

STATE OF WEST VIRGINIA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: PROPOSED CHANGES TO LEGISLATIVE RULE 47 CSR 2,  
REQUIREMENTS GOVERNING WATER QUALITY STANDARDS

\* \* \* \* \*

BEFORE: TERRY FLETCHER, Chair

HEARING: Monday, July 19, 2021  
6:07 p.m.

LOCATION: Via Zoom

Reporter: Jennifer Wilson

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NONE OFFERED

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CHAIR: All right.

Good evening, everyone. My name is Terry Fletcher.

I'm the communications director here at the West Virginia Department of Environmental Protection. I want to welcome everyone to the virtual public hearing this evening on the proposed changes to Legislative Rule 47 CSR 2, requirements governing water quality standards.

The amendments to 47 CSR 2 include revisions to human health criteria in Appendix E, Subsections 8.23 and 8.25, recommended by the Human Health Criteria Work Group, which is comprised of DEP employees and members of the Environmental Protection Advisory Council. The proposed revisions included updating 35 of West Virginia's criteria for the protection of human health to match the US EPA's 2015 updates and nationally recommended criteria.

The proposed rule also includes the addition of paragraph 8.2.C, which would add a provision to 47 CSR 2 for the evaluation of factors related to human health criteria on a case-by-case basis as part of the EPDES permitting process.

1           Additionally, DEP is proposing to revise  
2 Subsection 8.29.2 of this rule regarding temperature  
3 limits for the E2, aquatic life use designation for East  
4 River, Greenbrier River, and Summersville Lake and its  
5 tailwaters, which exhibit higher natural temperatures  
6 than typically expected of trout water streams.

7           To read this rule in entirety, you can go  
8 to the state website. It's available there, and I can  
9 add that link to any chat once I finish up my comments  
10 here.

11           The purpose for tonight's hearing is to  
12 take additional comments on this proposed rule, not to  
13 engage the DEP in open debate or for the agency to answer  
14 questions. The decision will not be made this evening.  
15 The DEP will review all comments and issue a response to  
16 comments document with the Agency's final determination.

17           A court reporter is in attendance and all  
18 comments given tonight will be made part of the official  
19 record. In order to have an accurate record of  
20 attendees, we ask that you enter your first and last name  
21 as well as any groups who you're affiliated with or  
22 representing and your email address. The email address  
23 you include will have to be how you receive agency's  
24 final determination. And similar to an in-person

1 hearing, which have sign-in sheets and the like - the  
2 meeting chat will also be part of the record and that can  
3 be released via the Freedom for Information Act.

4           The comment period for this proposed rule  
5 will end at the conclusion of tonight's hearing, and  
6 written comments can be submitted via email to  
7 WQScomments@WV.gov. And I can also include that link in  
8 the meeting chat room.

9           Each commenter will be given five minutes  
10 to speak. If time allows, we will circle back to allow  
11 for additional comments. If you wish to speak, we ask  
12 that you please use the raise hand function, and I will  
13 call on speakers as they appear on my screen. If you are  
14 joining us by phone using dial-in, you can press star  
15 nine to raise your hand and star six to meet -. We ask,  
16 again, that you please clearly state your name and any  
17 groups or organizations you represent. We ask that  
18 everyone please stay muted unless you've been called on  
19 to give your comments and to please stay on top, we can  
20 be respectful. Foul language, personal attacks or  
21 insults will not be tolerated.

22           So with that being said, I'm going to move  
23 to the comment portion. So if you would like to make a  
24 comment, I ask that you please raise your hand now. And

1 as I mentioned, I'm going to call on folks as they appear  
2 on my screen. I will call the first person up and then  
3 announce who is on deck so that person can get their  
4 comments prepared. So I'll give you a few minutes until  
5 everyone can kind of get their names and everything added  
6 and to raise their hands and we'll begin taking comments  
7 then.

8 ---  
9 (WHEREUPON, THERE WAS A BRIEF INTERRUPTION IN THE  
10 PROCEEDINGS.)

