patiently and
5 persistently for over 20 years can outline a set of
6 goals and metrics that we can all feel good about.

7 One may question, what's the risk? Muddy
8 Creek is dead. Fickey Run is dead. Glade and Martin
9 Run is dead. And the risk to this is adding
10 additional solids to the newly protected Cheat canyon.
11 It would degrade the whitewater experience and
12 potentially harm the rebounding fishery.

13 In 1995, the Cheat was named one of the
14 nations more endangered rivers. In 20 years, we
15 brought it back. We've got fish from the headwaters
16 to the mouth. We've got walleye swimming up from the
17 lake and there's bald eagles proliferating. That is
18 the risk. We just don't know if this is the best
19 measure and we think when you put on the brakes and
20 consider a more transparent approach that is evaluated
21 in a way we can all feel good about.

22 The north central region of West Virginia
23 has already seen the coal industry come and go and we
24 think our best hope for bringing back life to our

1 community is maintaining the progress we have made in
2 water quality and promoting the outdoor recreation
3 opportunities that require clean water to succeed.

4 So, in conclusion, I want to reiterate,
5 we share the goal of DEP to restore the streams. We
6 know that Muddy Creek requires an outside of the box
7 approach, but we cannot support the variance in the
8 proposed form. And, you know, I was sitting next to
9 my friend, Leroy, and we hadn't talked a lot before
10 this, and he said, well, what's the risk. I've never
11 seen anything bad happen. And, you know, this might
12 not be bad, but that's not a restored stream to me.
13 So let's figure out what that restored stream is.
14 Let's work together to develop metrics and the
15 variance, maybe I'll be up here next year supporting
16 that variance. I agree that science is important, but
17 these standards are not. Thanks, everybody.

18 MR. GLANCE: Bill Price is up now. After
19 Bill is Kevin Ryan.

20 MR. PRICE: Good evening. I'm Bill
21 Price. I am with the Sierra Club. I'm based here in
22 Charleston, West Virginia. We will also have
23 technical comments, so I'm going to stay away from
24 whatever the grams are. I'm not a scientist. What I

1 am is a guy who grew up in the southern part of West
2 Virginia in the coal producing areas of Boone and
3 Raleigh County and a union coal mining family. I
4 remember my father coming home in the evenings with
5 coal dust on his face, trying to impart to me values
6 of responsibility.

7 One of the things that he said was that
8 that we deserve -- when he goes into the mines, he
9 deserves a safe and clean workplace and we deserve a
10 safe and clean community to live in. I think that's
11 what we're trying to do here. One of my father's
12 bedrock things that I got in trouble with a lot was
13 you mess it up, you clean it up.

14 Today we have an industry that is messing
15 it up. Selenium is a pollutant in the streams which
16 is having an impact on the water quality of this
17 state. The industry is messing it up. I'm not
18 blaming any of the miners, but the industry is
19 polluting the streams and they need to clean it up.

20 This proposed rule change is
21 unenforceable in the way that it is being looked at.
22 It would be fine if you could get that fish that
23 you're going to take the tissue from to stay in one
24 part of the streams. Maybe we could build some cages.

1 I don't think anyone here wants to do that. Because
2 fish move around in a stream, and so when you get to
3 that stream and you do the sampling and let's say that
4 there is a selenium problem in that fish tissue and
5 you have three different operations that are polluting
6 that area, which of those three operations do you go
7 to and say, you messed it up, so, therefore, you clean
8 it up? Which one? That is just one level of the
9 unenforceability of this proposed rule change.

10 They tried that in Kentucky and they're
11 having -- already having problems with it. They tried
12 that last year. They're already having problems with
13 trying to figure out how they're going to reinforce --
14 how they're going to actually get the fish to get the
15 fish tissue from.

16 We don't need that kind of
17 unenforceability in this state. If we learned nothing
18 else 18 months ago, and some of you may have been
19 among the 300,000 who couldn't drink their water, some
20 of you may even be among the people who still don't
21 feel comfortable drinking the water that comes out of
22 the tap -- if we learn nothing else, what we did learn
23 from that is that you don't enforce the standards, if
24 you don't have simple enforcement, then bad things

1 will happen. Water will get polluted. The water
2 coming out of your tap will be unusable. If you don't
3 have enforceability, the economy will suffer. Just go
4 ask the businesses, the restaurants that closed down
5 in the City of Charleston because of the water crisis.
6 I'm not trying to blame the coal industry for that
7 particular incident. What I am saying is this, we
8 have got to have high water quality standards and the
9 aluminum standard change would make it the weakest
10 standard in the United States. I don't think we want
11 to continue to be seen as a state that has low water
12 quality and low standards on aluminum. I think we
13 want to lead the country, not be the last.

