WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MARKING REVIEW COMMITTEE

AGENCY: Environmental Quality Board TITLE NUMBER: 46 CSR 1

CITE AUTHORITY: 22B-3-4

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ONE

TITLE OF RULE BEING AMENDED: Requirements Governing Water Quality Standards

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Signature

$15.90 w/out comments
$159.00 w/comments

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 31, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 46CSR1 - "Requirements Governing Water Quality Standards"

Dear Ms. Cooper:

WV Code §29A-3-11(a) requires the Secretary of the executive department which administers an agency under WV Code §5F-2-1, et seq., to take the necessary steps to submit rules finalized by the agencies, which it administers, to the legislative rulemaking process. Because I am charged with providing administrative support to the Environmental Quality Board pursuant to WV Code §5F-2-1(a)(3)(C), I hereby submit to your office and the Legislative Rule-Making Review Committee, as Notice of Agency Approval of a Proposed Rule, the enclosed rulemaking package prepared by the Environmental Quality Board, entitled 46CSR1 - "Requirements Governing Water Quality Standards." In my capacities, both as Commissioner of the Bureau of Environment, and Director of the Division of Environmental Protection, though, I take no position on the appropriateness or need for the rule, and note that it is more stringent than the parallel federal regulations, and may be more stringent than surrounding states concerning the designation of stream uses.

Should you have any questions, please feel free to contact me at 759-0515, or Libby Chatfield, Technical Advisor, Environmental Quality Board, at 558-4002.

Sincerely,

Michael C Castle

Michael C. Castle
Commissioner

MCC:cc

cc: Libby Chatfield, Technical Advisor, EQB
John Johnston, Deputy Director, DEP
Carrie Chambers, Executive Assistant, DEP

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 31, 2000

TO: Legislative Rule-Making Review Committee

FROM: *(Agency Name, Address & Phone No.)* Environmental Quality Board

1615 Washington Street, East, Charleston, WV 25311

(304) 558-4002

LEGISLATIVE RULE TITLE: "Requirements Governing Water Quality Standards"

1. Authorizing statute(s) citation 22B-3-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 3, 2000

b. What other notice, including advertising, did you give of the hearing?

Published in Charleston Newspapers on July 20, 2000 and July 24, 2000 as well as the newspaper, the Parsons Advocate on July 19, 2000, also distributed notice to our internal/e-mail mailing list of approximately 125 people.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

Hearing held on August 3, 2000 at 7:00 p.m. , end of written comment period August 16, 2000.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 31, 2000

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to received all *written correspondence* regarding this rule: (Please type)

Elizabeth Chatfield, Technical Advisor

1615 Washington Street, East - Room 301

Charleston, WV 25311-2126

558-4002 / 558-4116 / chatfe@mail.wvnet.edu

g. **IF DIFFERENT FROM ITEM "f",** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

3. If the statute under which you promulgated the submitted rules requires certain findings and determination to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

46 CSR 1
Requirements Governing Water Quality Standards
August 30, 2000

Summary of Proposed Changes

Section 2. Added new definitions from the Antidegradation Implementation Procedures.

Section 4. Added a provision in §4.1.b of the Antidegradation Policy addressing Best Management Practices.

Section 7.2.c.4. Revised natural background exemption consistent with EPA guidance.

Section 7.2.d.8.1. Revised variance for Allegheny Power (Daugherty Run and tributaries).

Section 7.2.d.9. Reclassified the designated use of the Blackwater River below Davis from a warm water fishery (Category B1) to a trout water (Category B2).

Section 7.2.d.16.2. Revised variance for Weirton Steel (Harmon Creek).

Section 7.2.d.32.1. Deleted variance on Bluestone Lake.

Section 8.17.1. Deleted manganese "variance" from this section (retained manganese "variance" in section 7.2.a.2).

APPENDIX E

Section 8.1. Amended aluminum criteria: added chronic value of 87 ug/l; provide for use of dissolved concentrations rather than total concentrations for measurement for both acute and chronic criteria; adopted a conversion factor of 1 for implementation of the dissolved concentrations.

Section 8.2. Amended ammonia criteria for protection of aquatic life : adopted USEPA's 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA-822-R-99-014, December 1999)

Sections 8.24.1 - 8.24.7. Added numeric criteria for the protection of human health for the following parameters: Phenol, 2-Chlorophenol, 2, 4-Dichlorophenol, 2,4-Dimethylphenol, 2,4-Dinitrophenol , Pentachlorophenol and 2,4,6 Trichlorophenol.

Added numeric criteria for the protection of aquatic life for Trivalent Chromium (**Section 8.9.2 and 8.9.3.**) and Pentachlorophenol (**Section 8.24.6.a.**). The criteria added are those published in USEPA's National Recommended Water Quality Criteria - Correction (EPA 822-Z-99-001, April 1999).

Removed aquatic life criteria for chloroform, 1, 1, 2, 2 tetrachloroethane (**Section 8.22**) and

phenol **(Section 8.24.1)**. The values removed were EPA's "Lowest Observed Effect Levels" for those criteria, which EPA does not approve for use as instream criteria.

Section 8.22.2. Removed fish body burden criteria for chlordane, DDT, Aldrin, Dieldrin, Endrin, Toxaphene, PCB and Dioxin.

Appendix F

Added procedures for implementing the Antidegradation Policy in Section 4 of the rule.

46 CSR 1
Requirements Governing Water Quality Standards
August 31, 2000

Statement of Circumstances Requiring Proposed Amendments

The federal Clean Water Act requires the Environmental Quality Board to review the Water Quality Standards legislative rule, 46 CSR 1, Requirements Governing Water Quality Standards, every three years. Any changes proposed and adopted by the legislature are then reviewed by the US Environmental Protection Agency (EPA) for final approval. The Board completed its last triennial review in 1998. In June of 1999, the EPA advised the Board of its disapproval of portions of the water quality standards from the Board's 1998 triennial review of the rule. The changes proposed herein comprise the Board's response to the EPA's action.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 46 CSR 1 Requirements Governing Water Quality Standards

Type of Rule: X Legislative ____Interpretive _____Procedural

Agency: WV Environmental Quality Board

Address: 1615 Washington Street, E., Suite 301
Charleston, WV 25311

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1. Effect of Proposed Rule: **Information regarding the specific costs outlined below are not available at this time.**

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$	$	$	$	$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above Estimates:

The Board acknowledges that the adoption of the antidegradation implementation procedures in Appendix F of the proposed rule will have a significant fiscal impact to the Offices within the Division of Environmental Protection which prepares NPDES permits, applicants for new NPDES permits and others who may engage in activities subject to these changes, including nonpoint source activities, such as farming and logging, required to employ Best Management Practices. While we would like to be able to quantify these potential fiscal impacts, we regret that we are unable to do so at this time. Such quantification would require an economic analysis that is beyond the scope of duties and the financial capabilities of this Board.

In the future, we would like to work with the Legislature, appropriate agencies and other interested parties to consider ways of developing the type of fiscal analysis that would assist the Legislature in it's decision-making process.

3. Objectives of these rules:

Establish levels of protection of State waters consistent with the Federal Clean Water Act.

Rule Title: Requirements Governing Water Quality Standards.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Conducting antidegradation reviews of NPDES permit applications will increase the workload of offices within WVDEP. Conducting the socio-economic analysis required by the antidegradation provisions may require training or hiring additional staff. Costs of these impacts are not known at this time.

Conversely, fully implementing the antidegradation policy may result in lower costs to the agency in the future. Proper implementation of the policy should prevent deterioration of state waters to the point of impairment, eliminating placement of additional streams on the CWA 303(d) list of impaired waters. Consequently, the potential burden on DEP of conducting the extensive and costly studies associated with TMDLs would be relieved.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The antidegradation implementation procedures may result in additional requirements for new or expanding industries applying for NPDES permits in the state. Those requirements may include providing information about the existence of non-degrading or less-degrading alternatives to the proposed activity as well as documentation of the social and economic importance of the proposed activity. The proposed procedures will also result in some changes in the NPDES permit review process employed by the Division of Environmental Protection, which may ultimately affect the requirements in permits issued by that agency. All of these changes may result in increased costs to permit applicants. Conversely, the trading provisions outlined in the rule may result in decreased costs to permit applicants. None of the economic impacts described above can be accurately quantified at this time.

Revisions to various numeric criteria in Appendix E may affect NPDES permits issued to dischargers in the state. The actual costs of such changes is not known at this time.

C. Economic Impact on Citizens/Public at Large.

The purpose of the proposed revisions is to address portions of the rule which have been disapproved by the US Environmental Protection Agency, and ensure that the Water Quality Standards for West Virginia comply with the requirements of the federal Clean Water Act. The goal of such compliance is maintenance of existing high water quality and improvement in water quality of streams, where necessary. Responsible management of the state's water resources should result in positive economic impacts to the citizens of West Virginia. Quantification of these impacts is not possible at this time.

Date: 8/31/00

Signature of Agency Head or Authorized Representative

Elizabeth McCharles

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 46
LEGISLATIVE RULES
ENVIRONMENTAL QUALITY BOARD
SERIES 1
REQUIREMENTS GOVERNING WATER QUALITY STANDARDS

§46-1-1. General.

1.1. Scope. -- These rules establish requirements governing the discharge or deposit of sewage, industrial wastes and other wastes into the waters of the ~~State~~ state and establish water quality standards for the waters of the State standing or flowing over the surface of the State. It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, and other aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development. (See W. Va. Code § 22-11-2.)

1.2. Authority. -- W. Va. Code §22B-3-4

1.3. Filing Date. --

1.4. Effective Date. --

§46-1-2. Definitions.

The following definitions in addition to those set forth in W. Va. Code §22-11-3, shall apply to these rules unless otherwise specified herein, or unless the context in which used clearly requires a different meaning:

2.1. "Ambient Concentration" is that measured value or level of water quality upstream of the proposed activity (discharge point for point source, runoff area for nonpoint source) for any parameter of concern determined through EPA-approved or other methods accepted by the Chief, collection and analytical methods in 40 CFR 136. In the absence of a suitable upstream location, the ambient concentration will be measured at a point closest to the discharge or activity during precipitation events and at a point immediately downstream of the discharge or activity during non-precipitation events where adequate stream flow is available.

2.2. "Ambient Water Quality Conditions" (AWQC) are those physical, chemical, biological and radiological conditions of the receiving waters of the state existing at the time of review of a regulated activity.

2.3. "Baseline Water Quality" is that ambient concentration established at the time of an initial antidegradation review under rules effective (date) for a stream or stream segment or any other water(s) of the state.

~~2.1.~~ 2.4. "Board" is the Environmental Quality Board.

~~2.2.~~ 2.5. "Chief" is the Chief of the Office of Water Resources of the West Virginia Division of Environmental Protection.

~~2.3~~ 2.6. "Conventional treatment" is the treatment of water as approved by the ~~State Health Department~~ West Virginia Bureau for Public Health to assure that the water is safe for human consumption.

~~2.4.~~ 2.7. "Cumulative" means a pollutant which increases in concentration in an organism by successive additions at different times or in different ways (bio-accumulation).

~~2.5.~~ 2.8. "Designated uses" are those uses specified in water quality standards for each water body or segment whether or not they are being attained. (See ~~section 6.2.~~ sections 6.2 - 6.6, herein)

2.9. "Director" is the Director of the West Virginia Division of Environmental Protection.

~~2.6.~~ 2.10. "Dissolved metal" is operationally defined as that portion of metal which passes through a 0.45 micron filter.

~~2.7.~~ 2.11. "Existing uses" are those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

~~2.8.~~ 2.12. The "Federal Act" means the Clean Water Act (also known as the Federal Water Pollution Control Act) ~~Public Law 92-500, as amended by Public Law 100-4, 33 U.S.C. 1251, et seq~~ 33 U.S.C. §§ 1251 - 1387.

~~2.9.~~ 2.13."High quality waters" are those waters whose quality is equal to or better than the minimum levels necessary to achieve the national water quality goal uses.

~~2.10.~~ 2.14. "Intermittent streams" are streams which have no flow during sustained periods of no precipitation and which do not support aquatic life whose life history requires residence in flowing waters for a continuous period of at least six (6) months.

~~2.11.~~ 2.15. "Outstanding national resource waters" are those waters whose unique character, ecological or recreational value or pristine nature constitutes a valuable national or State resource.

~~2.12.~~ 2.16."Natural" or "naturally occurring" values or "natural temperature" shall mean for all of the waters of the ~~State~~ state:

~~2.12.a.~~ 2.16.a. Those water quality values which exist unaffected by -- or unaffected as a consequence of -- any water use by any person; and

~~2.12.b.~~ 2.16.b. Those water quality values which exist unaffected by the discharge, or direct or indirect deposit of, any solid, liquid or gaseous substance from any point source or non-point source.

~~2.13.~~ 2.17. "Non-point source" shall mean any source other than a point source from which pollutants may reach the waters of the ~~State~~ state.

2.18. "Parameter of concern" means any parameter for which numeric water quality criteria have been adopted in 46 CSR 1 and any other parameter for which numeric criteria are not established but where the discharge of such parameter has a reasonable potential to either cause or contribute to a violation of the narrative criteria outlined under 46 CSR 1, section 3.

~~2.14.~~ 2.19. "Persistent" shall mean a pollutant and its transformation products which under natural conditions degrade slowly in an aquatic environment.

~~2.15.~~ 2.20. "Point source" shall mean any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

2.21. "Reasonable less-degrading or non-degrading alternatives" shall be identified based on case specific information (as outlined in section 4C.4.a. of Appendix F, herein). Generally speaking, less-degrading or non-degrading pollution control alternatives shall be considered reasonable where the costs of such alternatives are less than 110% of the costs of the pollution control measures associated with the proposed activity.

2.22. "Regulated activity" includes 1) any activity that requires a permit or a water quality certification pursuant to state or federal law (e.g., Clean Water Act §402 NPDES permits, Clean Water Act §404 dredge and fill permits, or any activity requiring a Clean Water Act §401 certification), 2) any activity subject to nonpoint source control requirements or regulations, and 3) any activity which is otherwise subject to state requirements and regulations developed to protect water quality. The term "proposed activity" means a proposed activity that is also a regulated activity.

~~2.16.~~ 2.23. "Representative important species of aquatic life" shall mean those species of aquatic life whose protection and propagation will assure the sustained presence of a balanced

aquatic community. Such species are representative in the sense that maintenance of water quality criteria will assure both the natural completion of the species' life cycles and the overall protection and sustained propagation of the balanced aquatic community.

~~2.17.~~ 2.24. The "State Act" or "State Law" shall mean the West Virginia Water Pollution Control Act, W. Va. Code §22-11-1.

~~2.19.~~ 2.25. "Total recoverable" refers to the digestion procedure for certain heavy metals as referenced in 40 CFR 136, as amended June 15, 1990, Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act.

2.26. "Trading" means establishing upstream controls for a parameter of concern to compensate for new or increased downstream sources for the same parameter resulting in improved water quality for the parameter traded. More than one parameter of concern may be traded on a given stream. Trading may involve point sources, nonpoint sources or a combination of point and nonpoint sources. Unused permitted capacity cannot be traded.

2.27. "Trading Assessment Procedure" means methodologies to be used by the Director to document the basis for any trade allowed in sections 4B, 4C and 4D of Appendix F, herein, are EPA's Total Maximum Daily Load Procedures (40 CFR 130.2(i)), wasteload allocation procedures outlined in EPA's Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991), wasteload allocation methodologies outlined in EPA's Draft Framework for Watershed-Based Trading (EPA/800-R-96-001, May 1996) or other EPA approved wasteload allocation methodologies as long as these methodologies are consistent with the trading provisions of this rule.

~~2.19.~~ 2.28. "Trout waters" are streams or stream segments which sustain year-round trout populations. Excluded are those streams or stream segments which receive annual stockings of trout but which do not support year-round trout populations.

~~2.20~~ 2.29. "Water of special concern" are those waters occurring in the categories outlined in sections 4.1.c.1. through 4.1.c.4. of the antidegradation policy. This designation provides an intermediate level of antidegradation protection between high quality waters and outstanding national resource waters.

~~2.21~~ 2.30 "Water quality criteria" shall mean levels of parameters or stream conditions that are required to be maintained by these regulations. Criteria may be expressed as a constituent concentration, levels, or narrative statement, representing a quality of water that supports a designated use or uses.

~~2.22~~ 2.31. "Water quality standards" means the combination of water uses to be protected and the water quality criteria to be maintained by these rules.

~~2.23~~ 2.32. "Wetlands" are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

~~2.24~~ 2.33. "Wet weather streams" are streams that flow only in direct response to precipitation or whose channels are at all times above the water table.

§46-1-3. Conditions Not Allowable In State Waters.

3.1. Certain characteristics of sewage, industrial wastes and other wastes cause pollution and are objectionable in all waters of the ~~State~~ state. Therefore, the Environmental Quality Board does hereby proclaim that the following general conditions are not to be allowed in any of the waters of the ~~State~~ state.

3.2. No sewage, industrial wastes or other wastes present in any of the waters of the ~~State~~ state shall cause therein or materially contribute to any of the following conditions thereof:

3.2.a. Distinctly visible floating or settleable solids, suspended solids, scum, foam or oily slicks;

3.2.b. Deposits or sludge banks on the bottom;

3.2.c. Odors in the vicinity of the waters;

3.2.d. Taste or odor that would adversely affect the designated uses of the affected waters;

3.2.e. Materials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life;

3.2.f. Distinctly visible color;

3.2.g. Concentrations of bacteria which may impair or interfere with the designated uses of the affected waters;

3.2.h. Requiring an unreasonable degree of treatment for the production of potable water by modern water treatment processes as commonly employed; and

3.2.i. Any other condition, including radiological exposure, which adversely alters the integrity of the waters of the State including wetlands; no significant adverse impact to the chemical, physical, hydrologic, or biological components of aquatic ecosystems shall be allowed.

§46-1-4. ~~Anti-Degradation~~ Antidegradation Policy.

4.1. It is the policy of the State of West Virginia that the waters of the state shall be maintained and protected as follows:

4.1.a. Tier 1 Protection. Existing water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included as designated uses within these water quality standards.

4.1.b. Tier 2 Protection. The existing high quality waters of the ~~State~~ state must be maintained at their existing high quality unless it is determined after satisfaction of the intergovernmental coordination of the ~~State's~~ state's continuing planning process and opportunity for public comment and hearing that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. If limited degradation is allowed, it shall not result in injury or interference with existing stream water uses or in violation of ~~State~~ state or ~~Federal~~ federal water quality criteria that describe the base levels necessary to sustain the national water quality goal uses of protection and propagation of fish, shellfish and wildlife and recreating in and on the water.

In addition, the Board and the ~~Chief~~ Director shall assure that all new and existing point sources shall achieve the highest established statutory and regulatory requirements applicable to them and shall assure the achievement of cost-effective and reasonable best management practices (BMPs) for non-point source control. BMPs that have been implemented, applied or installed at a specific site should be evaluated to determine whether the BMPs are sufficient to reduce or minimize impacts to water quality. Where appropriate, the Director may require application or implementation of BMPs sufficient to prevent violations of water quality standards. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Director may require that more appropriate BMPs be developed and applied or, alternatively, may require that the activity causing the pollution cease.