11 ---  
12 CHAIR: Ms. Rivard, I have you down.  
13 You don't have to keep your hand raised. I'll have you -  
14 I'll get to you. Thank you.

15 Okay. We're going to go with Autumn  
16 Crowe first followed by Eileen Curtman. So Autumn, if  
17 you would like to begin your comments.

18 MS. CROWE: Yes. Can you hear me?

19 CHAIR: Yes.

20 MS. CROWE: Okay.

21 Good evening and thank you for the  
22 opportunity to comment on the proposed revision to our  
23 water quality standards. I'm a past scientist for West  
24 Virginia Rivers Coalition. Tonight I'm speaking to you

1 as a mom. You might hear a little background music -  
2 background noise. I'm a full-time working mom who, like  
3 so many parents of young children, I'm so tired. I'm  
4 tired of having to worry about my son's health every time  
5 he swims in the river or drinks water from a mud puddle  
6 or a hose or a faucet.

7           It's the DEP's job to ensure that our  
8 water is safe to swim in, that it's safe to drink, and  
9 that the fish in our rivers are safe to eat. But now I'm  
10 questioning DEP's intentions with this rule. The changes  
11 to this rule don't ensure that my son can safely play in  
12 our rivers. This rule gives industry the ability to make  
13 changes to the human health criteria and our water  
14 quality standards for some of the most toxic pollutants  
15 known to man without going through the proper procedures  
16 that requires transparency to the public, legislative  
17 approval and EPA approval.

18           Instead, industries will be able to  
19 conduct studies, expensive studies, that the average  
20 person wouldn't be able to afford. And if the results of  
21 those scientific studies show that the fish in the river  
22 have less toxins built up in their tissues than EPA  
23 estimated, the industry will be able to discharge  
24 pollutant, toxins, and carcinogens.

1           This is a horrible idea, sets really  
2 bad precedent, and is just plain bad policy. So here's  
3 the thing that worries me as a mother. The calculations  
4 for the criteria are based upon a life-time exposure to  
5 these chemicals with an average body weight for an adult  
6 of 80 kilograms or approximately 176 pounds. But I only  
7 weigh about 130 pounds, so does that mean I could be at  
8 higher risk? And my toddler is 30 pounds. So his little  
9 body is not going to be able to metabolize these  
10 chemicals the same as a 176-pound adult.

11           So industry can spend hundreds of  
12 thousands of dollars to hire a scientist to determine  
13 that our rivers can handle more toxins. And this change  
14 could occur through the permitting process where we only  
15 have 45 days to comment instead of the year-long process  
16 that requires legislative and EPA approval.

17           So guess what. I don't have the time  
18 or the resources as a full-time working mom to pay  
19 attention to and comment on every permit for industries  
20 to be given a health criteria. And I don't have the  
21 money or resources to fund a counter study to show that  
22 my little boy has a higher risk of getting cancer if  
23 exposed to the amount of carcinogens.

24           West Virginia has the third highest

1 cancer death rate in the nation. And I bet that there's  
2 not one person on here tonight that doesn't know someone  
3 who is battling cancer. One of my friend's little boys  
4 is fighting cancer right now and it's heartbreaking.

5                   It's only going to get worse if this  
6 bill is approved. We made our DEP to help protect  
7 health, not allow industry to take shortcuts through the  
8 permitting process to poison more West Virginians. I  
9 oppose this rule change and request that DEP strike  
10 paragraph 82C from the rule. And shame on DEP for  
11 putting industries' bottom dollar ahead of West  
12 Virginians. Thank you.

13                   CHAIR: Thank you.

14                   Next we have Aileen Curtman followed by  
15 Betty Rivard.

16                   Ms. Curtman?

17                   MS. CURTMAN: I am a resident of  
18 Berkeley County. I urge the West Virginia DEP to reject  
19 the current revisions to the West Virginia Water Quality  
20 Standard 47CSR2. The new revision of West Virginia's  
21 Water Quality Standards contains one revision that the  
22 chemical industry requests, and that revision allows  
23 exceptions to the standards if a manufacturer can provide  
24 results from a study that indicates that exceeding the

1 standard will not cause harm.