14 I'll end this with one more father
15 statement. My father said the first step to getting
16 out of a hole is to quit digging the hole. You
17 cannot, when you're heading down a path, simply stop
18 and think that a change in the administration -- that
19 somewhere out there there's this big bad guy who, if
20 we get rid of him, will change and solve all the
21 problems that you all are facing. We cannot do that.
22 We have to start down a new path.

23 I'd like to have a conversation with
24 anyone in this room around the power plus plan, the

1 administration's budget proposal right now. I would
2 like to have a conversation about good reliability
3 because I would be interested in what the AEP official
4 said about that. That's not what I'm hearing. But
5 maybe I'm hearing wrong. We could have this
6 conversation.

7 What we cannot do is to continue to let
8 this industry divide us, because we do all want good,
9 clean water. We do all want good jobs for everyone.
10 What we cannot do is get stuck in the past and
11 continue to bend over backwards for this industry or
12 any other industry. Thank you.

13 MR. GLANCE: Kevin Ryan is up next and
14 after Kevin is Art Kirkendoll. You have five minutes.

15 MR. RYAN: Okay. So my name is Kevin
16 Ryan. I work for Friends of the Cheat. Amanda Pitzer
17 is our director. You heard a little bit about our
18 organization and unfortunately I'm speaking in
19 opposition to the proposed variance on the Martin
20 Creek watershed issue that you've heard tonight. And
21 I say unfortunately because I think that some of our
22 opposition could have been avoided if we had a little
23 better communication and collaboration amongst the
24 watershed groups, the state agencies, the plaintiffs

1 that are -- the DEP's special reclamation is worried
2 about in implementing this restoration strategy. I
3 also say that I believe the DEP is doing what they
4 think is right. They want to clean up watersheds. So
5 do we. I commend them for this effort. And what I'm
6 going to do right now is just briefly outline some of
7 the technical questions that I would really love to
8 see DEP answer specifically in a variance application.
9 And if you've read the variance application, it is
10 quite vague, and, in fact, some of the language that
11 is pulled from a report that Friends of the Cheat
12 authored back in 2012 ourselves. So we know what the
13 data says and we know what monitoring had been done.

14 And the first thing I want to tell you
15 about is that in 2012, we actually did a pilot study
16 where we dosed Martin Creek in collaboration with
17 special reclamation and the picture that Amanda showed
18 you, you probably just saw it was a little bit red,
19 that was actually during dosing. And so the solids
20 that come out, the iron and aluminum that, I think
21 Leroy talked about, it comes out, but where's it go.
22 It goes either into the bottom of the stream or it
23 stays in the water and gets pushed downstream into
24 other rivers, creeks and eventually, in our case,

1 Cheat Lake. So it doesn't just disappear. And in our
2 case, the Martin Creek Watershed and the Muddy Creek
3 Watershed is short in that regard, only miles, only a
4 few miles. In the Three Fork situation, we're all
5 impressed by that. It was much longer --

6 MR. STANLEY: Say that again.

7 MR. RYAN: We're all impressed by the
8 Three Fork --

9 MR. STANLEY: Thank you.

10 MR. RYAN: Yes, you're welcome. I think
11 that it was done right, but every watershed is not the
12 same. And in our case, again --

13 MR. STANLEY: Say that again.

14 MR. RYAN: Every watershed is not the
15 same. And in our case, we really don't have a lot of
16 time for those metals to drop out and create clear
17 water where we're going to see what we think is real
18 restoration.

19 So we tried that study, we got muddy
20 water and so we have reason to believe that it may not
21 work. And that's not to say that we don't -- we
22 should not try, but we have reason to believe that we
23 shouldn't give DEP a blanket ten-year variance for
24 what they want to do and it may not work.

1 So my specific questions are regarding
2 how this is going to be implemented and evaluated.
3 And I think they're pretty easy to resolve. The first
4 thing that Amanda mentioned is that there's not really
5 a specific restoration goal in the variance
6 application. All it does is it proposes to set
7 standards to the worst case water quality scenarios
8 that already exist in the stream. That's an extremely
9 low bar for restoration. If DEP really wants to
10 restore streams, set a restoration goal and let's try
11 to meet that. In fact, water quality standards are
12 already essentially restoration goals. That's where
13 we want to be. But this variance doesn't do that. So
14 I think it's sort of fundamentally flawed in that
15 regard.

