



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

STATE OF WEST VIRGINIA
Legislative Rule-Making Review Committee

Senator Mike Ross, Cochair
Debra A. Graham, Counsel
Joseph A. Altizer, Associate Counsel
Rita A. Pauley, Associate Counsel
Connie A. Bowling, Associate Counsel
Daniel E. Kimble, Associate Counsel
Teri Anderson, Administrative Assistant

January 14, 2004

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Elizabeth Chatfield
Environmental Quality Board
1615 Washington St. E., Suite 301
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Requirements Governing Water Quality Standards, 46CSR1**

FILED
2004 JAN 19 A 9:48
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

With the following amendments:

On pages 5 and 6, by deleting existing section 5.2.c. and replacing it with the following:

"5.2.c. If a discharge will cause or contribute to concentrations of pollutants which exceed criteria for the protection of human health set forth in Appendix C at a public water supply intake, such discharge shall not be allowed unless a mixing zone has been assigned by the Director, after consultation with the Commissioner of the Bureau of Public Health, to prevent interference with the Category A use. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be mixed to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake.";

On page 5, by deleting section 5.2.h.6.;

On page 7, by adding to the end of section 6.1, the following sentence:

"Only those waters at the point of intake for a public water

supply are designated for Water Supply, Public (Category A).";

On page 8, by deleting section 6.2. and replacing it with the following:

"6.2. Category A - Water Supply, Public - This category is used to describe surface waters which, after conventional treatment, are regularly used for public consumption. Compliance with the Category A criteria in Appendix D, Table 1, will be determined at the surface water intakes for the public water supplies identified in Appendix B."

On page 8, section 6.2.d. by striking the sentence that reads "The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source." and inserting a new Section 6.2.e. to read as follows:

"Section 2.e. The manganese human health criterion shall only apply within a five-mile zone above the surface water intake of the public water supplies described above."

On page 8, section 6.3.b., following the words "(see Appendix A for a representative list.)" by inserting the following: "Provided, That the streams added to Appendix A and approved by the Legislature during the 2004 regular session shall be deemed as streams nominated to be included in the list, and may only be

considered trout waters pursuant to this rule after public comment is received from each county where the stream is located, to allow meaningful opportunity for review and comment by persons who live or own property along such streams, and then promulgated in this rule as trout waters during a subsequent legislative session."

On page 11, section 7.2.a.2., by deleting the entire section;

On page 18, by inserting a new section 8.5, to read as follows: "The chronic criterion of 5 ug/l for dissolved selenium in Category B use waters contained in Appendix C, Table 1, section 121.b shall expire and be deleted effective on September 1, 2004 and on that date be replaced with the following standard, absent an affirmative determination by the Environmental Quality Board prior to that date that some other standard should apply, and promulgated by emergency rule: The concentration of selenium in whole-body fish tissue shall not exceed 7.9 ug/g on a dry weight basis and the 4 day average of selenium dissolved in the water shall not exceed 185 ug/l more than once every 3 years on the average."

Beginning on page 60, by striking the following parameters and their related values from Appendix C, Table 1:

Acenaphthene, Acrolein, Anthracene, Asbestos, Benzidine,
Benzo(a)anthracene, Benzo(a)Pyrene, Benzo, (b)Fluoranthene,
Benzo(k)Fluoranthene, Bis(2-Chloroethyl)Ether, Bis(2-

Chloroisopropyl), Ethern, Bis(2-Ethylhexyl)Phthalate, Bromoform, Butylbenzyl Phthalate, Chlorodibromomethane, 2-Chloronaphthalene, Chlorophenoxy Herbicide (2,4-D), Chlorophenoxy Herbicide (2,4,5 - TP), Chloropyrifos, Chrysene, 4,4'-DDD, 4,4'-DDE, Demeton, Dibenzo(a,h)Anthracene, 3,3'-Dichlorobenzidine, Dichlorobromomethane, 1,2-Dichloropropane, 1,3-Dichloropropene, Diethyl Phthalate, Dimethyl Phthalate, Di-n-Butyl Phthalate, Dinitrophenols, 1,2-Diphenylhydrazine, alpha-Endosulfan, beta-Endosulfan, Endosulfan Sulfate, Endrin Aldehyde, Ether Bis (Chloromethyl), Fluorene, Guthion, Heptachlor Epoxide, Hexachlorobutadiene, Hexachlorocyclo-hexane-Technical, Hexachlorocyclo-pentadiene, Hexachloroethane, Ideno(1,2,3-cd)Pyrene, Isophorone, Malathion, Methyl Bromide, Methylene Chloride, Mirex, Nitrobenzene, Nitrosamines, Nitrosodibutylamine, N, Nitrosodiethylamine, N, N-Nitrosodimethylamine, N-Nitrosodi-n-Propylamine, N-Nitrosodiphenylamine, Nitrosopyrrolidine, N, Parathion, Pentachlorobenzene, Pyrene, Sulfide - Hydrogen Sulfide, Tetrachlorobenzene, 1,2,4,5, 1,2-Trans-Dichloroethylene, Tributyltin (TBT), 1,2,4-Trichlorobenzene, 1,1,2-trichloroethane, Trichlorophenol, 2,4,5-;

On page 31, by restoring the existing list of public water supplies in Appendix B.";

And,

On page 60, Appendix C Table 1, by replacing the aluminum criterion of "87 x CF₅" with "750 x CF₅".