2 Who is going to fund that study?

3 Probably the manufacturer. It is almost certain that  
4 bias, either conscious or unconscious, will find its way  
5 into the study's design and affect the results. That is  
6 a well-known phenomenon. It's rooted in the nature of  
7 the human mind and it's happened in many other  
8 industries.

9 This revision would put residents who  
10 need clean water in the position of having to mount a  
11 legal case and challenge the study's findings with  
12 results of their own study. It's unrealistic to believe  
13 that West Virginia's people have that kind of deep  
14 pockets like those that are available to the chemical  
15 manufacturers. We, the people, are at a distinct  
16 disadvantage here.

17 After I pay my bills, I certainly don't  
18 have thousands of dollars to donate toward a scientific  
19 study over quality of the water that my community depends  
20 on. And I say this as I sit in a comfortable home in an  
21 affluent county. There are many people in this state who  
22 don't even have the resources to find out about what's  
23 happening with their drinking water.

24 This provision will hit the elderly,

1 those burdened with multiple jobs, and those with  
2 low-income the hardest, while profitable corporations get  
3 what they want and continue to pour toxins into the  
4 drinking water. That is patently unfair.

5           The last set of proposed standards that  
6 we looked at already had several criteria that were  
7 weaker than previously, and now this one culled for  
8 manufacturers is absolutely unacceptable.

9           I see the West Virginia's DEP's mission  
10 statement has changed since I have looked it up a couple  
11 of years ago. When I looked up the old mission statement  
12 today to make sure I have the wording right, I got a  
13 horror of horror, not found message. The encouraging  
14 words about protecting the environment and serving the  
15 people, those have vanished. The website now says the  
16 West Virginia DEP's mission is to promote a healthy  
17 environment.

18           By allowing this loophole, the DEP is  
19 failing to fulfill even that pitifully, watered-down  
20 mission. The West Virginia DEP must not adopt the  
21 current revision of West Virginia's Water Quality  
22 Standards. Thank you.

23           CHAIR: Thank you, Ms. Curtman.

24           Next we have Betty Rivard followed by

1 Jim Kotcon.

2 Ms. Rivard?

3 MS. RIVARD: Thank you for the  
4 opportunity to participate. This is a very generous time  
5 of five minutes compared to the usual legislative public  
6 hearing of one to two minutes. But I won't use all that  
7 time.

8 I'm representing the Charleston NAACP  
9 Environmental Justice and Climate Change Committee. I  
10 want to make three points and then give a little bit of  
11 background and make a final statement.

12 One, I request that you keep paragraph  
13 8.2.c the way it is now. You said that it adds  
14 case-by-case review, but of course, it takes away  
15 rule-making review. And that's a big deal.

16 Number two, we need public  
17 participation through the legislative rule-making review  
18 process.

19 Three, I disagree with the lack of a  
20 physical amount. Degrading our water quality costs money  
21 in healthcare. It affects tourism and the outdoor  
22 recreation industry which, at one point, recently brought  
23 in more money than oil and gas into our economy.

24 As background, I've been around the

1 legislature for 30 years, including virtually here in the  
2 last session. I worked as staff for three years to the  
3 House Co-Chair of Rule-Making Review, and it gave me a  
4 chance to see up close through her office. I wasn't in  
5 the actual meetings, but through her office what a  
6 helpful process that can be. And I've also filed through  
7 it when I worked for DHHR.

8 I've watched industry come in year  
9 after year to try to reduce regulations. I've seen zero  
10 regard for the people of our state or for those who visit  
11 here. I cannot trust them. I don't think they can make  
12 the kind of decisions that we need. This rule is - the  
13 proposed rule is not the best interests of our citizens,  
14 our land, our economy, or our state.