16 Second, there's no mention of actual
17 metrics that will be used to determine whether or not
18 this is successful. And those are easy. Let's
19 measure WVSCI scores, benthic and fish. That's easy.
20 There's no fish in there right now. So if we're
21 monitoring fish, we should be able to determine
22 whether this is working. But there's no mention that
23 DEP will do that or that they'll have to do that with
24 the implementation of this program.

1 And then finally, or not finally, but
2 third, which downstream sites will be monitored to
3 determine whether this is a success or failure. The
4 variance is only for the Martin Creek Watershed.
5 Well, directly below that is the Muddy Creek Watershed
6 and directly below that is the Cheat River and things
7 flow downstream. So if you dose the stream, you
8 create sludge, we're going to get impacts in both
9 Muddy and the Cheat River and we will need to be
10 monitoring that as well. And DEP needs to monitor
11 that. It needs to be on paper that that's going to be
12 part of their study.

13 In some cases where this dosing might
14 occur, this sludge could flow just less than a mile
15 into these other streams. So we think that there's
16 reason for concern there.

17 And then, finally, I think this is maybe
18 my most important point I want to make to those in the
19 room that are aware of lime dosing strategies and the
20 management of sludge, when will DEP decide to stop the
21 dosing program if it's not working or advise a
22 strategy. I think that lime dosing has a place for
23 restoration in the watershed, but it may not be the
24 only tool that we need to use. So we may need to use

1 some of that for 50 percent of the load and we may
2 need to use other sludge management techniques that
3 we're already using to get the rest to achieve real
4 restoration. And that's just common sense. I don't
5 think that just saying that we're going to dose the
6 streams is going to fix it. So I would like to see
7 DEP acknowledge that there might be some solid
8 management methods that we actually need to use in
9 order to achieve the restoration goals, which have yet
10 to be sort of defined on paper.

11 And so with that, I'll just conclude that
12 I think there's some very basic questions concerning
13 how this program is going to be implemented and
14 evaluated and I would encourage DEP to continue to
15 communicate more directly with us. We live and work
16 and study this watershed. I've been studying this
17 watershed for a few years now and I would love to be
18 more involved with how this is going to play out, so
19 thank you very much.

20 MR. GLANCE: Art Kirkendoll is up next.
21 Is there anybody who has not signed -- Art's our last
22 speaker to sign up, so if anybody else wants to speak,
23 there is one more signup sheet in the back, so feel
24 free to sign up.

1 MR. KIRKENDOLL: My name is Art
2 Kirkendoll. I represent Logan, Boone, Lincoln, Mingo,
3 Wayne and 7 Central District and two years ago, I
4 think it was bill legislature. I may be off a number,
5 but I believe that bill passed 134 to nothing with the
6 senate vote and the house vote. And the reason I'm
7 saying that, I've served over there since November of
8 2011. We have quite a few people in the legislature
9 pretty environmentally sound. So with this piece of
10 legislation in front of these people that have
11 environmental concerns, it passed unanimous. And
12 tonight we are here looking at some issues regarding
13 that.

14 And I also heard some of them say it was
15 about politics. I want to just say there's just a
16 little bit of both. I've been through the coal
17 industry up and down since I became a county
18 commissioner back in 1981 in Logan at the age of 29.
19 My dad worked 42 years underground. My brother worked
20 underground. I actually worked underground 11 years.
21 I have a passion for people that do this and mine
22 coal. I come from three of the counties I represent,
23 Mingo, Logan and Boone. For about a five or six-year
24 period when reduction levels were decent, we were

1 sending 170 million dollars a year in taxes to the
2 state coffers. I done the math. We were getting
3 about 11.4 back, with a pat on the back, thank you.
4 So it was apparent the rest of the state loved us at
5 that point in time. Now, we're getting to the point
6 on Monday morning, back in Mingo, Logan and Boone, men
7 and women your age group now waking up do we have a
8 job where we can feed and educate our kids. And you
9 talk about political. Go to Illinois and see if
10 they're having any trouble mining coal. Take a little
11 trip out to Wyoming out to the Power River Basin and
12 see if they're having any trouble mining coal. The
13 standards for the Appalachian region are completely
14 different. Everything is different when you mine coal
15 in our area. And by the estimation, they have
16 actually said we're going to shut you down. Now, the
17 sadness of that is this. We're going to have some
18 trouble by August and September if this heat keeps up.
19 And, my God, I made a statement I hope nobody dies.
20 They shut down four power plants and they've operated
21 at 85 to 100 percent efficiency. They're off the grid
22 now. They're going to make a mistake and we'll have
23 to come back and retrofit them and put them back
24 online until they choose to retrofit them and gas down

1 the road that would be something they would look at,
2 but I hope it's not at the expense of somebody dying
3 in a nursing home needing oxygen or dialysis or
4 something like that.