4.1.b.1. High quality waters are those waters meeting the definition at section ~~2.9~~ 2.13 herein and section 4C.1.a. of Appendix F, herein.

4.1.b.2. High quality waters include but are not limited to the following:

4.1.b.2.A. Streams designated by the West Virginia Legislature under the West Virginia Natural Stream Preservation Act, pursuant to W. Va. Code ~~Section~~ §22-13-5; and

4.1.b.2.B. Streams listed in West Virginia High Quality Streams, Fifth Edition, prepared by the Wildlife Resources Division, Department of Natural Resources (1986).

4.1.b.2.C. Streams or stream segments which receive annual stockings of trout but which do not support year-round trout populations.

4.1.c. Tier 2.5 Protection. In waters which constitute a water of special concern no activities which result in the reduction of ambient water quality shall be allowed. Waters of special concern include:

4.1.c.1. All Federally designated rivers under the "Wild and Scenic Rivers Act" ~~Public Law 95-542 as amended,~~ 16 U.S.C. §§1271 et seq.

4.1.c.2. All naturally reproducing trout streams.

4.1.c.3. All streams and other bodies of water in State and National Forests and Recreation Areas.

4.1.c.4. National Rivers. Rivers designated under the "National Parks and Recreation Act of 1978." ~~Public Law 95-625, as amended,~~ 16 U.S.C. §§1 et seq.

4.1.d. Tier 3 Protection. In all cases, waters which constitute an outstanding national resource shall be maintained and protected and improved where necessary. Outstanding national resource waters include, but are not limited to, all streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act (16 U.S.C. §§1131 et seq.) within the State.

Additional waters may be nominated for inclusion in that category by any interested party or by the Board on its own initiative. To designate a nominated water as an outstanding national resource water, the Board shall follow the public notice and hearing provisions as provided in 46 C.S.R. 6.

4.1.e. All applicable requirements of ~~Section~~ section 316(a) of the Federal Act shall apply to modifications of the temperature water quality criteria provided for in these rules.

§46-1-5. Mixing Zones.

5.1. In the permit review and planning process or upon the request of a permit applicant or permittee, the Chief may establish on a case-by-case basis an appropriate mixing zone.

5.2. The following guidelines and conditions are applicable to all mixing zones:

5.2.a. The Chief will assign, on a case-by-case basis, definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge,

surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones shall take into account the mixing conditions in the receiving stream (i.e: whether complete or incomplete mixing conditions exist). Mixing zones will not be allowed until applicable limits are assigned by the Chief in accordance with this section.

5.2.b. Concentrations of pollutants which exceed the acute criteria for protection of aquatic life set forth in Appendix E, Table 1 shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the Chief. The zone of initial dilution is the area within the mixing zone where initial dilution of the effluent with the receiving water occurs, and where the concentration of the effluent will be its greatest in the water column. Where a zone of initial dilution is assigned by the Chief, the size of the zone shall be determined using one of the four alternatives outlined in ~~Section~~ section 4.3.3 of ~~EPAs~~ USEPA's Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991). Concentrations of pollutants shall not exceed the acute criteria at the edge of the assigned zone of initial dilution. Chronic criteria for the protection of aquatic life may be exceeded within the mixing zone but shall be met at the edge of the assigned mixing zone.

5.2.c. Concentrations of pollutants which exceed the criteria for the protection of human health set forth in Appendix E, Table 1 shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau ~~of~~ for Public Health. 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 sized 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. No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.

5.2.d. Mixing zones, including zones of initial dilution, shall not interfere with fish spawning or nursery areas or fish migration routes; shall not overlap public water supply intakes or bathing areas; cause lethality to or preclude the free passage of fish or other aquatic life; nor harm any threatened or endangered species, as listed in the Federal Endangered Species Act, ~~15 U.S.C.A. 1531 et seq.~~ 15 U.S.C. §§1531 et seq.

5.2.e. The mixing zone shall not exceed one-third (1/3) of the width of the receiving stream, and in no case shall the mixing zone exceed one-half (½) of the cross-sectional area of the receiving stream.

5.2.f. In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters

available for mixing.

5.2.g. A mixing zone shall be limited to an area or volume which will not adversely alter the existing or designated uses of the receiving water, nor be so large as to adversely affect the integrity of the water body.

5.2.h. Mixing zones shall not:

5.2.h.1. Be used for, or considered as, a substitute for technology-based requirements of the ~~Clean Water~~ Federal Act and other applicable ~~State~~ state and ~~Federal~~ federal laws.

5.2.h.2. Extend downstream at any time a distance more than five times the width of the receiving watercourse at the point of discharge.

5.2.h.3. Cause or contribute to any of the conditions prohibited in ~~Section 46-1-3~~ section 3, herein.

5.2.h.4. Be granted where instream waste concentration of a discharge is greater than 80%.

5.2.h.5. Overlap one another.

5.2.h.6. Overlap any ½ mile zone described in section 7.2.a.2 herein.

5.2.i. In the case of thermal discharges, a successful demonstration conducted under ~~Section~~ section 316(a) of the ~~Clean Water~~ Federal Act shall constitute compliance with all provisions of this section.

5.2.j. The Chief may waive the requirements of subsections ~~(e)~~ and ~~(h)(B)~~ 5.2.e and 5.2.h.2 above if a discharger provides an acceptable demonstration of:

5.2.j.1. Information defining the actual boundaries of the mixing zone in question; and

5.2.j.2. Information and data proving no violation of subsections ~~(d) and (g)~~ 5.2.d and 5.2.g above by the mixing zone in question.

5.2.k. Upon implementation of a mixing zone in a permit, the permittee shall provide documentation that demonstrates to the satisfaction of the Chief that the mixing zone is in compliance with the provisions outlined in subsections ~~(b),(c),(e) and (h)(B)~~ 5.2.b, 5.2.c, 5.2.e, and 5.2.h.2, herein.

5.2.l. In order to facilitate a determination or assessment of a mixing zone pursuant to this section, the Chief may require a permit applicant or permittee to submit such information as deemed necessary.

§46-1-6. Water Use Categories.

6.1. These rules establish general Water Use Categories and Water Quality Standards for the waters of the State. Unless otherwise designated by these rules, at a minimum all waters of the State are designated for the Propagation and ~~maintenance~~ Maintenance of Fish and Other Aquatic Life (Category B) and for Water Contact Recreation (Category C) consistent with ~~Clean Water~~ Federal Act goals. Incidental utilization for whatever purpose may or may not constitute a justification for assignment of a water use category to a particular stream segment.

6.1.a. Waste assimilation and transport are not recognized as designated uses. The classification of the waters must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial and other purposes including navigation.

Subcategories of a use may be adopted and appropriate criteria set to reflect varying needs of such subcategories of uses, for example to differentiate between trout water and other waters.

6.1.b. At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under ~~Sections~~ section 301(b) and section 306 of the Federal ~~Clean Water~~ Act and use of cost-effective and reasonable best management practices for non-point source control. Seasonal uses may be adopted as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria will be adjusted to reflect the seasonal uses; however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season. A designated use which is not an existing use may be removed, or subcategories of a use may be established if it can be demonstrated that attaining the designated use is not feasible because:

6.1.b.1. Application of effluent limitations for existing sources more stringent than those required pursuant to ~~Section~~ section 301 (b) and ~~Section~~ section 306 of the Federal Act in order to attain the existing designated use would result in substantial and widespread adverse economic and social impact; or

6.1.b.2. Naturally-occurring pollutant concentrations prevent the attainment of the use; or

6.1.b.3. Natural, ephemeral, intermittent or low flow conditions of water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met; or

6.1.b.4. Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

6.1.b.5. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

6.1.b.6. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

6.1.c. The State shall take into consideration the quality of downstream waters and shall assure that its water quality standards provide for the attainment of the water quality standards of downstream waters.

6.1.d. In establishing a less restrictive use or uses, or subcategory of use or uses, and the water quality criteria based upon such uses, the Board shall follow the requirements for revision of water quality standards as required by W. Va. Code §22B-3-4 and ~~Section~~ section 303 of the Federal Act and the regulations thereunder. Any revision of water quality standards shall be made with the concurrence of EPA. The Board's administrative procedural regulations for applying for less restrictive uses or criteria shall be followed.

6.2. Category A -- Water Supply, Public. -- This category is used to describe waters which, after conventional treatment, are used for human consumption. This category includes streams on which the following are located:

6.2.a. All community domestic water supply systems;

6.2.b. All non-community domestic water supply systems, (i.e. hospitals, schools, etc.);

6.2.c. All private domestic water systems;

6.2.d. All other surface water intakes where the water is used for human consumption. (See Appendix B for partial listing of ~~category~~ Category A waters; see section ~~7.2.a.B.~~ 7.2.a.2, herein for additional requirements for ~~category~~ Category A waters.) 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.

6.3. Category B -- Propagation and maintenance of fish and other aquatic life. -- This category includes:

6.3.a. Category B1 -- Warm water fishery streams. -- Streams or stream segments which contain populations composed of all warm water aquatic life.

6.3.b. Category B2 -- Trout Waters. -- As defined in ~~Section 2.19~~ section 2.28, herein (See Appendix A for a representative list.)

6.3.c. Category B4 -- Wetlands. -- As defined in ~~section 2.22~~ section 2.32, herein; certain numeric stream criteria may not be appropriate for application to wetlands (see Appendix E, Table 1).

6.4. Category C -- Water contact recreation. -- This category includes swimming, fishing, water skiing and certain types of pleasure boating such as sailing in very small craft and outboard motor boats. (See Appendix D for a representative list of category C waters.)

6.5. Category D. -- Agriculture and wildlife uses.

6.5.a. Category D1 -- Irrigation. -- This category includes all stream segments used for irrigation.

6.5.b. Category D2 -- Livestock watering. -- This category includes all stream segments used for livestock watering.

6.5.c. Category D3 -- Wildlife. -- This category includes all stream segments and wetlands used by wildlife.

6.6. Category E -- Water supply industrial, water transport, cooling and power. -- This category includes cooling water, industrial water supply, power production, commercial and pleasure vessel activity, except those small craft included in Category C.

6.6.a. Category E1 -- Water Transport. -- This category includes all stream segments modified for water transport and having permanently maintained navigation aides.

6.6.b. Category E2 -- Cooling Water. -- This category includes all stream segments having one (1) or more users for industrial cooling.

6.6.c. Category E3 -- Power production. -- This category includes all stream segments extending from a point 500 feet upstream from the intake to a point one half (½) mile below the wastewater discharge point. (See Appendix C for representative list.)

6.6.d. Category E4 -- Industrial. -- This category is used to describe all stream segments with one (1) or more industrial users. It does not include water for cooling.

§46-1-7. West Virginia Waters.

7.1. Major River Basins and their Alphanumeric System. All streams and their tributaries in West Virginia shall be individually identified using an alphanumeric system as identified in the "Key to West Virginia Stream Systems and Major Tributaries" (1956) as published by the Conservation Commission of West Virginia and revised by the West Virginia Department of Natural Resources, Division of Wildlife (1985).

7.1.a. J - James River Basin. All tributaries to the West Virginia - Virginia State line.

7.1.b. P - Potomac River Basin. All tributaries of the main stem of the Potomac River to the West Virginia - Maryland - Virginia State line to the confluence of the North Branch and the South Branch of the Potomac River and all tributaries arising in West Virginia excluding the major tributaries hereinafter designated:

7.1.b.1. S - Shenandoah River and all its tributaries arising in West Virginia to the West Virginia - Virginia State line.

7.1.b.2. PC - Cacapon River and all its tributaries.

7.1.b.3. PSB - South Branch and all its tributaries.

7.1.b.4. PNB - North Branch and all tributaries to the North Branch arising in West Virginia.

7.1.c. M - Monongahela River Basin. The Monongahela River Basin main stem and all its tributaries excluding the following major tributaries which are designated as follows:

7.1.c.1. MC - Cheat River and all its tributaries except those listed below:

7.1.c.1.A. MCB - Blackwater River and all its tributaries.

7.1.c.2. MW - West Fork River and all its tributaries.

7.1.c.3. MT - Tygart River and all its tributaries except those listed below:

7.1.c.3.A. MTB - Buckhannon River and all its tributaries.

7.1.c.3.B. MTM - Middle Fork River and all its tributaries.

7.1.c.4. MY - Youghigheny River and all its tributaries to the West Virginia - Maryland State line.

7.1.d. O Zone 1 - Ohio River - Main Stem. The main stem of the Ohio River from the Ohio - Pennsylvania - West Virginia ~~State~~ state line to the Ohio - Kentucky - West Virginia State line.

7.1.e. O Zone 2 - Ohio River - Tributaries. All tributaries of the Ohio River excluding the following major tributaries:

7.1.e.1. LK - Little Kanawha River. The Little Kanawha River and all its tributaries excluding the following major tributary which is designated as follows:

7.1.e.1.A. LKH - Hughes River and all its tributaries.

7.1.e.2. K - Kanawha River Zone 1. The main stem of the Kanawha River from mile point 0, at its confluence with the Ohio River, to mile point 72 near Diamond, West Virginia.

7.1.e.3. K - Kanawha River Zone 2. The main stem of the Kanawha River from mile point 72 near Diamond, West Virginia and all its tributaries from mile point 0 to the headwaters excluding the following major tributaries which are designated as follows:

7.1.e.3.A. KP - Pocatalico River and all its tributaries.

7.1.e.3.B. KC - Coal River and all its tributaries.

7.1.e.3.C. KE - Elk River and all its tributaries.

7.1.e.3.D. KG - Gauley River. The Gauley River and all its tributaries excluding the following major tributaries which are designated as follows:

7.1.e.3.D.1. KG-19 - Meadow River and all its tributaries.

7.1.e.3.D.2. KG-34 - Cherry River and all its tributaries.

7.1.e.3.D.3. KGC - Cranberry River and all its tributaries.

7.1.e.3.D.4. KGW - Williams River and all its tributaries.

7.1.e.3.E. KN - New River. The New River from its confluence with the Gauley River to the Virginia - West Virginia State line and all tributaries excluding the following major tributaries which are designated as follows:

7.1.e.3.E.1. KNG - Greenbrier River and all its tributaries.

7.1.e.3.E.2. KNB - Bluestone River and all its tributaries.

7.1.e.3.E.3. KN-60 - East River and all its tributaries.

7.1.e.3.E.4. K(L)-81-(1) - Bluestone Lake.

7.1.e.4. OG - Guyandotte River. The Guyandotte River and all its tributaries excluding the following major tributary which is designated as follows:

7.1.e.4.1. OGM - Mud River and all its tributaries.

7.1.e.5. BS - Big Sandy River. The Big Sandy River to the Kentucky - Virginia - West Virginia State lines and all its tributaries arising in West Virginia excluding the following major tributary which is designated as follows:

7.1.e.5.1 BST - Tug Fork and all its tributaries.

7.2. Applicability of Water Quality Standards. The following shall apply at all times unless a specific exception is granted in this section:

7.2.a. Water Use Categories as described in ~~Section 6~~, section 6, herein.

7.2.a.1. Based on meeting those Section 6 definitions, tributaries or stream segments may be classified for one or more Water Use Categories. When more than one use exists, they shall be protected by criteria for the use category requiring the most stringent protection.

7.2.a.2. Each segment extending upstream from the intake of a water supply public (Water Use Category A), for a distance of one half (½) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in ~~Section 8~~ section 8, herein. In addition, within that one half (½) mile zone, the Chief may establish for any discharge, effluent limitations for the protection of human health that require additional removal of pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than this zone above the intake, the water supply section may include the entire upstream watershed to its headwaters.) Until June 30, 2003, the one-half mile zone described in this section shall not apply to the Ohio River main channel (between Brown's Island and the left descending bank) between river mile points 61.0 and 63.5.

7.2.b. In the absence of any special application or contrary provision, water quality standards shall apply at all times when flows are equal to or greater than the minimum mean seven (7) consecutive day drought flow with a ten (10) year return frequency (7Q10). NOTE: With the exception of section 7.2.c.5 listed herein exceptions do not apply to trout waters

nor to the requirements of ~~Section 3~~ section 3, herein.

7.2.c. Exceptions: Numeric water quality standards shall not apply: (See section 7.2.d, herein, for site-specific revisions)

7.2.c.1. When the flow is less than 7Q10;

7.2.c.2. In wet weather streams (or intermittent streams, when they are dry or have no measurable flow): Provided, That the existing and designated uses of downstream waters are not adversely affected;

7.2.c.3. In any assigned zone of initial dilution of any mixing zone where a zone of initial dilution is required by section 5.2.b herein, or in any assigned mixing zone for human health criteria or aquatic life criteria for which a zone of initial dilution is not assigned; In zones of initial dilution and certain mixing zones: Provided, That all requirements described in ~~§ 5~~ section 5 herein shall apply to all zones of initial dilution and all mixing zones;

7.2.c.4. ~~Where lesser quality is due to natural conditions. In such cases the naturally occurring values shall be the applicable criteria. Provided, That the existing and designated uses of downstream waters are not adversely affected~~. Where, on the basis of natural conditions, the Board has established a site-specific aquatic life water quality criterion that modifies a water quality criterion set out in Appendix E, Table 1 of this rule. Where a natural condition of a waterbody is demonstrated to be of lower quality than a water quality criterion for the use classes and subclasses in section 6 of this rule, the Board, in its discretion, may establish a site-specific water quality criterion for aquatic life. This alternate criterion may only serve as the chronic criterion established for that parameter. This alternate criterion must be met at end of pipe. Where the Board decides to establish a site-specific water quality criterion for aquatic life, the natural condition constitutes the applicable water quality criterion. A site-specific criterion for natural conditions may only be established through the legislative rulemaking process in accordance with W.Va. Code §§29A-3-1 et seq. and must satisfy the public participation requirements set forth at 40 C.F.R. 131.20 and 40 C.F.R. Part 25. Site-specific criteria for natural conditions may be established only for aquatic life criteria. A public notice, hearing and comment period is required before site-specific criteria for natural conditions are established.

Upon application or on its own initiative, the Board will determine whether a natural condition of a waterbody should be approved as a site-specific water quality criterion. Before it approves a site-specific water quality criterion for a natural condition, the Board must find that the natural condition will fully protect existing and designated uses and ensure the protection of aquatic life. If a natural condition of a waterbody varies with time, the natural condition will be determined to be the actual natural condition of the waterbody measured prior to or concurrent with discharge or operation. The Board will, in its discretion, determine a natural condition for one or more seasonal or shorter periods to reflect variable ambient conditions; and require

additional or continuing monitoring of natural conditions.