15 And I just want to apologize. I'm  
16 going to have to leave at 6:30 for another Zoom meeting,  
17 and I wanted to add that I share the concerns of West  
18 Virginia Rivers Coalition, the Environmental Council, and  
19 other allied advocates. Thank you for the opportunity to  
20 comment, and I also submitted a written comment earlier.

21 CHAIR: Thank you.

22 Next, we have Jim Kotcon followed by  
23 Christine Wimer.

24 Mr. Kotcon.

1                   MR. KOTCON: My name is Jim Kotcon. I  
2 am the Chair of the Conservation Committee for the West  
3 Virginia Chapter of the Sierra Club.

4                   I am speaking specifically tonight  
5 about Section 8.2.c, which is a blatantly unfair  
6 provision for the public. It creates some major  
7 environmental justice issues that has conquered through  
8 EPA guidance. It denies the right and access to informed  
9 comments by the public because it makes most of the  
10 science the province of the regulated entity proposing  
11 the change. That regulated entity may have years to  
12 prepare their studies. They'll have lawyers and  
13 technical experts, and the public would only have 30 days  
14 to respond to that proposal. It is manifestly unfair.  
15 It is an unbalanced advantage for the pollutants.

16                   The real winners for this proposed  
17 change will be our mega corporations that can afford the  
18 years of studies the technical experts and the lawyers  
19 prepare their proposed revised water quality standard as  
20 part of that permitting process. Small mom-and-pop  
21 businesses, local West Virginia businesses will be placed  
22 at an unfair competitive disadvantage because they will  
23 not have the resources to propose these kinds of water  
24 quality standard revisions.

1                   West Virginia DEP will create a  
2 tremendous workload for itself in evaluating these  
3 proposed case-by-case water quality standards. Citizens  
4 will have no benefit and the environment will have no  
5 benefit.

6                   If DEP insists on keeping this type of  
7 a provision for case-by-case water quality standards,  
8 they must include language requiring that any regulating  
9 entity seeking a revision of a water quality standard  
10 through the NPDES permitting process is required to fund  
11 a community efficacy group chosen by the community and  
12 able to fund their own experts and lawyers with enough  
13 time to conduct their own studies to rebut the regulating  
14 entity's proposed standard and to propose a more  
15 stringent standard, whatever their data justifies them.

16                   If, in fact, and I would estimate that  
17 such a fund would require something in the range of  
18 \$100,000 to a million dollars, depending on the quality  
19 of that, if, in fact, the regulating entity can  
20 demonstrate and the community has a chance to clearly  
21 rebut that proposed standard, that might be considered  
22 valid. But that is a cost of the regulating entity.

23                   We, the citizens, should not have to  
24 bear that cost. Local businesses should not have to

1 compete with that type of an activity, and DEP should not  
2 and must not bear the administrative burden within their  
3 limited funds of trying to analyze water quality  
4 standards on a case-by-case basis. Thank you.

5 CHAIR: Thank you.

6 Next we have Christine Wimer followed  
7 by Hannah King.

8 Christine Wimer?

9 MS. WIMER: Thank you.

10 Christine Wimer, Jefferson County  
11 Foundation. Thank you for having us this evening and  
12 thank you for the generous time allotment.

13 I strongly encourage the West Virginia  
14 DEP to strike paragraph 8.2.c from the rule. In West  
15 Virginia, we must start to recognize human health as a  
16 resource that is critical to the long-term success of our  
17 state economy and our state as a whole. We need to stop  
18 choosing economic winners and losers by allowing large  
19 corporations to abide by one set of rules while requiring  
20 small businesses to abide by another set of rules.

21 Paragraph 8.2.c does just this, as well  
22 as disadvantaging - as well as advantaging large  
23 corporations over the general public and those whose  
24 businesses depend on water quality.

1           The environmental impacts of many of  
2 these large corporations leads to negative health impacts  
3 on workers and the general population. This is, in  
4 effect, a subsidy of the large corporations as the  
5 government must take on the responsibility of serving a  
6 tax base that has found - sorry. Serving an increasingly  
7 sicker, more disabled, less independent, less productive,  
8 less prolific tax base that has found itself in this  
9 state largely through no fault of their own due to the  
10 health effects of the government-sanctioned environmental  
11 degradation through and by loopholes for large  
12 corporations, such as this.