5 But how did we get to this point in
6 America? I've served on the Southern States Energy
7 Board since I've been in the senate. I've been to
8 Oklahoma, Alabama, Mississippi. It's a composite of
9 16 states in America, Puerto Rico and the Virgin
10 Islands. It's a known fact we're going to mine.
11 We're going to ask for 30 percent more use of fossil
12 fuels as coal -- known as coal, because of the ability
13 to mine cheaper, quality prices on your electricity.
14 The rest of the world says, look, we've tried it all.
15 We want coal. Germany's tried it all. They want
16 coal. But we're not going to send anything to them
17 because of the regulation aspects we have and
18 regarding the production levels and putting it on the
19 rail. I read a little message from CSX. They're
20 looking to lay off 600 people in a five-state area and
21 most of them are in the area where they transport
22 coal. That's four percent of the workforce.

23 Now, how can the rest of the world start
24 a global boom and we're sitting here and can't even

1 affordably get underground and mine the coal. It
2 doesn't make sense to me. Air quality standards, we
3 put 13 percent of the CO2 emissions from America that
4 goes up in the atmosphere. Challenged and contested
5 and I'm fine with that. I want a clean environment.
6 But 90 percent of it is force out there with no
7 restrictions whatsoever. And just a matter of days
8 it's overtop of us. When they had the Olympics, China
9 had to shut cars down so they could clean the air up
10 for the athletes to walk to the stadiums. But America
11 has got to where we've let outside forces of
12 environmentalists come in here. Most of these people
13 are not West Virginia people in the coal industry.
14 They aim and advertise for college kids to come and
15 join their efforts to rally and everything against
16 what you do.

17 This country was based on coal, steel,
18 manufacturing and housing and timbering. Why are we
19 not the strongest country in the world? We give up
20 being productive people in the workforce through
21 efforts and laws that they say are political,
22 absolutely.

23 Now, as long as I'm there, I want the
24 environment clean and safe. I worked underground.

1 There's a couple times I was lucky to get outside.
2 But I've never worked with a group of people any
3 better than coal people. They tell you the truth and
4 look you dead in the eye and work with like you're
5 family. I worked 60 and 70 hours a week. I seen my
6 guys on my shift more than I did my family. But tell
7 me how we could go -- right now, I believe the average
8 electrical power bill in America is \$272.00, \$280.00.
9 Cheapest in the world. They tried retrofitting gas.
10 It don't get hot enough. It's high. And the cost of
11 it is down. Now, I'd rather see it rise because both
12 -- I want both of them to survive. I don't think we
13 should have 100 percent dependency on coal. But this
14 country needs an energy bill. They need to know how
15 much we're going to produce to coincide with gas,
16 solar, use it all. But why are we so challenged only
17 in one area in America. We even put together a
18 resolution asking the people in DC to put us in
19 Atlanta EPA region. We don't need to be in
20 Philadelphia. I spoke in front of people in
21 Philadelphia and I thought I was talking to people
22 from Mars. They don't get what we're doing. It's not
23 fair. Am I an environmentalist, absolutely? I want
24 everything clean as it can be. But if we're going to

1 clean up the world, why don't they all meet and have
2 world standards, not just the Appalachian region
3 standards. We're the only ones that has these cement
4 standards. That's not fair to you, you and you. How
5 are you going to wake up and feed your family and do
6 what you've got to do? America needs to stand up and
7 tell these people in DC, we'll do it right, but let's
8 have everybody else do it right. That's all we ask
9 for, isn't it, a level playing field. And I'll tell
10 you one thing, the vote on the selenium bill is 130 to
11 11. With all the environmental people in the
12 legislature, they went ding, green. I'm just getting
13 started.

14 Thank you for the opportunity and I just
15 wish you the best of luck. I know you're in a
16 challenging effort, but as a guy that represents you
17 in Charleston, I'm proud to say that I stand up for
18 coal and doing it right. Thank you very much.