An application for a site-specific criterion to be established on the bàsis of natural conditions shall be filed with the Board and shall include the following information:

7.2.c.4.A. A U.S.G.S. 7.5 minute map showing the stream segment affected and showing all existing discharge points and proposed discharge point;

7.2.c.4.B. The alphanumeric code of the affected stream, if known;

7.2.c.4.C. Water quality data for the stream or stream segment. Where adequate data are unavailable, additional studies may be required by the Board;

7.2.c.4.D. General land uses (e.g. mining, agricultural, recreation, residential, commercial, industrial, etc.) as well as specific land uses adjacent to the waters for the affected segment or stream;

7.2.c.4.E. The existing and designated uses of the receiving waters into which the segment in question discharges and the location where those downstream uses begin to occur;

7.2.c.4.F. General physical characteristics of the stream segment, including, but not limited to width, depth, bottom composition and slope;

7.2.c.4.G. Conclusive information and data of the source of the natural condition that causes the stream to exceed the water quality standard for the criterion at issue.

7.2.c.4.H. The average flow rate in the segment and the amount of flow at a designated control point and a statement regarding whether the flow of the stream is ephemeral, intermittent or perennial;

7.2.c.4.I. An assessment of aquatic life in the stream or stream segment in question and in the adjacent upstream and downstream segments; and

7.2.c.4.J. Any additional information or data that the Board deems necessary to make a decision on the application.

7.2.c.5. For the upper Blackwater River from the mouth of Yellow Creek to a point 5.1 miles upstream, when flow is less than 7Q10. ~~naturally~~ Naturally occurring values for Dissolved Oxygen as established by data collected by the dischargers within this reach and reviewed by the Board and Division of Environmental Protection shall be the applicable criteria.

7.2.d. Site-specific applicability of water use categories and water quality criteria - State-wide water quality standards shall apply except where site-specific numeric criteria, variances or use removals have been approved following application and hearing, as provided in 46 C.S.R. 6. (See ~~§ 8.3~~ section 8.3 and ~~§ 8.4~~ section 8.4, herein) The following are approved site-specific criteria, variances and use ~~removals~~ reclassifications:

7.2.d.1. James River - (Reserved)

7.2.d.2. Potomac River

7.2.d.2.1. Except that a site-specific numeric criterion for aluminum, not to exceed 500 ug/l, shall apply to the section of Opequon Creek from Turkey Run to the Potomac River.

7.2.d.3. Shenandoah River - (Reserved)

7.2.d.4. Cacapon River - (Reserved)

7.2.d.5. South Branch - (Reserved)

7.2.d.6. North Branch

7.2.d.6.1 Except that the Stony River downstream from the limit of the thermal mixing zone (as established by Board Order of 11/20/75) for the Mount Storm Lake wastewater treatment facility to its confluence with the North Branch of the Potomac River is exempt from the 5°F above natural temperature rise; however, the maximum temperature outside the mixing zone shall not exceed 87°F at any time during the months of May through November and not exceed 73°F at any time during the months of December through April. This exception shall apply until the successful completion of a study conducted pursuant to section 316(a) of the Federal ~~Clean Water~~ Act or December 31, 1998, whichever comes first.

7.2.d.7. Monongahela River

7.2.d.7.1. Except that flow in the main stem of the Monongahela River, as regulated by the Tygart Reservoir, operated by the U. S. Army Corps of Engineers, is based on a minimum flow of 345 cfs at Lock and Dam No. 8, river mile point 90.8. This exception does not apply to tributaries of the Monongahela River.

7.2.d.8. Cheat River

7.2.d.8.1. ~~Except that the following site-specific numeric criteria shall apply to the unnamed tributary of Daugherty Run approximately one mile upstream of Daughterty Run's confluence with the Cheat River: iron not to exceed 3.5 mg/l and selenium not~~

~~to exceed 15.24 ug/l and the following site-specific numeric criteria shall apply to Fly Ash Run of Daugherty Run: aluminum: 888.5 ug/l and manganese: 5 mg/l.~~ Except that in the unnamed tributary of Daugherty Run, approximately one mile upstream of Daugherty Run's confluence with the Cheat River, a site-specific numeric criterion for iron of 3.5 mg/l shall apply and the following frequency and duration requirements shall apply to the chronic numeric criterion for selenium (5ug/l): the four-day average concentration shall not be exceeded more than three times every three years (36 months), on average. Further, the following site-specific numeric criteria shall apply to Fly Ash Run of Daugherty Run: acute numeric criterion for aluminum: 888.5 ug/l and manganese: 5 mg/l.

7.2.d.9. Blackwater River - ~~(Reserved)~~ The Blackwater River below Davis, West Virginia shall be classified as a trout water, Category B2.

7.2.d.10. West Fork River - (Reserved)

7.2.d.11. Tygart River - (Reserved)

7.2.d.12. Buckhannon River - (Reserved)

7.2.d.13. Middle Fork River - (Reserved)

7.2.d.14. Youghiogheny River

7.2.d.14.1 Water Use Categories A and E are excluded from the tributaries of the Youghiogheny River in West Virginia which flow into Maryland.

7.2.d.15. Ohio River Main Stem - (Reserved)

7.2.d.16. Ohio River Tributaries.

7.2.d.16.1. Except that site-specific numeric criteria shall apply to the stretch of Conners Run (0-77-A), a tributary of Fish Creek, from its mouth to the discharge from Conner Run impoundment, which shall not have the Water Use Category A and may contain selenium not to exceed 62 ug/1; and iron not to exceed 3.5 mg/1 as a monthly average and 7 mg/1 as a daily maximum.

7.2.d.16.2. Except that a socio-economic variance shall apply to that segment of Harmon Creek (0-97) from its confluence with the Ohio River to a point 2.2 miles upstream, which shall not have water use Category A designation, and which shall have the following instream criteria: ~~Free Cyanide 6.9 ug/l, Daily Maximum;~~ Lead 14 ug/l, Daily Maximum, ~~Total Phenolic Materials 10 ug/l, Daily Maximum,~~ Zinc 181 ug/l, Daily Maximum, Temperature 100° F (monitored per Footnote 12 of the permit); Iron 4.0 mg/l, Monthly Average and 8.0 mg/l, Daily Maximum (monitored per Footnote 12 of the permit)~~; Fluoride 3.1 mg/l,~~

~~Daily Maximum (monitored per Footnote 12 of the permit)~~. Provided, however, that the criteria for ~~Free Cyanide,~~ Lead, ~~Total Phenolic Materials,~~ Zinc, Temperature and Iron shall not apply, and instead the state-wide criteria for these parameters shall apply, unless: Weirton Steel Corporation (1) submits to the Office of Water Resources on or before ~~March 1, 2000~~ January 31, 2001 a report setting forth the water quality of the discharge from Outlet 004 for these parameters during ~~the period from May 1, 1999 to February 1, 2000~~ calendar year 2000; (2) offers further proposals for any appropriate reductions in the above excepted levels; (3) provides any appropriate additional engineering analysis of potential alternatives for reducing further the concentrations of said parameters in the discharge toward achieving statewide criteria; and (4) continues to submit to the Office of Water Resources on a semi-annual basis ~~commencing on December 31, 1999~~, summary reports on the water quality of the discharge from Outlet 004 and the efforts made by Weirton Steel Corporation during the prior six (6) months to improve the quality of said discharge. Additionally Weirton Steel must determine the water quality of Harmon Creek both immediately upstream of and below the discharge of outlet 004 at the Con Rail Bridge by sampling for Flow, pH, ~~Free Cyanide~~, Total and Dissolved Lead, ~~Total Phenolic Materials,~~ Total and Dissolved Zinc, Iron, Fluoride, Temperature, Turbidity, Oil and Grease and Hardness on at least a monthly basis and submit the results to the Office of Water Resources with the semi-annual report ~~commencing December 31, 1999~~. These exceptions shall be in effect until action by the Environmental Quality Board to revise such exceptions or until ~~June 29, 2001~~ June 29, 2004, whichever comes first.

7.2.d.17. Little Kanawha River - (Reserved)

7.2.d.18. Hughes River - (Reserved)

7.2.d.19. Kanawha River Zone 1 - Main Stem

7.2.d.19.1 For the Kanawha River main stem, Zone 1, Water Use Category A shall not apply; and

7.2.d.19.2. The minimum flow shall be 1,960 cfs at the Charleston gauge.

7.2.d.20. Kanawha River Zone 2 and Tributaries

7.2.d.20.1. For the main stem of the Kanawha River only, the minimum flow shall be 1,896 cfs at mile point 72.

7.2.d.20.2. Except the stretch between the mouth of Little Scary Creek (K-31) and the Little Scary impoundment shall not have Water Use Category A. The following site-specific numeric ~~criterion~~ criteria shall apply to that section: selenium not to exceed 62 ug/1 and copper not to exceed 105 ug/1 as a daily maximum nor 49 ug/1 as a 4-day average.

7.2.d.20.3. Except for Simmons Creek (K-54) from its mouth to a point 1200 feet upstream to which the following site-specific numeric ~~criterion~~ criteria shall apply: a maximum daily temperature not to exceed 38°C (100°F) nor a monthly average temperature to exceed 34°C. This exception shall apply until the successful completion of a study conducted pursuant to section 316(a) of the Federal ~~Clean Water~~ Act or May 30, 1998, whichever comes first.

7.2.d.21. Pocatalico River - (Reserved)

7.2.d.22. Coal River - (Reserved)

7.2.d.23. Elk River - (Reserved)

7.2.d.24. Gauley River - (Reserved)

7.2.d.25. Meadow River - (Reserved)

7.2.d.26. Cherry River - (Reserved)

7.2.d.27. Cranberry River - (Reserved)

7.2.d.28. Williams River - (Reserved)

7.2.d.29. New River - (Reserved)

7.2.d.30. Greenbrier River - (Reserved)

7.2.d.31. Bluestone River - (Reserved)

7.2.d.32. Bluestone Lake

~~7.2.d.32.1. Category E Water Uses are deleted in Bluestone Lake and temperature rise shall be limited to no more than 3°F above natural not to exceed 81°F at any time during the months of May through November and not to exceed 73°F at any time during December through April.~~

7.2.d.33. East River - (Reserved)

7.2.d.34. Guyandotte River - (Reserved)

7.2.d.35. Mud River - (Reserved)

7.2.d.36. Big Sandy River - (Reserved)

7.2.d.37. Tug Fork River - (Reserved)

§46-1-8. Specific Water Quality Criteria.

8.1. Charts of specific water quality criteria are included in Appendix E, Table 1.

8.1.a. Specific state (i.e. total, total recoverable, dissolved, valence, etc.) of any parameter to be analyzed shall follow 40 CFR 136, Guidelines Establishing Test Procedures for Analysis of Pollutants Under the Clean Water Act, as amended, June 15, 1990. (See also ~~Section 7.3 of 47 CSR 10~~ 47 C.S.R. 10, section 7.3 - National Pollutant Discharge Elimination System (NPDES) Program.)

8.1.b. Compliance with aquatic life water quality criteria expressed as dissolved metal shall be determined based on dissolved metals concentrations.

8.1.b.1. The aquatic life criteria for all metals listed in Appendix E, Table 2 shall be converted to a dissolved concentration by multiplying each numerical value or criterion equation from Appendix E, Table 1 by the appropriate conversion factor (CF) from Appendix E, Table 2.

8.1.b.2. Permit limits based on dissolved metal water quality criteria shall be prepared in accordance with the U.S. EPA document "The Metals Translator: Guidance For Calculating A Total Recoverable Permit ~~limit~~ Limit From A Dissolved Criterion, ~~June 1996~~: ~~(translator document)~~ EPA 823-B-96-007 June 1996.

8.1.b.3. NPDES permit ~~applications~~ applicants may petition the Office of Water Resources of the Division of Environmental Protection (OWR) to develop a site-specific translator consistent with the provisions in this section. The OWR may, on a case-by-case basis require an applicant applying for a translator to conduct appropriate sediment monitoring through SEM/AVS ratio, bioassay or other approved methods to evaluate effluent limits that prevent toxicity to aquatic life.

8.1.c. An "X" or numerical value in the use columns of Appendix E, Table 1 shall represent the applicable criteria.

8.1.d. Charts of water quality criteria in Appendix E, Table 1 shall be applied in accordance with major stream and use applications, ~~Sections 6 and 7~~ sections 6 and 7, herein.

8.2. Criteria for Toxicants

8.2.a. Toxicants which are carcinogenic have human health criteria (Water Use Categories A and C) based upon an estimated risk level of one additional cancer case per one million persons (10^{-6}) and are indicated in Appendix E, Table 1 with an endnote (^{b}).

8.2.b. A final determination on the critical design flow for carcinogens is not made in this rule, in order to permit further review and study of that issue. Following the conclusion of such review and study, the Legislature may again take up the authorization of this rule for purposes of addressing the critical design flow for carcinogens: Provided, That until such time as the review and study of the issue is concluded or until such time as the Legislature may again take up the authorization of this rule, the regulatory requirements for determining effluent limits for carcinogens shall remain as they were on the date this rule was proposed.

8.3. Variances from Specific Water Quality Criteria. A variance from numeric criteria may be granted to a discharger if it can be demonstrated that the conditions outlined in subsections 6.1.b.A - F, herein, limit the attainment of one or more specific water quality criteria. Variances shall apply only to the discharger to whom they are granted and shall be reviewed by the Board at least every three years. In granting a variance, the requirements for revision of water quality standards in 46 CSR ~~Series~~ 6 shall be followed.

8.4. Site-specific numeric criteria. The Board may establish numeric criteria different from those set forth in Appendix E, Table 1 for a stream or stream segment upon a demonstration that existing numeric criteria are either over-protective or under-protective of the aquatic life residing in the stream or stream segment. A site-specific numeric criterion will be established only where the numeric criterion will be fully protective of the aquatic life and the existing and designated uses in the stream or stream segment. The site-specific numeric criterion may be established by conducting a Water Effect Ratio study pursuant to the procedures outlined in ~~EPAs~~ USEPA's "Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals" (February 1994); other methods may be used with prior approval by the Board. In adopting site-specific numeric criteria, the requirements for revision of water quality standards set forth in 46 CSR 6 shall be followed.

§46-1-9. Establishment Of Safe Concentration Values.

When a specific water quality standard has not been established by these rules and there is a discharge or proposed discharge into waters of the State, the use of which has been designated a Category B1, B2, B3 or B4, such discharge may be regulated by the Chief where necessary to protect State ~~water~~ waters through establishment of a safe concentration value as follows:

9.1. Establishment of a safe concentration value shall be based upon data obtained from relevant aquatic field studies, standard bioassay test data which exists in substantial available scientific literature, or data obtained from specific tests utilizing one (1) or more representative important species of aquatic life designated on a case-by-case basis by the Chief and conducted in a water environment which is equal to or closely approximates that of the natural quality of the receiving waters.

9.2. In those cases where it has been determined that there is insufficient available data to

establish a safe concentration value for a pollutant, the safe concentration value shall be determined by applying the appropriate application factor as set forth below to the 96-hour LC 50 value. Except where the Chief determines, based upon substantial available scientific data that an alternate application factor exists for a pollutant, the following appropriate application factors shall be used in the determination of safe concentration values:

9.2.a. Concentrations of pollutants or combinations of pollutants that are not persistent and not cumulative shall not exceed 0.10 (1/10) of the 96-hour LC 50.

9.2.b. Concentrations of pollutants or combinations of pollutants that are persistent or cumulative shall not exceed 0.01 (1/100) of the 96-hour LC 50.

9.3. Persons seeking issuance of a permit pursuant to these rules authorizing the discharge of a pollutant for which a safe concentration value is to be established using special bioassay tests pursuant to subsection 9.1 of this section shall perform such testing as approved by the Chief and shall submit all of the following in writing to the Chief:

9.3.a. A plan proposing the bioassay testing to be performed.

9.3.b. Such periodic progress reports of the testing as may be required by the Chief.

9.3.c. A report of the completed results of such testing including, but not limited to, all data obtained during the course of testing, and all calculations made in the recording, collection, interpretation and evaluation of such data.

9.4. Bioassay testing shall be conducted in accordance with methodologies outlined in the following documents: U.S. EPA Office of Research and Development Series Publication, Methods for Measuring the Acute Toxicity (EPA/600/4-90/027F, August 1993, 4th Edition) or Short Term Methods for Estimating Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (EPA/600/4-89/001), March 1989; Standard Methods for the Examination of Water and Wastewater (18th Edition); or ASTM Practice E 729-88 for Conducting Acute Toxicity Tests with Fishes, Macroinvertebrates and Amphibians as published in Volume 11.04 of the 1988 Annual Book of ASTM Standards. Test waters shall be reconstituted according to recommendations and methodologies specified in the previously cited references or methodologies approved in writing by the Chief.

APPENDIX A
CATEGORY B-2 - TROUT WATERS

This list contains known trout waters and is not intended to exclude any waters which meet the definition in Section ~~2.16~~ 2.28.

