

Public Hearing for WVDEP Proposed Interpretive Rule
Rule 60CSR9

Date: Wednesday, July 28, 2021

Time: 6:00PM

Location: Zoom (<https://us02web.zoom.us/j/85898733914>)

Attendees

Name	Organization (if applicable)
Erin Brittain	WVDEP – Office of Environmental Remediation
Ross Brittain	WVDEP – Office of Environmental Remediation
Terry Fletcher	WVDEP – Public Information Office
Casey Korbini	WVDEP – Office of Environmental Remediation
Angie Rosser	WV Rivers Coalition

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: PROPOSED INTERPRETIVE RULE FOR 2021 RULE 60CSR9

PUBLIC HEARING

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BEFORE: Terry Fletcher, Chair

Erin Brittain

Ross Brittain

Casey Korbini

HEARING: Wednesday, July 28, 2021

6:00 p.m.

LOCATION: Zoom (<https://us02web.zoom.us/j/85898733914>)

PROCEEDINGS

CHAIR: Good evening everyone. My name is Terry Fletcher. I'm with the West Virginia Department of Environmental Protection's Public Information Office.

Welcome to the DEP's virtual public hearing on the Office of Environmental Remediation's interpretive rule 60CSR9 – the Voluntary Remediation and Redevelopment De Minimis Standards.

The Voluntary Remediation and Redevelopment Act established the West Virginia Voluntary Remediation Program, which applies De Minimis Standards during voluntary remediation activities and brownfield revitalization. De Minimis Standards are contaminant levels that pose no substantial risk to human health based on the current or reasonably anticipated future land and groundwater use for either residential or industrial purposes. The Voluntary Remediation and Redevelopment Rule (60CSR3 § 9.2.d) outlines the method for calculating De Minimis Standards, which are to be reviewed annually and updated as necessary to reflect current toxicity information, chemical-specific data, and exposure parameters.

The version of the rule is available in its entirety on the Secretary of State's website, and I can send that link if requested to anyone who needs it.

The purpose for tonight's hearing is to take additional comments on this interpretive rule, not to engage the DEP in open debate or for the agency to answer questions.

A decision will not be made this evening. The DEP will review all submitted comments and issue a response-to-comments document with the agency's final determination.

The hearing tonight is being recorded, and all comments given tonight will be made part of the official record.

In order to have an accurate record of attendees, we ask that you please enter your first and last name, as well as any groups you are affiliated with, and your email address into the meeting chat. The email address you include will be how you receive the agency's final determination. The meeting chat will also be part of the official record.

The comment period will end at the conclusion of tonight's hearing. Written comments can be submitted via email to DEP.Comments@wv.gov.

Each commenter will be given five minutes to speak. If time allows, we will circle back to allow for additional comments. If you wish to speak, we ask that you please use the raise hand function. I will call on speakers as they appear on my screen. If you are joining us by phone, you can dial *9 to raise your hand and *6 to mute/unmute.

We ask that you please clearly state your name and if you represent any groups or organizations and stay muted unless you have been called upon to give your comments. We also ask that you stay on topic and be respectful – foul language, personal attacks, or insults will not be tolerated. So with that being said, we will move on to any commenters we have. Angie Rosser, you have the floor.

MS. ROSSER: Thanks, Terry. Once again, thank you for holding the hearing in a virtual format. I know you have been doing a string of these and have once again proven that this agency is a model at facilitating these hearings in a way that is accessible to the public.

So my comments tonight are going to be brief, and I'm mainly going to comment on the process that is proposed by this interpretive rule more than the substantive changes. We support the fact that this rule promotes an annual review of the de minimis standards, taking into account the most recent data and applying the best science and adopting updates in a timely manner that applies the best science to adequately protect environmental and health.