19 MR. GLANCE: Mike Carpenter is up now and
20 after Mike is Cody Cooper.

21 MR. CARPENTER: I want to thank you for
22 the opportunity to speak. My name is Mike Carpenter
23 and I work for Maxxim Shared Resources, an Alpha
24 subsidiary, Brooks Run North comprised of Nicholas,

1 Braxton, Webster, Kanawha County. I've got several
2 fellow employees in here. I'm proud of them for being
3 here and probably 20 or 30 and for every one of these
4 I know that are laid off. So I just want to say I
5 thank you for the opportunity to provide comments this
6 evening. I'm here to support the adoption of the new
7 water quality standards for selenium and aluminum in
8 the State of West Virginia. I'm a lifetime West
9 Virginian. I'm not from out of state. I didn't come
10 in here to try to tell you what to do. I care about
11 the water and the environment and have seen how overly
12 protective standards and effluent limits have been
13 used by the anti-mining groups to influence the
14 state's mining program and to repeatedly sue the
15 industry resulting in a permitting quagmire and the
16 requirement for the installation of costly treatment
17 systems that have little, if any, proven environmental
18 benefit. And that's selenium systems. We're building
19 them 3, 5, 6, 7 million dollars. It's a waste of
20 money when we could be using that for better
21 productivity and more equipment for people in our
22 mines.

23 Under selenium, the proposal is an
24 important first step toward restoring reasonableness

1 to West Virginia's water quality standards programs
2 and the legislature is to be complimented for directed
3 the West Virginia DEP to use the best available
4 scientific information to promote and update to its
5 outdated standard.

6 It has taken way too long to propose a
7 revised standard. Despite knowing the standard was
8 incorrect, the West Virginia Legislature had to
9 instruct the agency to undertake a rulemaking to fix
10 it.

11 The state and federal government has
12 known for 17 years that the current selenium criteria
13 is incorrect since selenium's impact on aquatic life
14 is not simply from presence in the water, but its
15 accumulation in fish, which can vary dramatically
16 based on many factors.

17 The proposed state standard adopts a fish
18 tissue measurement for selenium, consistent with US
19 EPA's recommendations for developing such standards.

20 The proposed selenium standard was
21 developed using EPA's approved methodology and using
22 data specific to the waters of West Virginia.

23 The proposed rule would revise only the
24 aquatic life use standards, currently 5 ug/L chronic

1 and 20 ug/L acute, with no proposed changed to the
2 human health standard or the FDA recommendation
3 maximum daily intake for humans.

4 A very similar standard was recently
5 proposed by Kentucky and approved by EPA. We're not
6 asking you to do something that other states haven't
7 done or that the EPA hasn't approved. You know, we're
8 not trying to back up on standards and I'm like
9 everybody else, I like to have clean water, I like to
10 have a clean environment. I've worked in the mining
11 industry for 39 years.

12 We feel the proposed standard is more
13 protective of the environment since it's based on the
14 actual science and is derived from the West Virginia-
15 specific data.

16 Touching on aluminum. Unlike West
17 Virginia, most other states realized that compliance
18 with an aluminum standard would be too difficult since
19 it is one of the most abundant elements in soil.

20 Most aluminum is found in streams is
21 harmlessly bound up in sediments. This is a natural
22 condition in West Virginia streams.

23 The natural background level of aluminum
24 in state streams is often higher than the current

1 water quality standard.

2 Aluminum is only an issue where water
3 hardness drops below certain levels since hardness
4 buffers the potential impacts of aluminum.

5 The state's proposed aluminum standard
6 would be hardness dependent, with applied safety
7 factors and caps on the amount of aluminum to better
8 reflect the current science.

9 Hardness based standards are a better way
10 to implement protective criteria for certain metals
11 like aluminum. West Virginia and the federal EPA have
12 developed several hardness-based criteria and
13 standards for other metals.

14 The proposal follows EPA's
15 recommendations for developing water quality standards
16 for metals. The proposed standard is actually more
17 protective than the current standard since it reflects
18 the true potential impact from aluminum that can occur
19 in water with low hardness.

20 Some mining discharges to low-hardness
21 streams could actually receive lower aluminum limits
22 under the new standard.

23 West Virginia's current overly protective
24 aluminum water quality standard leaves our state coal

1 industry at a competitive disadvantage. And you've
2 seen a lot of that lately regarding the stream and we
3 seem to be on the short end of the stick, I would say.

4 Again, thank you for allowing me to
5 comment here this evening. I also want you to know
6 that we support the technical comments provided by the
7 West Virginia Coal Association. God bless our miners
8 and God bless our great state.