13           This subsidy for larger corporations  
14 perpetuates the dichotomy of winners and losers in our  
15 economy. We must start to level the playing field, stop  
16 picking winners and losers, stop the corporate subsidies,  
17 and start prioritizing human health and the environment  
18 for the long-term health and sustainability of our  
19 economy, our people, and our state. Please strike  
20 paragraph 8.2.c. Thank you.

21           CHAIR: Thank you.

22           Next we have Hannah King, followed by  
23 Madison Ball.

24           Hannah?

1                   MS. KING: Hi. Thank you for this  
2 opportunity to speak tonight on this issue. My name is  
3 Hannah King, and I am here on behalf of West Virginia  
4 Environmental Council to speak in support of West  
5 Virginia DEP adopting the rest of the EPA-recommended  
6 human health criteria updates, but a strong opposition of  
7 the language of a possible loophole for corporations to  
8 weaken our water quality standards. This loophole allows  
9 for industries to further pollute our waters by allowing  
10 them to conduct their own studies and apply for permits,  
11 which bypasses the normal process of revising water  
12 quality standards here in the State of West Virginia.

13                   This gives a disadvantage to smaller  
14 businesses as they are less likely to afford these  
15 expensive studies, as well as the residents in these  
16 heavy industrialized areas who face further pollution.  
17 Allowing this shortcut language will reduce public input  
18 and awareness and give yet another handout to large  
19 industries instead of holding them accountable for their  
20 actions and communions.

21                   With the third highest cancer death  
22 rate in the country, we should keep our human health  
23 criteria as stringent as possible and not allow shortcuts  
24 for industries to further pollute our waters and our

1 people. Please strike paragraph 8.2.c from the rule to  
2 keep our rivers and people safe.

3 Thanks for your time and consideration.

4 CHAIR: Thank you.

5 Next we have Madison Ball.

6 Madison.

7 MS. BALL: Thank you.

8 I just wanted to, again, say thank you  
9 for holding this public hearing. I wanted to echo the  
10 comments made by West Virginia Rivers both as the  
11 restoration program manager for Friends of the Cheat and  
12 as a West Virginia citizen.

13 Friends of the Cheat has been working  
14 for over 25 years to restore the Cheat River watershed  
15 from acid mine drainage, and we've had great success.  
16 And it's extremely concerning to think that perhaps this  
17 success could be then undone with a loophole such as that  
18 described in paragraph 8.2.c.

19 Additionally, we host many outdoor  
20 educational events and activities, such as community  
21 paddling events and snorkeling events that revolve around  
22 river use and outreach. And a lot of these events, we  
23 highlight our clean streams and rivers. And the thought  
24 that that can be jeopardized is concerning to us. And we

1 would like to see paragraph 8.2.c striked from the  
2 proposal. Thank you.

3 CHAIR: Thank you.

4 Next we have Angie Rosser followed by  
5 Linda Frame.

6 Angie.

7 MS. ROSSER: There we go. This is  
8 Angie Rosser. I'm the executive director for the West  
9 Virginia Rivers Coalition, and today we submitted our  
10 technical written comments that I'd just like to  
11 summarize a few points.

12 One - one point that hasn't been  
13 brought up yet is that yes, we're glad to see the DEP  
14 finally move on updating the criteria to comport with  
15 EPA's current recommendation on the standards that West  
16 Virginia currently - for the chemicals that West Virginia  
17 currently has standards for.