I did read through the technical document that was attached to the rule, and it gave me reassurance that this process would be transparent and explain the rationale and basis for changes to the De Minimis Standards. In working with the agency, I've really grown an appreciation for the expertise that Ross Brittain brings as an environmental toxicologist. His expertise—and thus the agency's expertise—is something that the public relies on to again do a thorough of the science and qualified by that review of changes as the data and science dictates.

So, I guess I would just close by saying that I hope the agency, even after people assets like Ross Brittain move on to the next chapter/move on from the agency, is investing in having the resources and hiring environmental toxicologists that bring the expertise that is required to do this really kind of technical analysis. So, again, thanks for the opportunity to be with you tonight. I didn't want you to feel lonely, so glad I showed up. But maybe we can keep this short and sweet tonight. Thanks, Terry.

CHAIR: Thank you, Angie. Appreciate that.

MR. BRITAIN: Yes, thanks, Angie.

CHAIR: It doesn't look like we have any additional commenters. Angie, if you want to circle back for any additional comments, now is the opportunity for that.

MS. ROSSER: Yes, I would like Ross to go line-by-line through all the changes. No, no. Just kidding.

MR. BRITAIN: Oh, I can if you want me to.

MS. ROSSER: I know you can. I know you can. That, again, I'll just reinforce my comment that the public really entrusts the agency to have the in-house expertise and the capacity to do that kind of analysis.

MR. BRITTAIN: And we appreciate the comment. That's actually one of the reasons we decided to codify the process in the rule. So that when I eventually do move on, for whatever reason (probably retirement), that whoever takes my place understands that this is the process the public has come to know and to trust.

MS. ROSSER: Very good. I'm glad you set the bar, Ross.

CHAIR: Ok. Well, with there being no more commenters, this will conclude the DEP's virtual public hearing on interpretive rule 60CSR9 – "Voluntary Remediation and Redevelopment De Minimis Standards". Again, a copy of the proposed rule is available on the Secretary of State's website and available upon request. Again, we ask that you please remember to include your first and last name, affiliation, and email address in the meeting chat so that we have an accurate count of attendees and so that you can receive the agency's final determination.

The comment period is now closed. We thank you for your interest and for taking the time to attend this hearing. Please stay safe and have a good evening.

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HEARING CONCLUDED AT 6:13 P.M.

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60CSR9
VOLUNTARY REMEDIATION AND REDEVELOPMENT DE MINIMIS STANDARDS
RESPONSE TO COMMENTS

The WV Department of Environmental Protection (WVDEP), Office of Environmental Remediation (OER) commenced the public comment period for proposed interpretive rule 60CSR9 on June 28, 2021. The public comment period concluded on July 28, 2021, after satisfying the minimum 30-day period. On July 28, 2021, at 6PM, a public hearing was held virtually. Members of the public were invited to participate online (<https://us02web.zoom.us/j/85898733914>) or via telephone (929-205-6099) to provide oral comments regarding the proposed revisions to legislative rule 60CSR9.

No written comments were received regarding proposed revisions to rule 60CSR9, and one (1) attendee present at the public hearing provided verbal comments. A summary of the comment is provided below, along with the agency's response. The full comment can be found within the public hearing transcript, also part of the formal rulemaking record.

No changes were made to the rule as a result of the comment received.

COMMENT (Angie Rosser, WV Rivers Coalition):

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I did read through the technical document that was attached to the rule, and it gave me reassurance that this process would be transparent and explain the rationale and basis for changes to the De Minimis Standards. In working with the agency, I've really grown an appreciation for the expertise that Ross Brittain brings as an environmental toxicologist. His expertise—and thus the agency's expertise—is something that the public relies on to again do a thorough of the science and qualified by that review of changes as the data and science dictates. So, I guess I would just close by saying that I hope the agency, even after people assets like Ross Brittain move on to the next chapter/move on from the agency, is investing in having the resources and hiring environmental toxicologists that bring the expertise that is required to do this really kind of technical analysis.

RESPONSE:

WVDEP-OER appreciates these comments.