9 MR. GLANCE: Cody Cooper is our last
10 speaker.

11 MR. COOPER: Hi. My name is Cody Cooper.
12 Yeah, I'm not good at public speaking or anything.
13 Yeah, I'm 25-years-old and I'm the future of the coal
14 industry. I've worked underground. I'm doing
15 environmental work right now and the guys I work with,
16 you know, we go out and we make sure everything to the
17 best of our ability is what it's supposed to be. And
18 I'm from here. I'm from like ten miles down the road
19 here and, you know, I hunt and fish. I don't want to
20 see anything, you know, destroyed or anything, so -- I
21 have a son. I have a daughter. I want them to, you
22 know, grow up and see what I have. But I believe the
23 limits, they're set -- the bar's set too high right
24 now. I think we need to -- especially when we get

1 limits, it's like 1/1000th's out and, you know, we
2 tried our best, the best we could do, but, you know,
3 we're going to try hard. Appreciate it.

4 MR. GLANCE: Is there anybody else who
5 want to speak? If not, this concludes the public
6 hearing on the Division of Water and Waste
7 Management's proposed revisions to Legislative Rule
8 47CSR2. The agency will accept written comments on
9 the proposed rule through 9:00 a.m. on July 31st.
10 Thank you all very much.

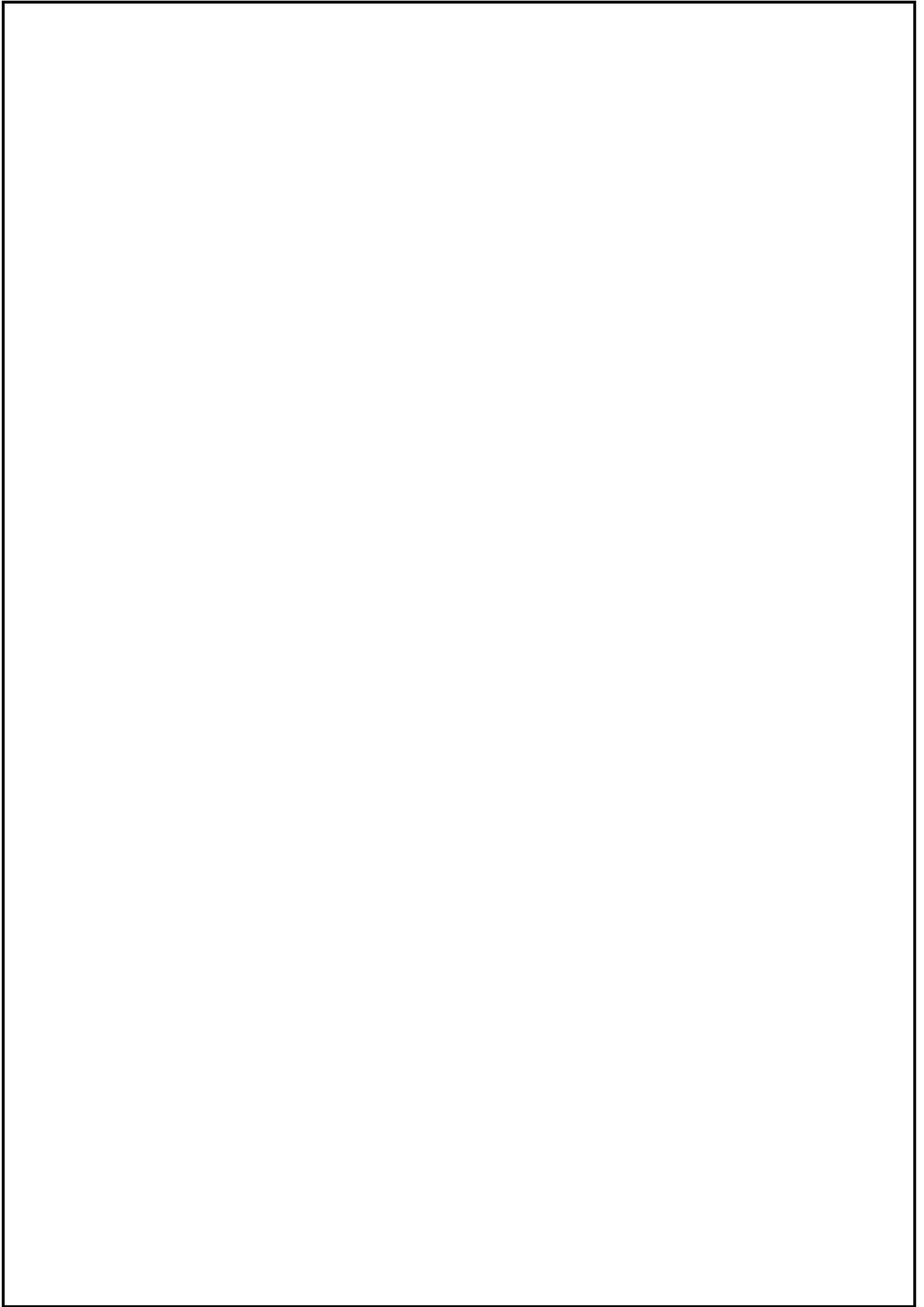
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(Concluded at 7:20 p.m.)