River Basin	County	Stream
James River		
J	Monroe	South Fork Potts Creek
Potomac River		
P	Jefferson	Town Run
P	"	Rocky Marsh Run
P	Berkeley	Opequon Creek
P	"	Tuscarora Creek (Above Martinsburg)
P	"	Middle Creek (Above Route 30 Bridge)
P	"	Mill Creek
P	"	Hartland Run
P	"	Mill Run
P	"	Tillance Creek
P	Morgan	Meadow Branch
PS	Jefferson	Flowing Springs Run (Above Halltown)
PS	"	Cattail Run
PS	"	Evitt's Run
PS	"	Big Bullskin Run
PS	"	Long Marsh Run
PC	Hampshire	Cold Stream
PC	"	Edwards Run and Impoundment
PC	"	Dillons Run
PC	Hardy	Lost River
PC	"	Camp Branch
PC	"	Lower Cove Run
PC	"	Moores Run
PC	"	North River (Above Rio)
PC	"	Waites Run
PC	"	Trout Run
PC	"	Trout Pond (Impoundment)
PC	"	Warden Lake (Impoundment)
PC	"	Rock Cliff Lake (Impoundment)
PSB	Hampshire	Mill Creek
PSB	"	Mill Run
PSB	Hardy	Dumpling Creek
PSB	Grant-Pendleton	North Fork South Branch
PSB	Grant	North Fork Lunice Creek
PSB	"	South Fork Lunice Creek
PSB	"	South Mill Creek (Above Hiser)
PSB	"	Spring Run

PSB	Pendleton	Hawes Run (Impoundment)
PSB	"	Little Fork
PSB	"	South Branch (Above North Fork)
PSB	"	Senena Creek
PSB	"	Laurel Fork
PSB	"	Big Run
PNB	Mineral	North Fork Patterson Creek
PNB	"	Fort Ashby (Impoundment)
PNB	"	New Creek
PNB	"	New Creek Dam 14 (Impoundment)
PNB	"	Mill Creek (Above Markwood)

Monongahela River

M	Monongalia-Marion	Whiteday Creek (Above Smithtown)
MC	Monongalia	Morgan Run
MC	"	Coopers Rock (Impoundment)
MC	"	Blaney Hollow
MC	Preston	Laurel Run
MC	"	Elsey Run
MC	"	Saltlick Creek
MC	"	Buffalo Creek
MC	"	Wolf Creek
MC	Tucker	Clover Run
MC	"	Elklick Run
MC	"	Horseshoe Run
MC	"	Maxwell Run
MC	"	Red Creek
MC	"	Slip Hill Mill Branch
MC	"	Thomas Park (Impoundment)
MC	"	Blackwater River (Above Davis)
MC	"	Blackwater River (Below Davis) (insert date adopted)
MC	Randolph	Camp Five Run
MC	"	Dry Fork (Above Otter Creek)
MC	"	Glady Fork
MC	"	Laurel Fork
MC	"	Gandy Creek (Above Whitmer)
MC	"	East Fork Glady Fork (Above C & P Compressor Station)
MC	Randolph	Shavers Fork (Above Little Black Fork)
MC	"	Three Spring Run
MC	"	Spruce Knob Lake (Impoundment)
MW	Harrison	Dog Run (Pond)
MW	Lewis	Stonecoal
MT	Barbour	Brushy Fork (Above Valley Furnace)
MT	"	Teter Creek Lake (Impoundment)

MT	"	Mill Run
MT	Taylor-Barbour	Tygart Lake Tailwaters (Above Route 119 Bridge)
MT	Preston	Roaring Creek (Above Little Lick Branch)
MT	Randolph	Tygart River (Above Huttonsville)
MT	"	Elkwater Fork
MT	"	Big Run
MTB	Upshur-Randolph-Lewis	Right Fork Buckhannon River
MTB	Upshur	Buckhannon River (Above Beans Mill)
MTB	Upshur	French Creek
MTB	Upshur-Randolph	Left Fork Right Fork
MTN	Upshur	Right Fork Middle Fork River
MTM	Randolph	Middle Fork River (Above Cassity)
MY	Preston	Rhine Creek

Little Kanawha River

LK	Upshur	Left Fork-Right Fork Little Kanawha River)
LK	Upshur-Lewis	Little Kanawha River (Above Wildcat)

Kanawha River

KE	Braxton	Sutton Reservoir
KE	"	Sutton Lake Tailwaters (Above Route 38/5 Bridge)
KE	Webster	Back Fork
KE	"	Desert Fork
KE	"	Fall Run
KE	"	Laurel Fork
KE	"	Left Fork Holly River
KE	"	Sugar Creek
KE	"	Elk River (Above Webster Springs)
KC	Raleigh	Stephens Lake (Impoundment)
KC	"	Marsh Fork (Above Sundial)
KG	Nicholas	Summersville Reservoir (Impoundment)
KG	"	Summersville Tailwaters (Above Collison Creek)
KG	Nicholas	Deer Creek
KG	Randolph-Webster	Gauley River (Above Moust Coal Tipple)
KG	Fayette	Glade Creek
KG	Nicholas	Hominy Creek
KG	"	Anglins Creek
KG	Greenbrier	Big Clear Creek
KG	"	Little Clear Creek and Laurel Run
KG	"	Meadow Creek
KG	Fayette	Wolf Creek
KG	Nicholas	Cherry River

KG	Greenbrier-Nicholas	Laurel Creek
KG	" "	North Fork Cherry River
KG	Greenbrier	Summit Lake (Impoundment)
KG	Greenbrier-Nicholas	South Fork Cherry River
KGC	Pocahontas-Webster-Nicholas	Cranberry River
KGC	Pocahontas	South Fork Cranberry River
KGW	Pocahontas	Tea Creek
KGW	Pocahontas-Webster	Williams River (Above Dyer)
KN	Raleigh	Glade Creek
KN	Summers	Meadow Creek
KN	Fayette	Mill Creek
KN	"	Laurel Creek (Above Cotton Hill)
KN	Raleigh	Pinch Creek
KN	Monroe	Rich Creek
KN	"	Turkey Creek
KN	Fayette	Dunloup Creek (Downstream from Harvey Sewage Treatment Plant)
KN	Mercer	East River (Above Kelleysville)
KN	"	Pigeon Creek
KN	Monroe	Laurel Creek
KNG	Monroe	Kitchen Creek (Above Gap Mills)
KNG	Greenbrier	Culverson Creek
KNG	"	Milligan Creek
KNG	Greenbrier-Monroe	Second Creek (Rt. 219 Bridge to Nickell's Mill)
KNG	Greenbrier	North Fork Anthony Creek
KNG	"	Spring Creek
KNG	"	Anthony Creek (Above Big Draft)
KNG	Pocahontas	Watoga Lake
KNG	"	Beaver Creek
KNG	"	Knapp's Creek
KNG	"	Hills Creek
KNG	"	North Fork Deer Creek (Above Route 28/5)
KNG	"	Deer Creek
KNG	"	Sitlington Creek
KNG	"	Stoney Creek
KNG	"	Swago Creek
KNG	"	Buffalo Fork (Impoundment)
KNG	"	Seneca (Impoundment)
KNG	"	Greenbrier River (Above Hosterman)
KNG	"	West Fork-Greenbrier River (Above the impoundment at the tannery)
KNG	"	Little River-East Fork
KNG	"	Little River-West Fork
KNG	"	Five Mile Run
KNG	"	Mullenax Run
KNG	"	Abes Run

KNB	Mercer	Marsh Fork
KNB	"	Camp Creek
OG	Wyoming	Pinnacle creek
BST	McDowell	Dry Fork (Above Canebrake)

APPENDIX B

This list contains known waters used as public water supplies and is not intended to exclude any waters as described in ~~Section 6.2~~ section 6.2, herein.

River Basin	County	Operating Company	Source
Shenandoah River			
S	Jefferson	Charlestown Water	Shenandoah River
Potomac River			
P	Jefferson	3-M Company	Turkey Run
P	"	Shepherdstown Water	Potomac River
P	"	Harpers Ferry Water	Elk Run
P	Berkeley	DuPont Potomac River Works	Potomac River
P	"	Berkeley County PSD	Le Feure Spring
P	"	Opequon PSD	Quarry Spring
P	"	Hedgesville PSD	Speck Spring
P	Morgan	Paw Paw Water	Potomac River
PSB	Hampshire	Romney Water	South Branch Potomac River
PSB	"	Peterkin Conference Center	Mill Run
PSB	Hardy	Moorefield Municipal Water	South Fork River
PSB	Pendleton	U.S. Naval Radio Sta.	South Fork River
PSB	"	Circleville Water Inc.	North Fork of South Branch, Potomac River
PSB	Grant	Mountain Top PSD	Mill Creek, Impoundment
PSB	"	Petersburg Municipal Water	South Branch, Potomac River
PNB	Grant	Island Creek Coal	Impoundment
PNB	Mineral	Piedmont Municipal Water	Savage River, Maryland
PNB	"	Keyser Water	New Creek
PNB	"	Fort Ashby PSD	Lake
Monongahela River			
M	Monongalia River	Morgantown Water Comm.	Colburn Creek & Monongahela
M	"	Morgantown Ordinance Works	Monongahela River
M	Preston	Preston County PSD	Deckers Creek
M	Monongalia	Blacksville # 1 Mine	Impoundment
M	"	Loveridge Mine	Impoundment
M	"	Consolidation Coal Co.	Impoundment
M	Preston	Mason Town Water	Block Run

MC	Preston	Fibair Inc.	Impoundment
MC	Monongalia	Cheat Neck PSD	Cheat Lake
MC	"	Lakeview County Club	Cheat Lake-Lake Lynn
MC	"	Union District PSD	Cheat Lake-Lake Lynn
MC	"	Cooper's Rock State Park	Impoundment
MC	Preston	Kingwood Water	Cheat River
MC	"	Hopemount State Hosp.	Snowy Creek
MC	"	Rowlesburg Water	Keyser Run & Cheat River
MC	"	Albright	Cheat River
MC	Tucker	Parsons Water	Shavers & Elk Lick Fork
MC	"	Thomas Municipal	Thomas Reservoir
MC	"	Hamrick PSD	Dry Fork
MC	"	Douglas Water System	Long Run
MC	"	Davis Water	Blackwater River
MC	"	Hambleton Water System	Roaring Creek
MC	"	Canaan Valley State Park	Blackwater River
MC	Pocahontas	Cheat Mt. Sewer	Shavers Lake
MC	"	Snowshoe Co. Water	Shavers Fork
MC	Randolph	Womelsdorf Water	Yokum Run
MW	Harrison	Lumberport Water	Jones Run
MW	"	Clarksburg Water Bd.	West Fork River
MW	"	Bridgeport Mun. Water	Deecons & Hinkle Creek
MW	"	Salem Water Board	Dog Run
MW	"	West Milford Water	West Fork Ricer
MW	Lewis	W.V. Water-Weston District	West Fork River
MW	"	Jackson's Mill Camp	Impoundment
MW	"	West Fork River PSD	West Fork River
MW	"	Kennedy Compresssor Station	West Fork River
MW	"	Jane Lew Water Comm.	Hackers Creek
MW	Harrison	Bel-Meadow Country Club	Lake
MW	"	Harrison Power Station	West Fork River
MW	"	Oakdale Portal	Impoundment
MW	"	Robinson Port	Impoundment
MT	Marion	Fairmont Water Comm.	Tygart River
MT	"	Mannington Water	Impoundment
MT	"	Monongah Water Works	Tygart River
MT	"	Eastern Assoc. Coal Corp.	Impoundment
MT	"	Four States Water	Impoundment
MT	Harrison	Shinnston Water Dept.	Tygart River
MT	Taylor	Grafton Water	Tygart River-Lake
MT	Barbour	Phillippi Water	Tygart River
MT	"	Bethlehem Mines Corp.	Impoundment
MT	"	Belington Water Works	Tygart River & Mill Run Lake

	MT	Randolph	Elkins Municipal Water	Tygart River
	MT	"	Beverly Water	Tygart river
	MT	"	Valley Water	Tygart River
	MT	"	Huttonsville Medium Security Prison	Tygart River
	MT	"	Mill Creek Water	Mill Creek
	MTB	Upshur	Buckhannon Water Board	Buckhannon River
Ohio River				
O	Zone 1	Hancock	Chester Water & Sewer	Ohio River
O	"	Brooke	City of Weirton	Ohio River
O	"	"	Weirton Steel Division	Ohio River
O	"	Ohio	Wheeling Water	Ohio River
O	"	Tyler	Sistersville Mun. Water	Ohio River
O	"	Pleasants	Pleasants Power Station	Ohio River
O	"	Cabel	Huntington Water Corp.	Ohio River
O	"	Marshall	Mobay Chemical Co.	Ohio River
O	"	Wood	E. I. DuPont	Ohio River
O	Zone 2	Marshall	Cameron Water	Glass House Hollow
O	"	"	New Urindahana Water System	Wheeling Creek
O	"	Wetzel	Pine Grove Water	North Fork, Fishing Creek
O	"	Marshall	Consolidated Coal Co.	Impoundment
O	"	Tyler	Middlebourne Water	Middle Island Creek
O	"	Doddridge	West Union Mun. Water	Middle Island Creek
O	"	Mason	Hidden Valley Country	Lake/Impoundment
O	"	Jackson	Ripley Water	Mill Creek
O	"	Wayne	Wayne Municipal Water	Twelve Pole Creek
O	"	"	East Lynn Lake	East Lynn Lake
O	Zone 2	Wayne	Monterey Coal Co.	Impoundment
Little Kanawha				
	LK	Wood	Claywood Park PSD	Little Kanawha River
	LK	Calhoun	Grantsville Mun. Water	Little Kanawha River
	LK	Gilmer	Glenville Utility	Little Kanawha River
	LK	"	Consolidated Gas Compressor	Steer Creek
	LK	Braxton	Burnsville Water Works	Little Kanawha river
	LK	Roane	Spencer Water	Spring Creek & Mile Tree Reservoir
	LK	Wirt	Elizabeth Water	Little Kanawha River
	LKH	Ritchie	Cairo Water	North Fork Hughes River
	LKH	"	Harrisville Water	North Fork Hughes River
	LKH	"	Pennsboro Water	North Fork Hughes River
Kanawha River				

K	Putnam	Buffalo Water	Cross Creek
K	"	Winfield Water	Poplar Fork & Crooked Creek
K	"	South Putnam PSD	Poplar Fork & Crooked Creek
K	Kanawha	Cedar Grove Water	Kanawha River
K	"	Pratt Water	Kanawha River
K	Fayette	Armstrong PSD PO-K1-CO-EL	Kanawha River & Gum Hollow
K	"	Kanawha Water Co.-Beards Fork	Unnamed Tributary Kanawha River
K	Kanawha	Midland Trail School	Impoundment
K	"	Cedar Coal Co.	Impoundment
K	Fayette	Elkem Metals Co.	Kanawha River
K	"	Deepwater PSD	Kanawha River
K	"	Kanawha Falls PSD	Kanawha River
K	"	W.V. Water-Montgomery	Kanawha River

Pocatalico River

KP	Kanawha	Sissonville PSD	Pocatalico River
KP	Roane	Walton PSD	Silcott Fork Dam

Coal River

KC	Kanawha	St. Albans Water	Coal River
KC	"	Washington PSD	Coal River
KC	Lincoln	Lincoln PSD	Coal River
KC	Boone	Coal River PSD	Coal River
KC	"	Whitesville PSD	Coal River
KC	Raleigh	Armco Mine 10	Marsh Fork
KC	"	Armco Steel-Montc. Stickney	Coal River
KC	Raleigh	Peabody Coal	Coal River
KC	"	Stephens Lake Park	Lake Stephens
KC	Boone	W.V. Water-Madison Dist.	Little Coal River
KC	"	Van PSD	Pond Fork
KC	Raleigh	Consol. Coal Co.	Workmans Creek
KC	Boone	Water Ways Park	Coal River

Elk River

KE	Kanawha	Clendenin Water	Elk River
KE	"	W.V. Water-Kanawha Valley District	Elk River
KE	Kanawha	Pinch PSD	Elk River
KE	Clay	Clay Waterworks	Elk River
KE	"	Procious PSD	Elk River
KE	Braxton	Flatwoods-Canoe Run PSD	Elk River
KE	"	Sugar Creek PSD	Elk River
KE	"	W.V. Water-Gassaway Dist.	Elk River
KE	"	W.V. Water-Sutton Dist.	Elk River
KE	Webster	W.V. Water-Webster Springs	Elk River
KE		Holly River State Park	Holly River

Gauley River

KG	Nicholas	Craigsville PSD	Gauley River
KG	"	Summersville Water	Impoundment/Muddlety Creek
KG	"	Nettie-Leivasy PSD	Jim Branch
KG	Webster	Cowen PSD	Gauley River
KG	Nicholas	Wilderness PSD	Anglins Creek & Meadow River
KG	"	Richwood Water	North Fork Cherry River

New ~~river~~ River

KN	Fayette	Ames Heights Water	Mill Creek
KN	"	Mt. Hope Water	Impounded Mine (Surface)
KN	"	Ansted Municipal Water	Mill Creek
KN	"	Fayette Co. Park	Impoundment
KN	"	New River Gorge Campground	Impoundment
KN	"	Fayetteville Water	Wolfe Creek
KN	Raleigh	Beckley Water	Glade Creek
KN	"	Westmoreland Coal Co.	Farley Branch

Bluestone River

KNB	Summers	Jumping Branch-Nimitz	Mt. Valley Lake
KNB	"	Bluestone Conf. Center	Bluestone Lake
KNB	"	Pipestem State Park	Impoundment
KNB	Mercer	Town of Athens	Impoundment
KNB	"	Bluewell PSD	Impoundment
KNB	"	Bramwell Water	Impoundment
KNB	"	Green Valley-Glenwood PSD	Bailey Reservoir
KNB	"	Kelly's Tank	Spring
KNB	"	W.V. Water Princeton	Impoundment/Brusch Creek
KNB	"	Lashmeet PSD	Impoundment
KNB	"	Pinnacle Water Assoc.	Mine
KNB	"	W.V. Water Bluefield	Impoundment

Greenbrier River

KNG	Summers	W.V. Water Hinton	Greenbrier River & New River
KNG	"	Big Bend PSD	Greenbrier River
KNG	Greenbrier	Alderson Water Dept.	Greenbrier River
KNG	"	Ronceverte Water	Greenbrier River
KNG	"	Lewisburg Water	Greenbrier river
KNG	Pocahontas	Denmar State Hospital Water	Greenbrier River
KNG	"	City of Marlinton Water	Knapp Creek
KNG	"	Cass Scenic Railroad	Leatherbark Creek

KNG	"	Upper Greenbrier PSD	Greenbrier River
KNG	"	The Hermitage	Greenbrier
Guyandotte River			
OG	Cabell	Salt Rock PSD	Guyandotte River
OG	Lincoln	West Hamlin Water	Guyandotte Rriver
OG	Logan	Logan Water Board	Guyandotte River
OG	"	Man Water Works	Guyandotte River
OG	"	Buffalo Creek PSD	Buffalo Creek/ Mine/Wells
OG	Logan	Chapmanville	Guyandotte River
OG	"	Logan PSD	Whitman Creek/ Guyandotte River
OG	Mingo	Gilbert Water	Guyandotte River
OG	Wyoming	Oceana Water	Laurel Fork
OG	"	Glen Rogers PSD	Impoundment
OG	"	Pineville Water	Pinnacle Creek/ Guyandotte River
OG	Raleigh	Raleigh Co. PSD-Amigo	Tommy Creek
OMG	Cabell	Milton Water Works	Guyandotte River
OMG	"	Culloden PSD	Indian Fork Creek
OMG	Putnam	Hurricane Municipal Water	Impoundment
OMG	"	Lake Washington PSD	Lake Washington
Big Sandy River			
BS	Wayne	Kenova Municipal Water	Big Sandy River
BS	"	Fort Gay Water	Tug Fork
BST	Mingo	Kermit Water	Tug Fork
BST	"	Matewan Water	Tug Fork
BST	"	A & H Coal Co., Inc.	Impoundment
BST	"	Williamson Water	Impoundment
BST	McDowell	City of Welch	Impoundment/Wells
BST	"	City of Gary	Impoundment/Mine

APPENDIX C
CATEGORY E-3 - POWER PRODUCTION

This list contains known power production facilities and is not intended to exclude any waters as described in ~~Section 6.6.c~~ section 6.6.c, herein.

River Basin	County	Station Name	Operating Company
Monongahela River			
M	Monongalia	Fort Martin Power Station	Monongahela Power
M	Marion	Rivesville Station	Monongahela Power
MC	Preston	Albright Station	Monongahela Power
Potomac	Grant	Mt. Storm Power Station	Virginia Electric & Power Company
Ohio River			
O - Zone 1	Wetzel	Hannibal (Hydro)	Ohio Power
O " "	Marshall	~~Kamer~~ Kammer	Ohio Power
O " "	"	Mitchell	Ohio Power
O " "	Pleasants	Pleasants Station	Monongahela Power
O " "	"	Willow Island Station	Monongahela Power
O " "	Mason	Phillip Sporn Plant	Central Operating (AEP)
O " "	"	Racine (Hydro)	Ohio Power
O " "	"	Mountaineer	Appalachian Power Co.
K	Putnam	Winfield (Hydro)	Appalachian Power Co.
K	Kanawha	Marmet (Hydro)	Appalachian Power Co.
K	"	London (Hydro)	Appalachian Power Co.
K	"	Kanawha River	Appalachian Power Co.
K	"	John E. Amos	Appalachian Power Co.