18 However, there are approximately 35  
19 chemicals included in EPA's 2015 recommendations that  
20 West Virginia simply doesn't even regulate. We do not  
21 have standards for them. So it is past time for DEP to  
22 give serious consideration to these chemicals that we  
23 know are harmful to human health, that EPA has  
24 established recommended criteria for. Yet, West Virginia

1 has not made any effort to consider or adopt those. So  
2 we urge DEP to revise this rule and include those  
3 additional 35 criteria that West Virginia needs to  
4 regulate. Our surrounding states are regulating these  
5 chemicals. So again, we see a case of West Virginia  
6 lagging behind and putting West Virginia residents  
7 undeservedly at more of a public health risk than our  
8 neighboring states.

9                   And I'll just restate a few things  
10 related to paragraph 8.2.c, which we also adamantly  
11 oppose as a new work around for that benefit industry and  
12 puts the public at a severe disadvantage. It moves us in  
13 the complete wrong direction in terms of increasing  
14 public input and participation and transparency. It  
15 eliminates legislative review, which is another means of  
16 public transparency and participation. And as others  
17 have said, it disadvantages the public. It creates a yet  
18 more unlevel playing field when those larger  
19 corporations, who can afford the studies to make their  
20 case, are the winners and we, the public, who would bear  
21 the impact of these moving standards do not have the  
22 resources at our disposal to be able to do our own  
23 studies to refute this, especially on the expedited  
24 timeline that this revision proposes. There are 45 days

1 for the public to scrutinize and respond to what the  
2 industry's petitioning for.

3           And that paragraph is very vague and  
4 unclear about the petition process, what is the standard,  
5 what is the threshold, who decides. Does DEP have even  
6 the resources to be able to provide adequate scrutiny and  
7 scientific review of these types of petitions? No. In  
8 many ways, the DEP is already fairly under-resourced.

9           And as has been said, we are very  
10 concerned about exacerbating environmental justice issues  
11 in the state, that these petitions will likely come from  
12 corporations already located in highly industrialized  
13 parts of the state, which are already disadvantaged,  
14 already facing economic health through multiple forms of  
15 marginally - marginalization and challenges.

16           So this moves the state in the wrong  
17 direction. And just to wrap this up, we've also put in  
18 our comments why we think 8.2.c is unlawful, why it's  
19 unfair, unbalanced, and it's unneeded. There is already  
20 a process that promotes more transparency and public  
21 input to revise water quality standards. We have many,  
22 many ways that industry gets breaks, whether it's through  
23 variances, compliance schedules, mixing zones. This is  
24 just another example how the state agency is bending over

1 backwards to benefit industry and giving them a break  
2 while public health takes a back seat.

3 Thanks for your consideration.

4 CHAIR: Thank you, Angie.

5 Next we have Linda Frame.

6 Linda.

7 MS. FRAME: Hi. Can you hear me okay?

8 CHAIR: Yes.

9 MS. FRAME: Thank you.

10 My name's Linda Frame. I am president  
11 of the West Virginia Environmental Council, and I would  
12 like to thank the DEP and all those in attendance today  
13 for speaking out on this important issue and providing  
14 this platform for us.

15 Hannah King is our outreach coordinator  
16 and she spoke on behalf of the Environmental Council.  
17 And I would just like to say that we have signed on to  
18 the letter being delivered by West Virginia Rivers  
19 Coalition and we strongly support their comments.

20 But I did want to just take a moment.  
21 I wasn't going to speak, but I was inspired by the first  
22 speaker, Autumn Crowe, who is a full-time working mom  
23 with a toddler and concern about her son's health. So  
24 I'm going to take off my environmental council hat for a

1 moment and put on my mom hat.

2                   On the other end of the spectrum, I  
3 have two boys who used to be toddlers 20-some years ago.  
4 And I worked to protect the environment back then and I'm  
5 back at it now. They have grown and they've left the  
6 state. They've watched what's happened here for the last  
7 20 years. They've watched the battles that we've gone  
8 through and really, I sort of feel like a déjà vu all  
9 over again.