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REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Dena A. Belisle, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing **PUBLIC HEARING** duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof; the said witness having been duly sworn by me to testify the whole truth and nothing but the truth concerning the matter in controversy.

I do certify that the said deposition was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of the testimony given by said witness.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 28th day of
July, 2015.



Dena A. Belisle

Dena A. Belisle, CCR
Notary Public

My commission expires April 8, 2023.

Public Hearing Sign In Sheet
Water Quality Standards Public Hearing (Legislative Rule 47CSR2)
July 21, 2015 - 6:00 p.m. Charleston

①

The Department of Environmental Protection asks for the information below so that agency staff may provide responses and information about decisions to you. The information you voluntarily provide on this sheet becomes part of the public record related to this topic and may be released if requested under the Freedom of Information Act.

Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
✓ Delegate Rupert Phillips	PO Box 194 Lorado WV	House	687-9793	Rupert.Phillips@ wvhouse.gov	Yes
James D. Whitt	RT 1 Box 1168 Crum WV	Alpha NF	304-783-9578	—	NO
Terry Mahon	RT 1 Box 2842 Dinges		304-784-2340		NO
Corey Hoover	367 Town Mtn. Rd ^{Summersville} WV	Alpha	304-619-4303	—	NO
Mike Jenkins	301 Maple Lane Kingwood WV 26537	AQUAFIT	304-329-1056	mij@aquafit.com	NO
PATRICK MURPHY	PO Box 1064 Beckley 25802	MARCO	304-890-9902	murphy.marcoresources @gmail.com	No
Kerry Adams	90 Vermont Dr Summersville	Alpha			NO
Ker Ward Jr	1001 Virginia St Charleston WV	Gazette	304- 348-1700	ward@ wvgazette.com	NO
Garry Jewell	127 Leslie Pl. SCOTT DEPOT WV	ALPHA	304-687-6655		
Ron Adkins	1407 Logan, W. VA		304-239-2752		NO
Danny Bess	105 Scott Depot, WV Maplewood Est. 25800	NALCO	304-993-3191	dbess@nalco.com	NO
Brian Lively	465 Hunters Ridge Fayetteville WV 25840	NALCO	304-640-0305	blively@nalco.com	NO

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⑦

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Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
Tiff H/ku	202 Cowfield Cir Lewisburg	WOPEC	304-667-1952	wopec.es@verizon.net	No
Ron Lilly	PO Box 1298 Shady Spring, WV 25918	MALLARD ENV. Services	304-787-5550	rlammonia@yahoo.com	No
LESLIE LAVENDER	3340 WEST 5th Ave Belle WV 25015	Kearns	304-204-8363	leslie.lavendre@frontier.com	No
Steve Goddard	MAN WV	Alpha			NO
Brian Beesee	Chapmanville WV	Alpha			NO
Orville Clive	MAN WV	Alpha	304-752-5205		no
Ray Dougherty	Matewan WV	Alpha	304-784-9039		NO
Martin Lilly	Camp Creek, WV	Alpha	304-920-5148		NO
Matt Ellis	Wharnciffe, WV	Alpha	304-784-9049		No
Martin Christ	2031 Pleasant Valley Rd Fairmont	WVDEP	304-368-2000	Martin.J.Christ @wv.gov	No
Larry Stanley	PO Box 164 Grafton 26347	SAVE THE Tyrant	304-265-5719	Stanley Dew 70@gmail	yes
Mike Carpenter	1292 Webster Rd Webster Springs WV 26288	Alpha	304-872-5065		

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3

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Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
Linda Torre	4984 N-Washington ²⁵³¹³	Deolta Consulting	304 776 3333	Lindatorre@deoltaconsulting.com	No
Allyn Turner	707 Va. St. E.	Stephan Johnson	304 353 8167	allyn.turner@stephan-johnson.com	NR
Drew McAllister	300 Kunningg Right	ANR	304-369-8691	drewmcallister@alphar.com	W
Angie Rosser	3501 MacCorkle #129	WV Rivers Coalition	637-7201	arosse@wvrivers.org	YES
CINDY RANK	4401 Eden Rd Park Case	WV HC	304-924-5800	drank2@quest.com	Yes
Julie Aron	1500 Dixie Street Charleston, WV 25311	WVCAG/WVSCRO	304-346-5891	julie@wvscro.org	no
MIKE PUSHKIN	411 -B RANDALPH ST CHARLESTON, WV 25302		304-344-4339	pushkin.house@gmail.com	NO
LADO WILLIAMS	3751 Fall Hollow RD TUNNELTON, WV 26444	WVDEP	304-841-2454	laurance.B.Williams@wv.gov	NO
Shanel Turner	501 Lee St	JLC	304-534-501	shanel.judge@tly.com	No
Kenny Williams	40 Pine Ridge ^{Tornado} WV		304-644 4366	Kennedy.williams@col.com	NO