APPENDIX D
CATEGORY C - WATER CONTACT RECREATION

This list contains waters known to be used for water contact recreation and is not intended to exclude any waters as described in ~~Section 6.4~~ section 6.4, herein.

River Basin	Stream Code	Stream	County
Shenandoah	S	Shenandoah River	Jefferson
Potomac	P	Potomac River	Jefferson
	P	" "	Hampshire
	P	" "	Berkeley
	P	" "	Morgan
	P-9	Sleepy Creek & Meadow Branch	Berkeley
	P-9-G-1	North Fork of Indian Run	Morgan
South Branch	PSB	South Branch of Potomac River	Hampshire
	PSB	" "	Hardy
	PSB	" "	Grant
	PSB-21-X	Hawes Run	Pendleton
	PSB-25-C-2	Spring Run	Grant
	PSB-28	North Fork South Branch Potomac River	Grant
North Branch	PNB	North Branch of Potomac River	Mineral
	PNB-4-EE	North Fork Patterson Creek	Grant
	PNB-7-H	Linton Creek	Grant
	PNB-17	Stoney River-Mt. Storm Lake	Grant
	PC	Cacapon River	Hampshire
Monongalia			
Cheat	MC	Cheat Lake/Cheat river	Monongalia/Preston
	MC	Alpine Lake	Preston
	MC-6	Coopers Rock Lake/ Quarry Run	Monongalia
	MC-12	Big Sandy Creek	Preston
	MSC	Shavers Fork	Randolph
	MTN	Middle Fork River	Barbour/Randolph/ Upshur
	MW	West Fork River	Harrison

	MW-18	Stonecoal Creek/ Stonecoal Lake	Lewis
Ohio	O	Ohio River	Brooke/Cabell/ Hancock/Jackson/ Marshall/Mason/ Ohio/Pleasants/ Tyler/Wayne/Wood/ Wetzel
	O-2-H	Beech Fork of Twelvepole Creek/Beech Fork Lake	Wayne
	O-2-Q	East Fork of Twelvepole Creek/East Lynn Lake	Wayne
	O-3	Fourpole Creek	Cabell
	O-21	Old Town Creek/ McClintic Ponds	Mason
	OMI	Middle Island Creek/ Crystal Lake	Doddridge
	OG	Guyandotte River	Cabell
	OG	Guyandotte River/ R. D. Bailey Lake	Wyoming
	OGM	Mud River	Cabell
Little Kanawha	LK	Little Kanawha River/ Burnsville Lake	Braxton
Kanawha	K	Kanawha River	Fayette/Kanawha/ Mason/Putnam
	K-1	Unnamed Tributary Krodel Lake	Mason
	KC	Coal River	Kanawha
	KC-45-Q	Stephens Branch/ Lake Stephens	Raleigh
	KE	Elk River	Kanawha/Clay/ Braxton/Webster/ Randolph
	KE	Sutton lake	Braxton
	KN	New River	Fayette/Raleigh/ Summers
	KN-26-F	Little Beaver Creek	Raleigh
	KNG	Greenbrier River	Greenbrier/Pocahontas/ Summers

KNG-23-E-1	Little Devil Creek/ Moncove Lake	Monroe
KNG-28	Anthony Creek	Greenbrier
KNG-28-P	Meadow Creek/ Lake Sherwood	Greenbrier
KNB	Bluestone River/ Bluestone Lake	Summers
KG	Gauley River	Webster
KG	Gauley River/ Summersville Lake	Nicholas
KGW	Williams River	Webster

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.1 Dissolved Aluminum (ug/l) Not to exceed: ~~(See 7.2.d.B(b))~~	750xCF[5]	87xCF[5]	750xCF[5]	87xCF[5]			
8.2 Ammonia (ug/l): Un-ionized ammonia (UA) shall be determined from values of total ammonia-N, pH and temperature according to the following equation: $UA = \frac{1.2(\text{total ammonia-N})}{1+10^{(pka-pH)}}$ where pka = 0.0902 + 2730/(273.2 + T)and T = temperature (°C) The concentration of un-ionized ammonia (NH3) shall not exceed 50 ug/l.						50	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.2.1 Acute and chronic aquatic life criteria for ammonia shall be determined using ~~the tables and formulae in the National Criteria section of USEPAs Ambient Water Quality Criteria for Ammonia - 1984 (EPA 440/5-85-001, January 1985)~~ the National Criterion for Ammonia in Fresh Water[d] from USEPA's 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA-822-R-99-014, December 1999)	X	X	X	X			
8.3 Antimony (ug/l) Not to exceed:					4300	14	
8.4 Arsenic[b] (ug/l) Not to exceed:					50	50	100
8.4.1 Dissolved Trivalent Arsenic Not to exceed:	360 x CF[5]	190 x CF[5]	360 x CF[5]	190 x CF[5]			
8.5 Barium (mg/l) Not to exceed:						1.0	
8.6 Beryllium (ug/l)	130		130			.0077	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.7 Cadmium (ug/l) Hardness Soluble Cd (mg/l $CaCO_3$) 0 - 35 1.0 36 - 75 2.0 76 - 150 5.0 > 150 10.0						X	
8.7.1 Not to exceed 10 ug/l in the Ohio River (O Zone 1) main stem (see section 7.1.d, herein)						X	
8.7.3 The four-day average concentration of dissolved cadmium shall not exceed the value determined by the following equation: $Cd = e^{(0.7852[\ln(\text{hardness})]-3.490)} \times CF$[5]		X		X			
8.7.4 The one-hour average concentration of dissolved cadmium shall not exceed the value determined by the following equation: $Cd = e^{(1.128[\ln(\text{hardness})]-3.828)} \times CF$[5]	X		X				
8.8 Chloride (mg/l) Not to exceed:	860	230	860	230	250	250	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.9.1 Chromium, dissolved hexavalent (ug/l): Not to exceed:	16 x CF[5]	11 x CF[5]	16 x CF[5]	7.2 x CF[5]		50	
8.9.2 Chromium, trivalent (ug/l) The one-hour average concentration of dissolved trivalent chromium shall not exceed the value determined by the following equation: exp{0.8190[ln(hardness)]+3.7256} x (CF[5])	X		X				
8.9.3 The four-day average concentration of dissolved trivalent chromium shall not exceed the value determined by the following concentration: exp{0.8190[ln(hardness)]+0.6848}x (CF[5]).		X		X			
~~8.9~~ 8.10 Copper (ug/l) Not to exceed:						1000	
~~8.9.1~~ 8.10.1 The four-day average concentration of dissolved copper shall not exceed the value determined by the following equation[a]: $Cu = e^{(0.8545\{\ln(hardness)\}-1.465)} \times CF^5$		X		X			

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
~~8.9.2~~ 8.10.2 The one-hour average concentration of dissolved copper shall not exceed the value determined by the following equation[a]: $Cu = e^{(0.9422[\ln(\text{hardness})]-1.464)} \times CF$[5]	X		X				
~~8.10~~ 8.11 Cyanide (ug/l) (As free cyanide $HCN+CN^-$) Not to exceed:	22	5.0	22	5.0	5.0	5.0	
~~8.11~~ 8.12 Dissolved Oxygen[c]: not less than 5 mg/l at any time.	X				X	X	X
~~8.11.1~~ 8.12.1 Kanawha River main stem, Zone 1 - Not less than 4.0 mg/l at any time.	X						
~~8.11.2~~ 8.12.2 Ohio River main stem - the average concentration shall not be less than 5.0 mg/l per calendar day and shall not be less than 4.0 mg/l at any time or place outside any established mixing zone - provided that a minimum of 5.0 mg/l at any time is maintained during the April 15-June 15 spawning season.	X						

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
~~8.11.3.~~ 8.12.3 Not less than 7.0 mg/l in spawning areas and in no case less than 6.0 mg/l at any time.			X				
~~8.12~~ 8.13 Fecal Coliform: Maximum allowable level of fecal coliform content for Primary Contact Recreation (either MPN or MF) shall not exceed 200/100 ml as a monthly geometric mean based on not less than 5 samples per month; nor to exceed 400/100 ml in more than ten percent of all samples taken during the month.					X	X	
~~8.12.1~~ 8.13.1 Ohio River main stem (zone 1) - During the non-recreational season (November through April only) the maximum allowable level of fecal coliform for the Ohio River (either MPN or MF) shall not exceed 2000/100 ml as a monthly geometric mean based on not less than 5 samples per month.					X		
~~8.13~~ 8.14 Fluoride (mg/l) Not to exceed:						1.4	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
~~8.13.1~~ 8.14.1 Not to exceed 2.0 for category D uses.							X
~~8.14. Dissolved Hexavalent chromium (ug/l) Not to exceed:~~	~~16 x CF[5]~~	~~11 x CF[5]~~	~~16 x CF[5]~~	~~7.2 x CF[5]~~		~~50~~	
8.15 Iron[c] (mg/l) Not to exceed:		1.5		0.5		1.5	
8.16 Lead (ug/l) Not to exceed:						50	
8.16.1 The four-day average concentration of dissolved lead shall not exceed the value determined by the following equation[a]: $Pb = e^{(1.273[\ln(\text{hardness})]-4.705)} \times CF^5$		X		X			

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.16.2 The one-hour average concentration of dissolved lead shall not exceed the value determined by the following equation[a]: $Pb = e^{(1.273[\ln(hardness)]-1.46)} \times CF^5$	X		X				
8.17 Manganese (mg/l) (see §6.2.d) Not to exceed:						1.0	
~~8.17.1 Effluent limitations regarding Mn shall not apply where the applicant certifies the stream or stream segment is not category A water.~~							
8.18 Mercury The total organism body burden of any aquatic species shall not exceed 0.5 ug/g as methylmercury.					0.5	0.5	
8.18.1 Total mercury in any unfiltered water sample shall not exceed (ug/l):	2.4		2.4		0.15	0.14	
8.18.2 Methylmercury (water column) Not to exceed (ug/l):		.012		.012			
8.19 Nickel (ug/l) Not to exceed:					4600	510	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.19.1 The four-day average concentration of dissolved nickel shall not exceed the value determined by the following equation[a]: $Ni = e^{(0.846[\ln(hardness)]+1.1645)} \times CF^5$		X		X			
8.19.2 The one-hour average concentration of dissolved nickel shall not exceed the value determined by the following equation[a]: $Ni = e^{(0.846[\ln(hardness)]+3.361)} \times CF^5$	X		X				
8.20 Nitrate (as Nitrate-N) (mg/l)						10	
8.21 Nitrite (as Nitrite-N) (mg/l) Not to exceed:	1.0		.060				
8.22 Organics							
Chlordane[b] (ng/l)	2400	4.3	2400	4.3	0.46	0.46	0.46
DDT[b] (ng/l)	1100	1.0	1100	1.0	0.024	0.024	0.024
Aldrin[b] (ng/l)	3.0		3.0		0.071	0.071	0.071
Dieldrin[b] (ng/l)	2500	1.9	2500	1.9	0.071	0.071	0.071

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
Endrin (ng/l)	180	2.3	180	2.3	2.3	2.3	2.3
Toxaphene[b] (ng/l)	730	0.2	730	0.2	0.73	0.73	0.73
PCB[b] (ng/l)		14.0		14.0	0.045	0.044	0.045
Methoxychlor (ug/l)		0.03		0.03	0.03	0.03	0.03
Dioxin (2,3,7,8- TCDD)[b] (pg/l)					0.014	0.013	0.014
Acrylonitrile[b] (ug/l)					0.66	0.059	
Benzene[b] (ug/l)					71	0.66	
1,2-dichlorobenzene (mg/l)					17	2.7	
1,3-dichlorobenzene (mg/l)					2.6	0.4	
1,4-dichlorobenzene (mg/l)					2.6	0.4	
2,4-dinitrotoluene[b] (ug/l)					9.1	0.11	
Hexachlorobenzene[b] (ng/l)					0.77	0.72	
Carbon tetrachloride[b] (ug/l)					4.4	0.25	
Chloroform[b] (ug/l)	~~28,900~~	~~1,240~~	~~28,900~~	~~1,240~~	470	0.19	
Halomethanes (ug/l)					15.7	0.19	
1,2-dichloroethane[b] (ug/l)					99	0.035	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
1,1,1- trichloroethane[b] (mg/l)						12	
1,1,2,2-tetrachloroethane (ug/l)		~~2400~~		~~2400~~	11	0.17	
1,1-dichloroethylene[b] (ug/l)					3.2	0.03	
Trichloroethylene[b] (ug/l)					81	2.7	
Tetrachloroethylene[b] (ug/l)					8.85	0.8	
Toluene[b] (mg/l)					200	6.8	
Polynuclear Aromatic Hydrocarbons (PAH)[b] (ug/l)					0.031	.0028	
Phthalate esters (ug/l)		3.0		3.0			
Vinyl chloride[b] (chloroethene)(ug/l)					525	2.0	
alpa-BHC (alpha- Hexachloro-cyclohexane)[b] (ug/l)					0.013	.0039	
beta-BHC(beta- Hexachloro-cyclohexane)[b] (ug/l)					0.046	0.014	
gamma-BHC (gamma- Hexachloro-cyclohexane)[b] (ug/l)	2.0	0.08	2.0	0.08	0.063	0.019	
Chlorobenzene (mg/l)					21	0.68	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
Ethylbenzene (mg/l)					29	3.1	
Heptachlor[b] (ng/l)	520	3.8	520	3.8	0.21	0.21	
2-methyl-4,6-Dinitrophenol (ug/l)					765	13.4	
Fluoranthene (ug/l)					370	300	
8.22.1 The organic chemicals listed in §8.22 shall not exceed the specified water quality criteria. When the specified criteria are less than the practical laboratory quantification level, instream values will be calculated from discharge concentrations and flow rates ~~and from fish body burden~~, where applicable.							

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
~~8.22.2~~ ~~The following body burden criteria shall not be exceeded in edible tissues of fish:~~ ~~Parameter Body Burden~~ ~~Chlordane 1.0 (ug/g)~~ ~~DDT 0.1 (ug/g)~~ ~~Aldrin~~ ~~Dieldrin 0.3 (ug/g)~~ ~~Endrin 0.3 (ug/g)~~ ~~Toxaphene 1.0 (ug/g)~~ ~~PCB 2.0 (ug/g)~~ ~~Dioxin 6.4 (pg/g)~~							
8.23 pH[c] No values below 6.0 nor above 9.0. Higher values due to photosynthetic activity may be tolerated.	X	X	X	X	X	X	X
8.24 Phenolic Materials							
8.24.1 Phenol (ug/l) ~~(except Category A)~~ Not to exceed:	~~10,200~~	~~2,560~~	~~10,200~~	~~2,560~~	4,600,000	~~3.5 mg/l~~ 21,000	
8.24.2 2-Chlorophenol (ug/l) Not to exceed:					400	120	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.24.3 2,4-Dichlorophenol (ug/l) Not to exceed:					790	93	
8.24.4 2,4-Dimethylphenol (ug/l) Not to exceed:					2300	540	
8.24.5 2,4-Dinitrophenol (ug/l) Not to exceed:					14,000	70	
8.24.6 Pentachlorophenol[b] (ug/l)					8.2	0.28	
8.24.6.a The one-hour average concentration of pentachlorophenol shall not exceed the value determined by the following equation: exp(1.005(pH)-4.869)	X		X				
8.24.6.b The 4-day average concentration of pentachlorophenol shall not exceed the value determined by the following equation: exp(1.005(pH)-5.134).		X		X			
8.24.7 2,4,6-Trichlorophenol[b] (ug/l) Not to exceed:					6.5	2.1	
8.25 Radioactivity: Gross Beta activity not to exceed 1000 picocuries per liter (pCi/l), nor shall activity from dissolved strontium-90 exceed 10 pCi/l, nor shall activity from dissolved alpha emitters exceed 3 pCi/l.	X		X		X	X	X

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C^3	A^4	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.25.1 Gross total alpha particle activity (including radium-226 but excluding radon and uranium shall not exceed 15 pCi/l and combined radium-226 and radium-228 shall not exceed 5pCi/l; provided that the specific determination of radium-226 and radium-228 are not required if dissolved particle activity does not exceed 5pCi/l; the concentration of tritium shall not exceed 20,000 pCi/l; the concentration of total strontium-90 shall not exceed 8 pCi/l in the Ohio River main stem.	X		X		X	X	X
8.26 Selenium (ug/l) Not to exceed:	20	5	20	5		10	
8.27 Silver (ug/l)							
Hardness / Silver (~~ug/l~~)							
0-50 / 1							
51-100 / 4							
101-200 / 12							
>201 / 24				X		X	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.27.1 0-50 1 51-100 4 101-200 12 201-400 24 401-500 30 501-600 43		X					
8.27.2 The one-hour average concentration of dissolved silver shall not exceed the value determined by the following equation: $Ag=e^{(1.72[\ln(hardness)]-6.52)} \times CF$[5]	X		X				
8.28 Temperature Temperature rise shall be							

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
limited to no more than 5°F above natural temperature, not to exceed 87°F at any time during months of May through November and not to exceed 73°F at any time during the months of December through April. During any month of the year, heat should not be added to a stream in excess of the amount that will raise the temperature of the water more than 5°F above natural temperature. In lakes and reservoirs, the temperature of the epilimnion should not be raised more than 3°F by the addition of heat of artificial origin. The normal daily and seasonable temperature fluctuations that existed before the addition of heat due to other natural causes should be maintained.							

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.28.1 For the Kanawha River Main Stem (K-1): Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 90°F in any case.	X						
8.28.2 For the Bluestone R (KNB), Bluestone Lake (KN-60) East River (KNE), New River (KN), Gauley R. (KG) and Greenbrier River (KNG): Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 81°F at any time during the months of May through November and not to exceed 73°F at any time during December through April.			X				
8.28.3 No heated effluents will be discharged in the vicinity of spawning areas. The maximum temperatures for cold waters are expressed in the following table: Daily Mean °F / Hourly Max °F Oct-Apr 50 55 Sep-May 58 62 Jun-Aug 66 70			X				

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.28.4 For Ohio River Main Stem (01)~~(Section 7.1.d)~~ (see section 7.1.d, herein): Period Inst. Dates Ave. Max. Jan 1-31 45°F 50°F February 45 50 March 1-15 51 56 March 16-31 54 59 April 1-15 58 64 April 16-30 64 69 May 1-15 68 73 May 16-31 75 80 June 1-15 80 85 June 16-30 83 87 July 1-31 84 89 August 1-31 84 89 Sept 1-15 84 87 Sept 16-30 82 86 Oct 1-15 77 82 Oct 16-31 72 77 Nov 1-30 67 72 Dec 1-31 52 57	X						
8.29 Thallium (ug/l)					6.3	1.7	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.30 Threshold odor[c] Not to exceed a threshold odor number of 8 at 104°F as a daily average.		X		X	X	X	
8.31 Total Residual Chlorine (ug/l - measured by amperometric or equivalent method) Not to exceed:	19	11					
8.31.1 No chlorinated discharge allowed			X				
8.32 Turbidity No point or non-point source to West Virginia's waters shall contribute a net load of suspended matter such that the turbidity exceeds 10 NTU's over background turbidity when the background is 50 NTU or less, or have more than a 10% increase in turbidity (plus 10 NTU minimum) when the background turbidity is more than 50 NTUs.							