10                   Some of the same folks that have been  
11 fighting this issue for all these years are back here  
12 asking again for the DEP to do its job. I really ran out  
13 of reasons to tell my two sons to stay. You know, you  
14 really don't want your children to stay in a place that's  
15 got the third highest cancer death rate in the nation.  
16 You really don't want your children to stay in a place  
17 that's that dangerous. And when there's an agency and  
18 the political world, they really don't seem to care that  
19 much about the people and puts industry first.

20                   It's hard to get young people to stay.  
21 Imagine how difficult it is to convince young people to  
22 come here. So I just want to ask the DEP to please let's  
23 not do this all over again.

24                   Not everybody has the means to move

1 away. Some of the folks most affected by increased  
2 toxins are going to be people that can't leave. So  
3 please, put people first. Put people ahead of industry  
4 and help provide young people a reason to stay instead of  
5 another reason to leave.

6 Thank you very much.

7 CHAIR: Thank you.

8 Next I'm seeing a --- it says Warren's  
9 Mini. I'm not sure who that might be. We can circle  
10 back.

11 Next I have A Duane Nichols.

12 MR. NICHOLS: Thank you. Can you hear  
13 me okay?

14 CHAIR: Yes, sir.

15 MR. NICHOLS: I appreciate the service  
16 that many have given to the West Virginia DEP over the  
17 past years. I particularly want to acknowledge I'm aware  
18 of the hard work of Scott Van Rover and the hard work of  
19 Ed McGuire and many others.

20 But there is a crying need for  
21 environmental education in our state. There's a crying  
22 need for the DEP to bring forward programs to familiarize  
23 the public with chemical substance abuses and the  
24 aspects, characteristics of those that can impact the

1 environment and impact public interest. This is a crying  
2 need.

3 I was shocked to learn just this past  
4 week that PFF substances, perfluoroalkyl substances, has  
5 been used in fracking operations. Obviously, that is  
6 something that the public interest could never approve.

7 So if our DEP is not aware of this, if  
8 they're not investigating it fully, if they're not  
9 attempting to rid this out, prevent it, mitigate it,  
10 whatever's required, then this would be a serious  
11 omission.

12 On behalf of the Monongahela Area  
13 Watershed Compact, I've worked to bring forward concerns  
14 for the Monongahela River. Just now the TDS level is  
15 above 400, and this is not a violation of federal code,  
16 but it is a warning that we have reached the level of  
17 concern that is not new, but is something that we cannot  
18 sustain because it means that in the future that there  
19 can easily be occurrences that bring us to critical  
20 levels beyond the 500 for the total dissolved solids.

21 We know, for example, that the mine  
22 water accumulating in the mines has continued to flow.  
23 Even when it's treated, there still is effluent that  
24 brings TDS levels up in the stream. We know that mining

1 operations up at the Tiger River watershed are continuous  
2 to bring increased levels of TDS in our streams.

3 I'm particularly concerned about the  
4 manner in which frack water residues are being disposed  
5 of. If you take, for example, down in Tyler County, the  
6 Middle Island Creek is flowing from West Union down to  
7 Middlebourne on down to St. Mary's. And there is a  
8 disposal site almost within earshot of Middlebourne of  
9 where the fracking companies continue to pool the  
10 wastewater. And this is going to be a problem for years  
11 to come when we accumulate these toxic wastes.

12 So these are examples of the reasons  
13 why we need to have strong environmental alerts,  
14 regulations, and why there would never in this day and  
15 age be a reason to create loopholes or other ways to  
16 subvert the control and protection of the environment and  
17 concern for the public interest.

18 In conclusion, I would like to say that  
19 the West Virginia DEP and the director have a role and  
20 responsibility to our state that goes beyond the  
21 individual spelled-out regulations, a role, a  
22 responsibility to advocate for and protect our state and  
23 help to coordinate with other states in order to achieve  
24 a better environment.