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4

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Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
Steve Phares	722 Bright Mt Rd Summersville	Alpha	(304) 239-9828	(304) 239-9828	NO
Scott Heflin	607 Holly Drive Summersville	ALPHA	304 765-4006	—	NO
Jason C. Miller	290 Rockland Hills Dr. 2000 Dunbar, WV	Rhino Energy	304-934-6570	—	No.
Bruce Chapman	P.O. Box 834 Astabula	Alpha	304-657-3652	—	no
Wayne Pennington	302 Pratt Avenue	ALPHA	304-207-1733		NO
Andy Henthorn	266 Molly Grove Rd	—	304-964-0361	—	NO
Jennie Henthorn	517 6th Avenue St Albans WV 25111	Henthorn Env	304-727-1445	jhenthorn@henthornenv.com	NO
Steve Hambleton	213 Jackson Ave Summersville WV 26051	Alpha	206 276 5795	—	NO
FRANK PATRICK					
LARRY DRA	104 WILKES AVE ELLENVILLE, WV	WVETU	304 965 7185	edhase@sullivaninc.net	YES
Connie Gratephens	PO Box 1007 Chas WV 25321	NEC	304 543 5811	conniegle@aol.com	yes

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Public Hearing Sign In Sheet
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Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
✓ Mike Becher	546 P.O. Box 507 Lewisburg	Appalachian		mbecher@opinion.com	Yes
✓ JASON BOSTIC	PO Box 5923 Charleston WV 25307	WVCOAC	304-347-4153	jbostic@wvcoal.com	Yes
✓ ROGER HORTON	P.O. Box 612 Hooten	CITIZENS FOR COAL	304-239-3780	ONEARMRIDER@ gmail.com	Yes
✓ Jay Keasley	2622 Racine Way Martinsburg, WV 25145	WV Coal	304-590-5941		Yes
Scott Hall	Yawkey WV	Alpha	304-369-7710	gshall@alphar.com	
Aven Sizemore	New Richmond WV	Alpha	304-898-2862	asizemore@alphar.com	
Owen Mulkeen	Kingwood, WV	FOL	304 329 3621	omulkeen@gmail.com	
✓ Amanda Pitar	"	FOL	304 329 3621	amanda@chest.org	Yes
Brent Coakley	Lincoln WV	Alpha	304 687 0944	bcoakley@alphar.com	
Kelli Sobonya	Beile WV	House of Delegates	304-340-3175		
Ken Marcum	Hum Creek, WV	Alpha	504-877-7017	Kmarcum@alphar.com	No
✓ Bill Price	Charleston WV	Sierra Club	304-389-8822	Bill.Price@sierraclub.org	Yes

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(8)

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Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
John Gilkeson	Naoma WV	Alpha Natural Resources	854-0721	JGilkeson@AlphaNR.com	No
David Aetry	Kingwood, WV	Friends of the Cheat	304 329 3621	david@cheat.org	No
KEVIN RYAN	KINGWOOD, WV	Friends of the Cheat	304 329 3621	Kevin@cheat.org	Yes
Blair M. Gardner	Charleston, WV	Jackson Kelly	304 340 1146	bgardner@jacksonkelly.com	No
GREG CARROLL	3501 BENEDICT RD, CULLODEN	WVEC	304 206 8849	GREG.CARROLL@Frontier.com	NO
Karen Tabor	3501 Benedict Rd, Culloden	WVEC	479-790-7213	ktteach123@yahoo.com	NO
MATTHEW VANCE		ALPHA NATURAL RESOURCES	304-849-3730	mvance@alphannr.com	NO
David McGraw	4101 slate drive Scarbro, WV 25917	Alpha	304-595-1870	dmcgraw@alphannr.com	No
Coek McGraw	4101 SLATE DRIVE SCARBRO 25917	Alpha	304-595-1870	cmcgraw@alphannr.com	no
ART Kirkendall	Chapmanville	ST. SENATE	304-855-7418		Yes