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
This limitation shall apply to all earth disturbance activities and shall be determined by measuring stream quality directly above and below the area where drainage from such activity enters the affected stream. Any earth disturbing activity continuously or intermittently carried on by the same or associated persons on the same stream or tributary segment shall be allowed a single net loading increase.		X		X	X	X	
8.32.1 This rule shall not apply to those activities at which Best Management Practices in accordance with the State's adopted 208 Water Quality Management Plan are being utilized, maintained and completed on a site-specific basis as determined by the appropriate 208 cooperative or an approved Federal or State Surface Mining Permit is in effect. This exemption shall not apply to Trout Waters.		X			X	X	

APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION						
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES
	B1, B4		B2		C[3]	A[4]	
	ACUTE[1]	CHRON[2]	ACUTE[1]	CHRON[2]			
8.33 Zinc (ug/l) The four-day average concentration of dissolved zinc shall not exceed the value determined by the following equation[a]: $Zn = e^{(0.8473[\ln(\text{hardness})]+0.7614)} \times CF^5$		X		X			
8.33.1 The one-hour average concentration of dissolved zinc shall not exceed the value determined by the following equation[a]: $Zn = e^{(0.8473[\ln(\text{hardness})]+0.8604)} \times CF^5$	X		X				

1 One hour average concentration not to be exceeded more than once every three years on the average, unless otherwise noted.

2 Four-day average concentration not to be exceeded more than once every three years on the average, unless otherwise noted.

3 These criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted.

4 These criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted.

5 The appropriate Conversion Factor (CF) is a value used as a multiplier to derive the dissolved aquatic life criterion is found in Appendix E, Table 2.

a Hardness as calcium carbonate (mg/l). The minimum hardness allowed for use is this equation shall not be less than 25 mg/l, even if the actual ambient hardness is less than 25 mg/l. The maximum hardness value for use in this equation shall not exceed 400 mg.l even if the actual hardness is greater than 400 mg/l.

b Known or suspected carcinogen. Human health standards are for a risk level of 10^{-6}.

c May not be applicable to wetlands (B4) - site-specific criteria are desirable.

d The early life stage equation in the National Criterion shall be used to establish chronic criteria throughout the state unless the applicant demonstrates that no early life stages of fish occur in the affected water(s).

APPENDIX E
TABLE 2

Conversion Factors

Metal	Acute	Chronic
Aluminum	1.000	1.000
Arsenic (III)	1.000	1.000
Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	0.316	0.860
Chromium(VI)	0.982	0.962
Copper	0.960	0.960
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]
Nickel	0.998	0.997
Silver	0.85	N/A
Zinc	0.978	0.986

APPENDIX F

ANTIDEGRADATION IMPLEMENTATION PROCEDURES

46-1-4A. Applicability

4A.1. The antidegradation implementation procedures herein are intended to apply to new and expanded regulated activities that have the potential to affect existing water quality. The specifics of the review called for in the regulation will depend upon the existing and designated uses of the waters or segments of waters that would be affected, the level of protection (tier) assigned to the applicable waters or segment of water, and the extent to which water quality would be degraded.

4A.2. Nonpoint source activities will be deemed to be in compliance with antidegradation requirements with the achievement of cost effective and reasonable best management practices in accordance with section 4.1.b herein.

4A.3. The procedures outlined herein shall be performed by the Director when reviewing all activities subject to this rule.

46-1-4B. Tier 1 Protection Review Procedures. Tier 1 protection requires that existing uses and the level of water quality to protect those uses be maintained and protected. Tier 1 protection applies to all waters of the state.

4B.1. The following procedures shall be performed by the Director when reviewing all activities subject to Tier 1 protection.

4B.1.a. Determine the existing uses of the water.

4B.1.a.1. Determine whether the water currently supports, or has supported since November 28, 1975, an existing use other than the designated uses in section 6 herein, or that the water quality is suitable to allow the use to be attained unless there are physical problems, such as substrate or flow that prevent the use from being attained.

4B.1.b. Identify the designated uses in section 6 herein, which apply to the water in question.

4B.1.c. Before any final action is taken, provide public notice through the appropriate Class I or Class II legal advertisement in a qualified newspaper with the largest circulation for the county where the activity will occur. The notice will identify the action being considered, list all existing uses identified of the water, and call for comments from the public regarding other known existing uses. The cost of such publication will be borne by the applicant.

4B.2. The Director shall ensure maintenance and protection of water quality necessary to protect existing uses.

4B.2.a. Where designated uses or existing uses of the waterbody are impaired there shall be no further degradation of water quality with respect to the parameters of concern that are causing the impairment. To ensure the designated uses and existing uses are maintained and protected, the Director shall not allow lowering of water quality of a parameter of concern that interferes with the attainment of the designated or existing use.

4B.2.b. Where uses are not impaired and a determination is made that the designated uses appropriately protect the existing uses of the water, controls shall be applied as necessary to ensure that existing uses are protected and maintained. If a use is impaired the activity shall conform with the requirements of section 4B.2.a.

4B.2.c. Where the Director determines that the designated uses do not appropriately protect the existing uses of the water the Director shall determine whether numeric criteria for a related designated use would maintain water quality sufficient to protect the existing use.

4B.2.c.1. Where it is necessary to establish new criteria to protect an existing use, a proposal that appropriate revisions to the designated uses be adopted into the water quality standards shall be made to the Board at the earliest opportunity. However, no delay in Tier 1 water protection shall occur pending the reclassification action.

4B.3. The Director shall document all antidegradation review findings regarding uses of waters and protection of those uses.

4B.4. Trading. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 1 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters. The basis of the trade will be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into account the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream segment with an 8-digit Hydrologic Unit Code watershed where removing a discharge in one stream segment directly results in improved water quality in another stream segment, provided that no degradation results to any stream segment within the 8-digit Hydrologic Unit Code watershed. In addition, (1) The effluent trade must be for the same form of the parameter; (2) Dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (3) Offsets must be enforceable.

46-1-4C. Tier 2 Protection Review Procedures (High Quality Waters) See section 4.1.b, herein, for a description of high quality waters.

4C.1. Determine whether a water is a Tier 2, high quality water.

4C.1.a. All waters not included in Tiers 2.5 and 3 will be considered high quality waters unless it can be demonstrated that the water quality is not equal to or better than necessary to attain both fishable (Category B) and swimmable (Category C) uses and are therefore more appropriately categorized as Tier 1. If either the fishable or swimmable use is attained, the water is a high quality water.

4C.2. Determine whether the proposed activity will result in significant degradation of water quality.

4C.2.a. Significant degradation will be determined for any parameter of concern to be affected by the proposed activity on a parameter by parameter basis . The proposed activities will be considered to result in significant degradation and be subject to further Tier 2 requirements where significant degradation is projected for one or more parameters.

4C.2.a.1. For chemical condition evaluations:

4C.2.a.1.A. Any proposed activity that would degrade the ambient concentration of any parameter of concern by more than 10% at critical flow conditions or reduce the assimilative capacity by more than 10%, which ever is most protective, will be presumed to pose significant degradation (See also section 4C.3). Critical flow conditions are further defined as follows:

4C.2.a.1.A.1. For non-precipitation induced discharges the maximum permitted flow or maximum flow specified in the application for industrial activities and average design flow for municipal activities combined with the 7Q10 flow of the receiving stream.

4C.2.a.2. The following circumstances shall not be subject to further Tier 2 review requirements:

4C.2.a.2.A. Temperature: any new or expanded activity resulting in a thermal discharge where the temperature of the discharge will not cause a violation of the applicable temperature criteria in sections 8.28 through 8.28.4 in Appendix E, Table 1 herein, or where the discharge is otherwise consistent with section 316(a) of the Federal Act.

4C.2.a.2.B. Fecal coliform - any new or expanded activity resulting in a discharge provided that necessary and appropriate treatment (disinfection) or control is required and the fecal coliform concentrations are established as 200/100 ml monthly average and 400/100 ml daily maximum.

4C.2.a.2.C. pH - Any new or expanded activity resulting in a discharge where the pH of the discharge is in the range of 6.0 to 9.0 standard units. In addition, any pH permitted at greater than 9.0 standard units will not be considered significant degradation if the sole purpose of the discharge is to improve the quality of the receiving stream, and the discharger demonstrates and the Director finds that such improvement would occur.

4C.2.a.2.D. Dissolved Oxygen (DO) - any new or expanded activity resulting in a discharge where any reduction of water quality of less than 0.4 ppm at maximum DO sag based upon an appropriate wasteload allocation model, unless the reduction is projected to cause a violation of sections 8.12 through 8.12.3 in Appendix E, Table 1 herein.

4C.2.a.2.E. Reissuance of an individual NPDES permit where no new increase in permitted levels will occur. Provided that the Director may require antidegradation review procedures be applied where individual circumstances warrant.

4C.2.a.2.F. Addition of chemicals used for the treatment of drinking water or sanitary wastewater that do not otherwise violate water quality standards. This exemption shall be limited to public drinking water and municipal waste water systems. This exemption shall not apply to parameters of concern.

4C.2.a.2.G. A new or increased discharge of a substance used to treat zebra mussels or asiatic clams in an intake water pipe or structure if the new or increased discharge will not cause adverse effects on human health and aquatic life outside any applicable mixing zone except in areas where federally threatened and endangered species are known to occur.

4C.2.a.2.H. Those activities that qualify for coverage under a Nationwide Corps of Engineers Permit, or any subsequent reissuance of the same Nationwide Permit (or subsequent Nationwide Permit that regulates those activities) for which state water quality certification has been granted or conditionally approved.

4C.2.a.2.I. Any application approved for coverage under an applicable WV/NPDES General Permit or any subsequent coverage under those permits.

4C.2.a.2.J. Waiver granted by the Director allowing the permitting authority to approve activities that lower water quality whenever the Director determines that an emergency exists requiring immediate action to protect public health and welfare. When the Director determines that the emergency is over, this exemption shall no longer apply.

4C.2.a.2.K. A proposed new or expanded discharge from a sanitary wastewater treatment plant constructed or operated to alleviate a public health concern associated with failing septic systems or untreated or inadequately treated sewage. This exemption would include Combined Sewer Overflow elimination or reduction projects affecting one or more waterbodies and shall apply only where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters.

4C.2.a.2.L. Groundwater remediation efforts proposed for existing contaminated sites which do not constitute a new point source where there are or may be ongoing surface water impacts from contaminated groundwater not associated with point sources. Provided that the tier 2 review process will be required for groundwater remediation efforts

where there is a potential for new or increased surface water or groundwater impacts from activities associated with the treatment of contaminated groundwater.

4C.2.a.2.M. Trading. The Director may determine that an activity proposed in a Tier 2 water will not pose significant degradation where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters. The basis for the trade shall be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into account the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream segment within an 8-digit Hydrologic Unit Code watershed, where removing a discharge in one stream segment directly results in improved water quality in another stream segment, provided that no degradation results to any stream segment within an 8-digit Hydrologic Unit Code watershed. In addition, (1) The effluent trade must be for the same form of the parameter; (2) Dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (3) Offsets must be enforceable.

4C.3. If the proposed activity is determined not to result in significant degradation to the water, that finding will be documented and no further antidegradation review is necessary. Provided that in no case shall the change in ambient concentration from an established baseline water quality exceed 20% of the baseline level without fulfilling the further requirements of sections 4C.4 through 4C.8 below.

4C.4. If a determination is made that significant degradation will occur, or if any baseline water quality is to exceed that specified in section 4C.3., the applicant must determine whether reasonable less-degrading or non-degrading alternatives to the proposed activity exist.

4C.4.a. An applicant requesting a permit for any new or expanded activity that would significantly degrade water quality or otherwise exceed the level specified in section 4C.3. in a high quality water is required to prepare an evaluation of alternatives to the proposed activity. The evaluation is required at a minimum, to provide substantive information pertaining to the cost and environmental impacts associated with the following alternatives:

4C.4.a.1. pollution prevention measures (e.g., substitution of less toxic substances);

4C.4.a.2. reduction in scale of project;

4C.4.a.3. water recycle or reuse;

4C.4.a.4. process changes;

4C.4.a.5. innovative treatment technology;

4C.4.a.6. advanced treatment technology;

4C.4.a.7. seasonal or controlled discharge options to avoid critical water quality periods;

4C.4.a.8. improved operation and maintenance of existing treatment systems; and

4C.4.a.9. alternative discharge locations.

4C.5. After a determination that alternatives to allowing degradation have been adequately evaluated, a preliminary determination shall be made regarding whether reasonable less-degrading or non-degrading alternatives to the proposed activity shall be required.

4C.5.a. If it is determined that reasonable less-degrading or non-degrading alternatives to the proposed activity do exist, coordination with the project applicant may occur to revise the project design. In general, if reasonable alternative(s) exist, the alternative or combination of alternatives that provide the least amount of degradation shall be implemented up to the reasonable threshold. If the project applicant does not agree to adopt such reasonable alternatives, the alternatives analysis findings will be documented and the activity will not be allowed.

4C.5.b. If no reasonable less-degrading or non-degrading alternatives to the proposed activity are determined to exist, the Tier 2 review shall continue and the substance and basis for the preliminary determination shall be documented.

4C.6. Determine whether the proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located.

4C.6.a. The applicant shall provide documentation of the social and economic importance of the proposed activity. The factors to be addressed in such documentation may include, but are not necessarily limited to, the following:

4C.6.a.1 employment (e.g., increasing, maintaining or avoiding a reduction in employment);

4C.6.a.2 increased production;

4C.6.a.3. improved community tax base;

4C.6.a.4. housing; and

4C.6.a.5. correction of an environmental or public health problem.

4C.6.b. In addition to the above, an applicant may be required to submit the

following: (a) information pertaining to current aquatic life, recreational, or other water uses, (b) information necessary to determine the environmental impacts that may result from the proposed activity, (c) facts pertaining to the current state of economic development in the area (e.g., population, area employment, area income, major employers, types of businesses), (d) government fiscal base, and (e) land use in the areas surrounding the proposed activity.

4C.6.c. Once the available information pertaining to the socio-economic importance of the proposed activity has been reviewed, a preliminary determination regarding importance shall be made. In evaluating the applicant's demonstration of socio-economic importance, the Director may use EPA's Interim Economic Guidance for Water Quality Standards Workbook (EPA 823-B-95-002, March, 1995). If the proposed activity is determined to have social or economic importance in the area in which the affected waters are located, the substance and basis for that preliminary determination shall be documented and the Tier 2 review shall continue.

4C.6.d Where there is a request for a variance from groundwater standards pursuant to 47 CSR 57 for existing sites where activities on those sites have the potential to impact surface water from contaminated groundwater, the socio-economic justification process required under §47 CSR 57.6.2.i will satisfy the requirements of sections 4C.6.a-c herein.

4C.6.e. If the preliminary determination that the proposed activity does not have social or economic importance in the area in which the affected waters are located is made, that antidegradation review finding shall be documented. In no case shall the Director deny an activity based solely on its socio-economic importance without first proceeding to the intergovernmental coordination and public participation phase of the antidegradation review process.

4C.7. Intergovernmental coordination and public notice requirements.

4C.7.a. The intergovernmental coordination requirements in section 4.1.b herein, will be accomplished by either providing notice consistent with the state's continuing planning process document or by providing notice to the appropriate agencies as identified by the Director using the list provided in Appendix F1 as guidance. Such coordination will be accomplished by the agency performing the antidegradation review, by notifying the appropriate agencies outlined in Appendix F1 of the results of any antidegradation review, and requesting comments from them regarding that review to be returned by the agency within thirty days.

4C.7.b. Based upon comments and information received during the public comment period, the preliminary determinations made as a result of the antidegradation review may be reversed.

4C.7.c. The public notice of the activity prepared by the agency shall include:

4C.7.c.1. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4C.7.c.2. Notice of the availability of an antidegradation review sheet, which may include:

4C.7.c.2.A. A determination of existing uses and their protection level;

4C.7.c.2.B. A determination of the impact of the activity to ambient water quality;

4C.7.c.2.C. The results of the socio-economic evaluation of the activity;

4C.7.c.2.D. A determination regarding existence of non-degrading or less degrading alternatives; and

4C.7.c.2.E. A description of the water which is subject to the antidegradation review.

4C.8. Prior to authorizing any proposed activity that would significantly degrade a Tier 2 water, existing uses of the water shall be fully protected consistent with Tier 1 implementation procedures.

46-1-4D. Tier 2.5 Protection Review Procedures: Waters of Special Concern See sections 2.29 and 4.1.c herein, for descriptions of waters of special concern.

4D.1. The Director shall determine whether the water is a water of special concern.

4D.2. The Director shall determine or, when appropriate, require a discharger to determine on a parameter-by-parameter basis whether the activity will degrade ambient water quality conditions. This determination shall be made at or directly upstream of the point of the proposed discharge for point source discharges and at or directly upstream of the location of the activity for nonpoint source discharges.

4D.2.a. If a determination is made that the activity will result in degradation of ambient water quality conditions, the activity shall not be allowed.

4D.2.b. If the activity is determined not to result in the degradation of ambient water quality conditions, the activity may be allowed. In such case the antidegradation review findings will be documented in writing and public notice activities will be initiated.

4D.2.b.1. The public notice of the activity shall include:

4D.2.b.1.a. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4D.2.b.1.b. Notice of the availability of an antidegradation review sheet, which shall include:

4D.2.b.1.b.A. A determination of existing uses and their protection level;

4D.2.b.1.b.B. A determination that the activity will not result in the reduction of ambient water quality and the basis for that determination.

4D.3 Discharges from activities in waters upstream of a water of special concern shall not result in the degradation of ambient water quality conditions within the Tier 2.5 water.

4D.4 Trading. A proposed activity that will result in a new or expanded discharge in a Tier 2.5 water may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters. Where such trading occurs on or upstream of a Tier 2.5 segment or water, Tier 2.5 requirements may be considered satisfied where the applicant shows that water quality at all points within the Tier 2.5 waters will be improved. The basis for trade will be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into account the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources, shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream segment within an 8-digit Hydrologic Unit Code watershed, where removing a discharge in one stream segment directly results in improved water quality in another stream segment, provided that no degradation results to any stream segment within the 8-digit Hydrologic Unit Code watershed. In addition, (1) The effluent trade must be for the same form of the parameter; (2) Dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (3) Offsets must be enforceable.

4D.5. Determine whether the proposed activity is short term in nature and the resulting changes in water quality will be temporary and have limited effects. Activities which result in less than a 5% change may be deemed to have limited effects. Determinations will be made on a case-by-case basis and shall be made after consideration of the following factors:

4D.5.a. the length of time during which the water quality will be lowered,

4D.5.b. the parameters affected;

4D.5.c. the likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

4D.5.d. the degree to which achieving applicable water quality standards during the proposed activity may be at risk; and

4D.5.e. the potential for any residual long-term influences on existing uses.