1           The greatest example comes with the Mon  
2 River where it enters Pennsylvania and where then the  
3 Ohio River comes back down, becomes part of West  
4 Virginia. So the coordination with Pennsylvania is  
5 essential and should be ramped up and if nothing else on  
6 base to provide leadership in that regard, given the fact  
7 that the Mon River rises here in our state and the Ohio  
8 River is part of our state over the entire length from  
9 Hancock County all the way down to - Hancock, Brooke,  
10 Ohio, Marshall, Wetzel, Tyler, Pleasants, Wood, Jackson,  
11 Mason, Cabell and Wayne. Can you imagine a stream over  
12 all that distance and without regard, we have seen not  
13 that much protection?

14           Thank you for this opportunity to  
15 speak.

16           CHAIR: Thank you, Ms. Nichols.

17           I'm going to circle back. We've got a  
18 participant with Warren Mini?

19           MR. PEASCOE: Yeah. I'm Warren  
20 Peascoe. I'm in Wood County. I sent my email on that  
21 for you.

22           I don't have prepared things, but I'm a  
23 Ph.D. chemist. I've worked in the chemical industry for  
24 30 years. I've been in Wood County for 20 years. And

1 the DEP has a very, I guess, hard job trying to regulate  
2 industry. And I want to thank them for the job they're  
3 doing, but I think that they are not doing enough.

4                   And when I came down - when I first  
5 came down here, I walk with braces and crutches. Some  
6 friends helped me - introduce me to kayaking, so I've  
7 paddled on many of the rivers around in the state, and  
8 I'm really impressed with them. We took one trip on the  
9 New River where we spent an overnight camping. And on  
10 that trip, we were with a commercial company and we were  
11 required to use portable outhouse, but it had some  
12 buckets. And if we had to go to the bathroom for a bowel  
13 movement, we did it in the bucket. And so what we took  
14 in with us, we carried out. Individuals carried out.

15                   It seems to me that an industry should  
16 be required to carry out their own excrement just like  
17 the people do. And so you know, I just want to draw that  
18 analogy and hope that we can maintain the rivers, the  
19 beauty.

20                   I love being out into it. I've seen  
21 the Cheat River where you go down there and there's acid  
22 mine drainage and, you know, you come out of the water  
23 and needing to wash off your equipment and everything  
24 from contamination. So you know, something needs to be

1 done.

2                   And removing and putting in loopholes  
3 like everyone's describing is not the way to go. So  
4 thank you. Thank you for having the public hearings and  
5 everyone has prepared more detailed things of the  
6 problems. Thank you.

7                   CHAIR: Thank you, Mr. Peascoe.

8                   I'm not seeing any other hands raised.  
9 Are there any other commenters? Anybody else that wishes  
10 to speak?

11                   Okay. We're not seeing any new hands  
12 raised. Is there anyone here who has already provided  
13 comments that would like to make additional comment?

14                   Going once, going twice.

15                   Mr. Kotcon, did you have another  
16 comment?

17                   MR. KOTCON: This is sort of an  
18 interesting observation, but I counted ten out of ten  
19 speakers tonight who are opposed to the proposed changes.  
20 And I'm just wondering why is anybody for that? Thank  
21 you.

22                   CHAIR: Do we have any other additional  
23 comments anyone who has already spoken that would like to  
24 speak again?

1                   Okay.

2                   If there be no other comments, this  
3 will conclude the DEP's virtual public hearing on  
4 Proposed Changes to Legislative Rule 47CSR2,  
5 Requirements, Governing Water Quality Standards. Again,  
6 a copy of the proposed rule is available on the Secretary  
7 of State website. And I will add that thank you to Group  
8 Chat. I'll take a minute to copy that link down if you  
9 need it.

10                   Again, we ask that everyone put your  
11 first and last name in the Group Chat here with your  
12 email address, your Meeting Chat, so that we have an  
13 accurate count of attendees and to also receive your  
14 final determination from the agency.

15                   The comment period is now closed. We  
16 want to thank everyone for your interest and for taking  
17 the time to attend this hearing. We ask that you please  
18 stay safe and have a good evening. Thank you.

19                   \* \* \* \* \*

20                   HEARING CONCLUDED AT 6:50 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

Dated the 26 day of October, 2021



Jennifer Wilson,

Court Reporter