4D.6. If after review of the factors in 4D.5.a.- e, the Director determines that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, the proposed activity may be authorized. In such case the antidegradation review findings shall be documented and public notice activities shall be initiated. If after review of the factors in 4D.1.a.1-5 the Director determines that the proposed activity will not be short term in nature or that changes in water quality will not be temporary and limited, the proposed activity shall be denied.

4D.7. Tier 2.5 Nomination Procedures. Any interested party or the Board may nominate a water as a Water of Special Concern. After reviewing the nomination, the Board shall consider the qualification criteria and may designate the nominated water as a Tier 2.5 water in accordance with the notice and comment provisions of 46 C.S.R. 6 - Procedural Rules Governing Site-Specific Revisions to Water Quality Standards. The address for filing such petitions is:

West Virginia Environmental Quality Board
1615 Washington Street, East
Room 301
Charleston, West Virginia 25311-2126

4D.7.a. Upon receiving a nomination of a water or segment of a water for designation as a Tier 2.5 water pursuant to the Board's antidegradation policy, the Board shall notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. The written notice shall include, at a minimum:

4D.7.a.1. A description of the location of the water or segment;

4D.7.a.2. The procedures and criteria for designation as well as the impact of the designation;

4D.7.a.3. The name of the person(s) making the nomination; and

4D.7.a.4. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the water or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

4D.7.b. Qualification Criteria. Factors to be considered in determining whether to assign a Water of Special Concern designation to a water from another category shall include the following:

4D.7.b.1. Impact on private property owners;

4D.7.b.2. Whether the interests of all affected parties have been

adequately represented during the nomination and designation process;

4D.7.b.3. The location of the water;

4D.7.b.4 Any previous special designations;

4D.7.b.5. Existing water quality;

4D.7.b.6. Ecological value;

4D.7.b.7. Recreational or aesthetic value;

4D.7.b.8. Other factors that indicate outstanding ecological or recreational resource value;

4D.7.b.9. Economic justification; and

4D.7.b.10. Other factors determined by the Board or the Director, when applicable.

4D.7.c. Reclassification of a Designated Water of Special Concern. The Board may on its own, or at the request of an interested party, consider reclassification of a Water of Special Concern to another antidegradation tier. In considering a reclassification, the Board shall review the criteria outlined in sections 4D.7.b.1 - 10 above, as well as the provisions in sections 4C.1.a, and 4E.6 herein. After such consideration, the Board may reclassify a Tier 2.5 water in accordance with the notice and comment provisions of 46 C.S.R. 6 - Procedural Rules Governing Site-specific Revisions to Water Quality Standards.

46-1-4E. Tier 3 Protection Review Procedures: Outstanding National Resource Waters. See sections 2.15 and 4.1.d herein, for descriptions of Outstanding National Resource Waters (ONRW). Waters designated as Tier 3 may include any exceptional water of the state and are not limited to waters on federal property. Any proposed activity that would result in a permanent new or expanded point or nonpoint discharge of pollutants to any waterbody segment that has been designated as an Outstanding National Resource Water is prohibited.

4E.1. The Director shall use the following antidegradation implementation procedures when reviewing proposed activities within an ONRW that would result in short-term and temporary changes in the water quality of that ONRW.

4E.1.a. Determine whether the proposed activity is short term in nature and the resulting changes in water quality will be temporary. Activities which result in less than a 5% change in ambient concentration may be deemed to have limited effects. Such determination will be made on a case-by-case basis and shall be made after consideration of the following factors:

4E.1.a.1. The length of time during which the water quality will be

lowered;

4E.1.a.2. The parameters affected;

4E.1.a.3. The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediment);

4E.1.a.4. The degree to which achieving applicable water quality standards during the proposed activity may be at risk; and

4E.1.a.5. The potential for any residual long-term influences on existing uses.

4E.2. If after review of the factors in 4E.1.a.1-5, the Director determines that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, the proposed activity may be authorized. In such case the antidegradation review findings shall be documented and public notice activities shall be initiated. If after review of the factors in 4E.1.a.1-5 the Director determines that the proposed activity will not be short term in nature or that changes in water quality will not be temporary and limited, the proposed activity shall be denied.

4E.3. Sources upstream from an ONRW. Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source would not degrade the existing water quality of the downstream ONRW segment.

4E.3.a. To determine whether the proposed activity will degrade the water quality in the downstream ONRW segment, the following factors, when applicable, shall be considered:

4E.3.a.1. change in ambient concentrations predicted at the appropriate critical condition(s);

4E.3.a.2. change in loadings (ie., the new or expanded loadings compared to total existing loadings to the segment);

4E.3.a.3. reduction in available assimilative capacity;

4E.3.a.4. nature, persistence and potential effects of the parameter;

4E.3.a.5. potential for cumulative effects;

4E.3.a.6. degree of confidence in the various components of any modeling technique utilized (e.g., degree of confidence associated with the predicted effluent variability); and

4E.3.a.7. other factors determined by the Director, when appropriate.

4E.3.b. If a preliminary determination is made that the applicable criteria in 4E.3.a.1-7 will be met, the antidegradation review findings shall be documented and the applicable public notice activities shall be initiated. If after review of the factors in 4E.3.a.1-7, the Director determines that the proposed activity will result in the degradation of water quality within the ONRW stream segment, the proposed activity shall be denied.

4E.4. The public notice of the activities authorized in section 4E.1.a.1-5 and 4E.3.a.1-7, herein, shall include:

4E.4.a. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4E.4.b. Notice of the availability of an antidegradation review sheet, which may include:

4E.4.b.1. A determination of existing uses and their protection level; and

4E.4.b.2. A determination that the activity will be short-term in nature and the resulting changes in water quality will be temporary. Inclusion of this determination is only necessary as a result of a review under section 4.E.1.

4E.5. For ONRWs in areas designated as federal Wilderness, nothing in this rule is intended to authorize activities not authorized by the Wilderness Act.

4E.6. Tier 3 Nomination Procedures. Any interested party or the Board may nominate a water as an ONRW. After reviewing the nomination the Board shall consider the qualification criteria and may designate the nominated water as a Tier 3 water in accordance with the notice and comment provisions of 46 CSR 6 - Procedural Rules Governing Site-specific Revisions to Water Quality Standards. The address for filing such petitions is:

West Virginia Environmental Quality Board
1615 Washington Street, East Room 301
Charleston, West Virginia 25311-2126

4E.6.a. Upon receiving a nomination of a water or segment of a water for designation as a Tier 3 water pursuant to the Board's antidegradation policy, the Board shall notify each locality in which the water or segment lies and areas upstream and downstream and shall provide individual notice to property owners on the nominated segment. The written notice shall include, at a minimum:

4E.6.a.1. A description of the location of the water or segment;

4E.6.a.2. The procedures and criteria for designation as well as the impact of the designation;

4E.6.a.3. The name of the person(s) making the nomination; and

4E.6.a.4. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the water or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

4E.6.b. Qualification Criteria. Factors to be considered in determining whether to assign an ONRW designation to a water from another category shall include the following:

4E.6.b.1. Impact on private property owners;

4E.6.b.2. Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

4E.6.b.3. The location of the water;

4E.6.b.4. Any previous special designations;

4E.6.b.5. Existing water quality;

4E.6.b.6. Ecological value;

4E.6.b.7. Recreational or aesthetic value;

4E.6.b.8. Other factors that indicate outstanding ecological or recreational resource value; and

4E.6.b.9. Other factors determined by the Board or the Director, when applicable.

APPENDIX F1

ANTIDEGRADATION IMPLEMENTATION PROCEDURES

INTERGOVERNMENTAL COORDINATION AGENCIES

STATE AGENCIES

Bureau of Commerce

Division of Natural Resources

Division of Forestry

Development Office

Department of Health and Human Resources

Bureau for Public Health

Bureau of the Environment

Division of Environmental Protection - all offices

Department of Agriculture

Soil Conservation Agency

FEDERAL AGENCIES

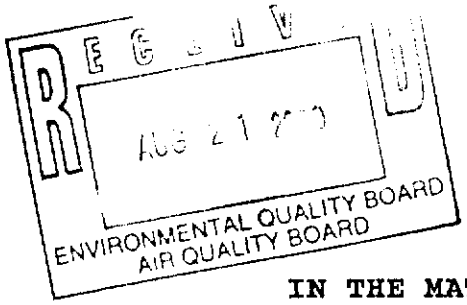
US Environmental Protection Agency, Region III

US Fish and Wildlife Service

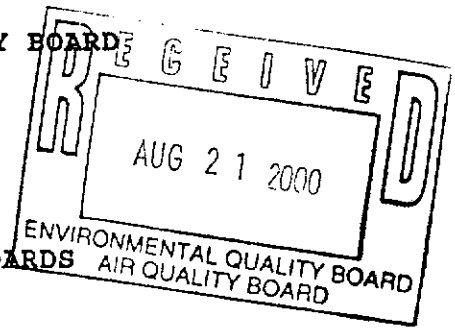
US Army Corps of Engineers

US Forest Service

US Office of Surface Mining



ORIGINAL



BEFORE THE ENVIRONMENTAL QUALITY BOARD

IN THE MATTER OF: 46 CSR 1

REQUIREMENTS GOVERNING WATER QUALITY STANDARDS

Cite Authority: 22B-3-4

The following is a transcript of a public hearing held on the 3rd day of August, 2000, beginning at 7:00 p.m., at the Environmental Quality Board, 1615 Washington Street, East, Suite 301, Charleston, West Virginia, before the Environmental Quality Board, pursuant to notice of public hearing on a proposed rule, before Barbara Harris, Certified Court Reporter and Notary Public.

BOARD MEMBERS PRESENT:

Edward M. Snyder, Chairman
David E. Samuel, Member
Charles R. Jenkins, Member

JANET T. SURFACE
Court Reporting Services
145 Belle Acres
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MR. SNYDER: My name is Ed Snyder. I'm co-chair for the Environmental Quality Board, and as you can probably tell by my lungs, I teach at Shepherd College, so I'm used to shouting to large groups of people, although this is a great turnout and I'm very pleased to see so many people here regarding this issue and these rules.

I would like to introduce the staff and my fellow board members. Starting at the far left, Melissa Carte, is the clerk for the Board. Next to her is Doctor David Samuels. David was chair for many years and is from WVU. Next to me is Bob Jenkins, also chair for a few years of the Board, another WVU person. To my far right, Rebecca Charles, the attorney for the Board. To my immediate right, Libby Chatfield, the technical advisor to the Environmental Quality Board.

What we're going to do tonight is have the opportunity to listen, to hear what you have to say, what you think about the anti-degradation implementation procedure that's proposed by the Board, as well as other changes to the rule that are going forward at this time. And what we want to do is to provide everyone an opportunity to speak who wants to speak. To do this, we're going to have to run on a tight time table and we will do this, three minutes, and if you have any written documentation, you can provide the documentation to Ms.

Carte, our clerk, and we will look at the documentation. I suspect we're going to have a lot of good reading by the end of the evening. So we're looking forward to seeing that.

At this time, I guess we will get started. Let's go down the list. I forgot my glasses, I'm in trouble.

MS. CHATFIELD: One thing to keep in mind, we have a proposed document that has been circulated. Most of you, I'm sure, have already seen it. The comments that we're taking tonight are limited to the proposals that we have made in that document. We are limited in our review to those items that we have provided public notice of. Comments on issues that have not been included in that document, we won't be able to make decisions and move forward on at this time.

If there are issues that are of interest that have not been noticed in this document, we certainly will hear those during the course of the next year. We are going to be undertaking a triennial review during our -- that will probably go to the legislature in the 2002 session, and that's likely when we'll take comments that don't address things that have been proposed in the document that we have out to notice today.

MR. SNYDER: Very good. At this time, then, I would like to ask our first speaker to come to the

podium, Ty Lollini.

MR. LOLLINI: My name is Ty Lollini. I'm with the management group of Wheeling-Nisshin, Follansbee, West Virginia. Mr. Chairman & fellow members of the Environmental Quality Board, I welcome this opportunity to state my company's position on anti-degradation.

First, let me say that Wheeling-Nisshin take a lot of pride in its Environmental Management Programs. We work quite hard to live up to its standards.

I understand that the making of an environmental standard needs to address not only environmental issues, but also the economic issues as well.

Sustainability should be and can be a workable goal. We can sustain the environment and still maintain our economic growth, but only if we are balanced and reasonable in our approach.

Economic growth in the Northern Panhandle can compete with both Ohio and Pennsylvania for a piece of the pie if we all are held to the same standards.

I urge you to promulgate a standard which both protects our waters and at the same time protect our economist position.

Sustainability should be and can be a workable goal.

I would also like to read into the record a

statement from the Brookings Institute. Although the media that they're discussing is different, the logic is the same. This is an abstract which I will present to the Board.

"More than forty prominent economists urge Supreme Court to allow EPA to consider costs and consequences in clean air regulations, and, again, although the media is different, the logic is the same.

The economists will argue that the EPA should be allowed to consider explicitly the full consequences of regulatory decisions, including costs, benefits, and any other relevant factors.

In their brief, the economists contended that the "plain aim" of the Clean Air Act is protecting the public health, as the plain aim of the Clean Water Act is to do the same. That aim, they said, is unlikely to be achieved without, at least, an implicit balancing of benefits and costs.

Ignoring costs, the economists said, could lead to a decision to set the standard at zero pollution, which would threaten the very economic prosperity on which public health primarily depends.

In closing, sir, I'm asking that you set the anti-degradation trigger so that it is no more stringent than any of our surrounding states.

Thank you very much for you time.

MR. SNYDER: Thank you, Mr. Lollini. Next on our list is Lisa Dooly. And if I do any damage to people's names, I apologize up front, straighten me out.

MS. DOOLY: Good evening. My name is Lisa Dooly, and I'm before you tonight as the Executive Director of the West Virginia Municipal League.

On behalf of our members, the 234 cities, towns and villages and more than 1,600 elected officials in West Virginia, I appreciate the opportunity to speak to you on this most important issue at public hearing.

My comments will not be technical in nature. I believe those who are most knowledgeable in that field are well represented, not only by my members, but also many of my colleagues, members and staff scheduled to speak tonight.

First, I want to be perfectly clear on our position. Cities in West Virginia fully support rules and regulations designed to protect the environment when they are based on scientific standards; only then are they beneficial to our local governments and the citizens we serve.

Being on the front line of government, we are first to realize that those handing down the rules and regs are not likely to understand the results of implementing

them fully. If that were the case, we believe this rule would have a fiscal note attached to it, one that would probably stop most of it. Just like the cashier at Kroger's, you can't ring it up if you don't have a price tag, but that absence of a stated price certainly doesn't mean you get the merchandise for free. It only assures that there will be delays for writing the check, along with the guarantee that if you leave with the merchandise, you surely will pay for it then.

The cities in West Virginia are reaching a critical list quickly. We are not in a position to grow a revenue base to cover the additional demands for basic services. I am fearful that the cities are only able to continue to meet these demands because of the strength of the national economy. We can easily bury our heads in the sand and hope that things continue or we can be realistic and expect to find that if there is a turn, sudden or subtle, the potential for revenue reduction is inevitable.

I am also fearful that if we see these rules approved in their current form, the alternative will be to table any idea for expansions to serve citizens who are now unserved. Instead, we'll be preparing for yet another fiscal crisis. That aside, I also want you to understand that cities are also first to realize when reliable environmental rules are in place, the cost associated with

compliance is less of an issue.

My second, but no less important, reason that I stand here is a fact that is sometimes lost in the debate. My members are sworn to be good stewards of the environment. I don't make this comment lightly, nor do they, city officials, take the covenant lightly.

Before any authority is granted to the elected official, before any duty is discharged, a sworn oath of office is administered. This may sound like a pompous formality to some. Perhaps, like anything else, repetition can breed indifference. However, the language of the constitution is clear and binding. Through their oath of office, mayors and council are sworn to uphold the laws governing the state and the consequences are strong for non-compliance.

For those reasons, I vigorously object to the rules in their current form and ask the Board to reconsider the language to include realistic and achievable measures to protect our environment and the citizens we represent.

Thank you.

MR. SNYDER: Thank you, Ms. Dooly. I would like to next call Ray George.

MR. GEORGE: Thank you, Mr. Chairman. My name is Ray George. I am the West Virginia state liaison officer for the Environmental Protection Agency, Region

III. We thank the Environmental Quality Board for providing this opportunity so EPA may speak about the proposed revisions to West Virginia's water quality standards.

As you know, EPA Region III is extremely interested in two key areas of the proposed water quality standards revisions. These key areas are the proposed anti-degradation implementation procedures and the proposed revisions which address EPA's outstanding disapproved elements of the West Virginia water quality standards.

With respect to anti-degradation, in previous correspondence EPA had identified three main areas of concern.

The first issue of concern pertains to the applicability of these procedures. The opening line of Appendix F indicates that the anti-degradation implementation procedures are intended to apply only to "new and expanded activities." EPA Region III interprets this statement to mean that existing discharges would not be considered in light of anti-degradation but would, in effect, be "grandfathered" from any level of anti-degradation review. EPA has concerns with this application of the anti-degradation implementation procedures.

The Region's second concern is with the numerous exemptions included under the Tier 2 portion of the

procedures. Many of these exemptions appear inconsistent with both the state and federal anti-degradation policies and need to be removed.

Lastly, the proposed procedures are silent on how West Virginia will assure the achievement of the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for non-point source control. This is an important component of the anti-degradation policy and needs to be addressed in the implementation procedures.

As for disapproved water quality standards, EPA finds it essential for states nationwide to resolve all items determined to be inconsistent with the Clean Water Act. Therefore, we are very pleased to see the Board take actions to resolve a large majority of the items disapproved by EPA. We are concerned, however, that the Board has not proposed to address EPA's disapproval of the iron criteria.

I would like to take this opportunity to speak briefly about West Virginia's iron criteria. EPA is aware of the influx of letters received by the Board requesting that the iron criteria be removed for various reasons. I remind the Board that EPA had disapproved West Virginia's current iron criteria. Surely an iron standard is

necessary to protect the citizens and the streams of West Virginia against elevated iron as a result of extensive coal mining.

We trust that the Board will adopt final anti-degradation implementation procedures that are consistent with EPA's and West Virginia's anti-degradation policy and will make appropriate revisions to the disapproved elements to the state water quality standards. It is important to note that based on recent revisions to EPA's water quality standards regulation, any adopted revisions to the state water quality standards cannot be implemented in NPDES permits until those standards are approved by EPA.

I again want to thank the Board for this opportunity to comment on the water quality standards. EPA will provide detailed comments in writing in the near future.

MR. SNYDER: Thank you, Mr. George.

MR. GEORGE: Thank you, Mr. Chairman.

MR. SNYDER: I would next like to call Randall Lewis.

MR. LEWIS: Good evening. My name is Randall Lewis. I'm the Executive Director of the West Virginia Rural Water Association.

On behalf of the West Virginia Rural Water Association, and over 270 member public service districts

and municipal water and waste water utilities who provide water and waste water service to an estimated 800,000 citizens across the state of West Virginia, I would like to thank you for the opportunity to comment.

We believe that the proposed rule, that the rule proposed by the Board has serious deficiencies and must be corrected before the rule is sent forward to the West Virginia legislature. The West Virginia Rural Water Association maintains a dream of a safe environment and clean waterways in all of West Virginia. We also desire an expanded and prosperous economy for our state. We strongly feel that this proposed rule cannot achieve these goals. Only a balanced and reasonable approach in developing an anti-degradation policy will allow West Virginia to reach these objectives.

The Board's proposal would make the implementation of the anti-degradation policy apply to newly expanded regulated activities. We support this. We believe that the proposal by the EPA to all regulated activities would be financially devastating to small water and waste water systems and would sharply increase --

MR. SNYDER: We're going to take a break for just a minute and see if we can get the thing to work.

(WHEREUPON, a brief recess was taken, after which the following proceedings were

had.)

MR. SNYDER: Why don't you start at the beginning, sir?

MR. LEWIS: Are you serious?

MR. SNYDER: We really want to hear what you have to say, and it just wasn't working, so.

MR. LEWIS: I enjoy this. Good evening, ladies and gentlemen. My name is Randall Lewis. I'm the Executive Director of the West Virginia Rural Water Association. On behalf of the Rural Water Association and our over 270 member of public service districts and municipal water and waste water utilities who provide water and waste water service to an estimated 800,000 citizens across the state of West Virginia, I would like to thank you for this opportunity to speak.

We believe that the rule proposed by the Board has serious deficiencies that must be corrected -- I'm not staring again -- that must be corrected before the rule is sent forward to the West Virginia legislature.

West Virginia Rural Water Association maintains a dream of a safe environment and clean waterways for all West Virginians. We also desire an expanding and prosperous economy for our state. We strongly feel that the proposed rule cannot achieve these goals, only a balanced and reasonable approach in developing an anti-degradation

policy will allow West Virginia to reach these objectives. The Board's proposal would make the implementation of the anti-degradation policy apply to new and expanded regulated activities. We support this.

We believe that the proposal by US EPA to include all regulated activities would be financially devastating to small water and waste water systems and would sharply increase fees to the private citizens of our state.

The proposed regulations will impose unnecessary and expensive requirements on public service districts, municipal water and waste water systems, their customers and the businesses in our state.

West Virginia has historically had one of the lowest, if not the lowest, median household incomes in the nation. The need to maintain a reasonable utility rate is already a critical issue for our citizens. The economic hardships which would result from this proposal are unacceptable and cannot be justified. This rule may be the most stringent in the nation and is more stringent that equivalent rules in surrounding states.

It is our understanding from many years of close association that the West Virginia legislature historically requires that rules more stringent than federal requirements must be justified scientifically.

We do not believe the Board has met this

criteria. We believe that the proposed rule is excessively costly without significant benefits. We believe that the proposed rule is overly broad. It would be in the best interest of the state to set West Virginia's anti-degradation rules to be no more stringent than our surrounding states. We understand that Indiana, Ohio, and Michigan have off set the trigger for requiring a full anti-degradation review at 10 percent of the available assimilative capacity in high quality waters. We believe that this is sufficient to protect the water quality.

The classification of streams into tiers needs to be considered carefully and should include adequate public input from concerned municipalities, public service districts, property owners and water systems along said streams.

Because the 2.5 criteria is so strict and costly, it effectively represents a no growth situation. Many systems will be unable to extent service to outlying areas that are presently unserved and underserved. Real progress in improving public health and safety will actually be hindered by this proposal.

The objective of this regulation should be to prevent degradation of the state's waters, not to prevent growth and development of our communities.

The West Virginia Rural Water Association share

the desire to protect our environment and to insure that our waterways provide a safe and quality habitat for future generations. We also share the dream of a growing and healthy economy. We believe that without a doubt, that this proposal rule cannot achieve these objectives. We need to balance the need for pure water, which we support wholeheartedly, with the economic needs of our state and the citizens. A reasonable approach in developing an anti-degradation policy is needed if our state is to reach these goals. Thank you.

MR. SNYDER: Thank you, Mr. Lewis. You're a good sport. I would next like to call Karen Price, please.

MS. PRICE: Good evening. My name is Karen Price, and I'm president of the West Virginia Manufacturer's Association. It's my pleasure to be here this evening to speak to you about the concerns that our members have with the proposed regulation.

We do support an anti-degradation implementation procedure, but not as proposed by the Board. Why? Because this regulation goes far beyond what is needed to protect West Virginia's rivers. It goes far beyond any federal guidance and far beyond what any other state has set.

I brought with me tonight a map, and if you'll look at the map, it's a map of West Virginia, and in bold in the dark color, are the major rivers of the state. And

as you can see, and as we all know, we share rivers with our neighboring states, but their anti-degradation policy sets a trigger at 10 or 20 or 25 percent, you have recommended ours at 5 percent.

Now, we have an overlay on that that will show you the main waterways of the state as listed in the Blue Book in West Virginia. All of these waterways were on a list that was developed by the Office of Water Resources that would go on a 2.5 tier list. That means if you're located along any of these waterways, under 2.5, you may not do anything that effects the net quality of the stream. It shuts down economic growth and community development.

We have several recommendations for you tonight. We would recommend that there is public input before a decision is made on tier designation; to do otherwise, we believe denies all West Virginians their due process, that you complete the fiscal note to the regulation as required, the effect that it will have on the state, on the political subdivisions and on industry, and that you set West Virginia's trigger so that it is no more stringent than any of our surrounding states.

Quite frankly, we just need to go back to the drawing board on this regulation. We thank you very much for the work that you've done on it, but we just cannot support it in the form it's in tonight. Thank you very

much.

MR. SNYDER: Thank you, Ms. Price. I would next like to ask Craig Skaggs to come forward.

MR. SKAGGS: I'm Craig Skaggs, I'm the regional director for the DuPont Company. We have about 3,500 jobs in the state, and these are good jobs. They pay, on average for an hourly job, about $53,000 a year. These are the kind of jobs that West Virginia needs.

DuPont supports West Virginia's strong environmental protection ethic, and encourages the state to search for common-sense ways to achieve solid environmental goals, but I need to explain something about business so you can understand my concern with this proposed policy.

When a new market for a product, call it Product X, opens up in Europe, dozens of supplier companies throughout the world who manufacture Product X rush to be first to supply that customer with a quality product. The first supplier to the market wins, the others lose.

When the new market for Product X opens up, a manufacturer looks at existing plants to see if they can produce enough Product X for that opening market. Usually they'll look at two to five plants at various points on the globe. As the business considers capability to make Product X for that new market, managers making decisions about building a new facility, for example, at Nitro,

versus some of the other plants around the world, need to be able to know they're going to ramp up production very rapidly to get that new Product X to capacity into the market and to the customer. Also, when you're making your decision about where to put the new capacity, you have to have some certainty to when they make that financial decision, they'll actually be able to make the product at the plant they selected.

With the stringent five-percent trigger for a complete review, it is uncertain whether any proposed permit would be granted without the required socioeconomic study. The likelihood is that virtually all investments will require such a study. And the way such studies now are contemplated, it would take at least a year in West Virginia for all the evaluations by public bodies. And at the end of that year, there is really no certainty that a permit ever would be granted. So timeliness to the market and certainty about financial decisions are badly compromised. In the "business world", if a company cannot beat the competition to the customer, the opportunity disappears and the company eventually disappears. And given such a choice, West Virginia would be disadvantaged as a competitor for virtually any investment decision under the existing proposed anti-degradation policy.

One thing that struck me in looking at the

details of this proposal was that part of the statute in the state code that allows the West Virginia Environmental Quality Board to make these kind of policy decision, states -- the state laws says, and I'll quote this, "The expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development must be considered." And I would ask us all to think hard about that. That's one of the three provisos in the code for work done by this Board.

One last point I would like to make that I think is very important, and that is, West Virginia has a brand new brownfields law and regulations and that's allowing us to clean up a lot of the contaminated older properties throughout the state, and as we look at this proposed anti-degradation policy, we would suggest that you consider exempting these brownfields operations under the policies proposed because almost any of these require some pump and treat, which would require some disposal to a river that would almost always violate the threshold trigger set at five percent. What I would say is that brownfields clean up, just at face value, are socioeconomically beneficial to the state, for that reason alone, you ought to exempt them from the socioeconomic studies. Something needs to be done now.

The last point I'd make is, we've looked at some

of the laws around the country and DuPont takes the position that if you could take your example from the state of Ohio as a template, that the Environmental Quality Board's anti-degradation threshold trigger would be a lot more beneficial for the economic benefit of the state.

MR. SNYDER: Thank you, Mr. Skaggs. I would next like to call Rick Herd.

MR. HERD: Good evening. Mr. Chairman, members of the Board and staff, my name is Richard Herd. I'm Water Resources Manager with Allegheny Energy. We serve about 1.3 million customers throughout five states including most of northern West Virginia. Of course, we appreciate the opportunity to speak here before you tonight on these important issues that you're considering for rule making.

First, let me say that Allegheny appreciates the efforts of this Board to address what has recently been, in my opinion, an overwhelming number of complex water quality issues and to attempt to strike that delicate balance between environmental protection and economic stability and development. We have attempted to help you with your efforts where and when we could and will continue to support you to insure that your rule makings are based on sound science and policy.

Tonight I would like to touch on four issues, two

of which I would like to commend the Board for and two of which I'd like to ask the Board to reconsider their proposal.

First of all, we appreciate the efforts of this Board and DEP and EPA in helping us to develop a site specific criterion for selenium at the Albright Power Station. It's been a long and arduous process and without your support and involvement, I don't think we could have accomplished it.

Secondly, EPA's aluminum criterion is flawed. I think we all know that. EPA admits it and the science supports a dissolved criterion. Therefore, you are correct in proposing this dissolved aluminum criterion, if for no other reason than to avoid listing most if not all the streams in the state on the 303(d) list.

Thirdly, regarding natural background conditions, I have one concern: You propose to establish natural background as the highest value measured during an annual season. In theory this sounds like a rational and reasonable approach but it fails to incorporate temporal water quality variability as well as analytical sampling variability into the derived value. Failure to incorporate this variability will subject NPDES permittees that have permits issued upon this value to compliance liabilities.

I submitted to you earlier in the year a

recommendation that we adopt the methodology whereby we derive the criterion based on a statistical approach that's utilized by both EPA and DEP in their ground water programs and I would encourage you to revisit that issue.

Last, and, of course, not least, your anti-degradation proposal, in Allegheny's opinion, is so restrictive as to be unworkable both for industry and DEP, and if EPA's comments are incorporated it could make the proposal much worse. If this proposal is finalized and implemented the state's economy will suffer from unnecessary delays, expense and administrative burdens imposed by the regulatory process. I'm sure that it is no surprise to this Board that the lackluster economic development, new business development, employment expansion, and income levels of West Virginia rank last or next to dead last in all respects for all 50 states.

While there are many factors that affect our economy, the overall regulatory environment of the state, including its environmental agencies, and their policies towards business are of critical importance. We therefore ask that you carefully consider the economic implications of this anti-degradation proposal before sending it to the legislature.

We have three suggestions:

First of all, as you've heard other speakers, we

suggest you make the program no more restrictive than our surrounding states. The trigger level should be 10 percent of the assimilative stream capacity and no more and should not be based on ambient conditions.

Most of the streams in the state should not be classified in tier 2.5, and a stream should not be put in tier 2.5 without adding public input.

And in deference to our friends in EPA, I suggest that you ignore EPA's comments unless they are specifically required by law or regulation. Congress did not intend for EPA to overview specific water resource policies implemented by the states.

I thank you for your time.

MR. SNYDER: Thank you, Mr. Herd. I would next like to call Tim Mallen, please.

MR. MALLEN: Mr. Chairman, my name is Tim Mallen and I am the Environmental Affairs Manager for American Electric Power in West Virginia. I will just go ahead and get right to my comments tonight and AEP will be filing formal written comments later on in the process on a number of issues, but we will concentrate tonight on the anti-degradation questions.

In conjunction with many of the other people in the regulative community, I've been researching a number of the other state regulations. We've looked at perhaps a

total of between 25 and 30 other state regulations to see how they handle anti-degradation issues.

We can find no program in any state that combines the default, such a large default category to tier 2; in other words, taking most of the streams and moving them into tier 2 with such an extremely low trigger level. Some states have very low trigger levels, some states have other ways of getting into tier 2, but basically West Virginia's is the most stringent we've come into.

This means that in West Virginia, a proposed discharge is going to be more likely to have to go through a long administrative process than it is just about anywhere else we can find.

The question that we're asking the Board, and we would like the Board to think about, is what is the benefit that is going to accrue to West Virginia because of this additional administrative burden?

People have said that they're concerned that designated uses that streams are not going to be able to be used for their designated or existing uses. That is already protected in West Virginia law. Designated usage, you cannot get a permit now that violates a water quality standard. They already are protected. There's no way that this anti-degradation policy is going to add anything to protection of existing uses.

From a practical standpoint, the tier 2 definition of significant anti-degradation is a matter of distinction between almost undetectable quantities.

In our comments, we will be showing you some examples of what we meant based upon a five percent category, a five percent of ambient versus what would be allowed in streams if a 10 percent or similar capacity was allowed.

The only practical distinction between these two levels is actually the amount of money it's going to take and the amount of time it's going to take for someone to get a permit in the state.

I would like to make just a quick comment, if I could, on tier 2.5, also. I think that the category is so extremely broad that it's going to be a very difficult process for a lot of people. I don't have as fancy a map as Karen Price had, but I do have a map. This is the West Virginia State map. In the map you will see large areas of green, basically every area on this map that is green is by default a 2.5 category stream, because these are national forests, national and state scenic areas and the like.

The majority of land in Tucker, Pendleton, Pocahontas, and Greenbrier Counties meets the definition of tier 2.5, the municipalities of Oak Hill, Fayetteville, Summersville and Beckley, are all immediately up stream of

tier 2.5 streams, and we'll have to do extensive work for any kind of expansion before they can change anything in those areas.

Now, if we follow EPA's guidance and you take this back and apply it to existing discharges, then on the next permit issuance, all of the sewage treatment plants in those counties are going to have to install advanced waste treatment, because that will be the only way they will be able to meet the standards that apply in a tier 2.5 water.

Mr. Chairman, we strongly recommend that the Board change the definition of significant degradation to apply to discharges that have an impact greater than 10 percent of their remaining assimilative capacity and that the definition of tier 2.5 waters in section 4.1.C be modified to allow rather than require that elicited types of waters be included in the tier subject to individual stream nomination and action by the Board. Thank you.

MR. SNYDER: Thank you, Mr. Mallen. I will say, as I'm looking down the list, Dave Robertson will be our next speaker, and as I look down the list, we have many more people who want to speak, so we're going to have to make sure we're very tight on the three minute time element here. Mr. Robertson.

MR. ROBERTSON: Good evening. I thank you for the opportunity to address this Board. My name is

David Robertson. I'm the executive vice-president at Weirton Steel, responsible for human resources and corporate law.

Weirton Steel is located in Weirton, situated along the Ohio River in the state's Northern Panhandle.

My company is the eighth largest steel producer in the United States and West Virginia's largest single location industrial employer with over forty-three hundred employees. We have been in business in the State of West Virginia, that of our predecessor companies and as well as us, since 1909. We are a West Virginia company.

Weirton Steel's annual production of raw steel approximates three million tons. We produce hot-rolled, cold-rolled, galvanized and tinplated products. We also have our own product development and manufacturing process research center in Weirton, known as WEIRTEC, and it is internationally recognized for developments in steel products, particularly containers.

Beginning in 1998 and continuing today, the U.S. steel industry has faced significant adversity as domestic markets have been flooded with illegally priced steel imports. These imports are sold in the U.S. at prices that violate federal trade laws, a practice commonly known as "dumping," or selling in this country for less than they sell in their country or below the cost of the product.

Weirton Steel and our CEO has been a leader in the fight against steel dumping and against subsidies to foreign producers received by their foreign governments, also a violation of federal trade laws and international regulations.

Although Weirton has committed some substantial financial resources and legal talent to this problem, the problem continues to grow worse. In 1998, this country permitted 41 million ton of steel into our domestic market. In 1999 it was slightly less than that, and it would appear on a year basis, the year 2000 we will see just one million tons less than the record year 1998.

What is the result of all this assault of foreign steelmakers with illegally dumped steel, my industry and my company is extremely vulnerable to production losses and cost pressures that can undercut its ability to compete in not only the domestic market but the international marketplaces.

We are here this evening to ask the Board to find a way to address anti-degradation of water quality in a reasonable fashion that does not impose unnecessary obstacles to economic development in West Virginia.

Weirton, as a company, is constantly assessing new and innovative projects for improving production efficiency and generating products that are responsive to

customer needs and changing market demands. That's why we've been in business since 1909. From time to time, accomplishing these ends requires upgrades in the technology employed at our mill as well as modifications to our processes in the production area of the business.

Existing environmental regs already require new equipment or processes to yield less pollution to the environment than the equipment or the processes they replace. As a general matter, we believe the policies of the Board should promote these types of changes and improvements. However, we also believe that the proposed anti-degradation rule does just the opposite.

We appreciate, with all sincerity, the long hours that were invested in the stakeholder process by representatives of various groups and certainly the Board members. Consensus, however, was not reached on many issues and this Board has become the arbiter of those unresolved issues. However, somehow the proposed rule, when it went to public notice, does not reflect, in our opinion, the appropriate and rational balancing of the environment, public health, and expansion and retention of employment opportunities as required in the statute. Rather, the result is a proposed rule that is considerably more stringent, as you've already heard tonight, that is required by federal or state law and which would put

businesses in West Virginia and Weirton at a extremely competitive disadvantage. We will be filing written comments with what we hope are positive suggestions of change in your rule. I thank you.

MR. SNYDER: Thank you, Mr. Robertson. Dillard Meadows, please. And after Mr. Meadows will be Hal Foss. This way you can gear up and be ready to go.

MR. MEADOWS: Good evening, Mr. Chairman, members of the Board. My name is Dillard Meadows. I'm assistant plant manager at the Union Carbide Corporation, South Charleston plant. I supervise responsible care activities at the plant, which include compliance within the NPDES permits, as well as waste water treatment requirements.

Our principal concerns with the proposed anti-degradation regulations are as follows: First, regulations may have significant impact, no tangible benefits. The existing NPDES permit program requires technology based treatment standards and pre-treatment standards and requires further controls where warranted by water quality standards. This system has led to major investments in waste water treatment and remarkable improvements in the Kanawha River quality.

We support an anti-degradation program that will sustain these improvements, but the program must be more

workable than the proposal we are commenting on tonight. The proposal does not establish the benefits that go beyond any degradation requirements established by our neighboring states.

Secondly, the proposal should only apply to new or modified discharges and non-existing discharges that do not impair achievement of water quality standards. While the initial proposal would apply the anti-degradation rules only to new or modified discharges there is much sentiment for applying the rules for existing discharges. The proposal could impose socioeconomic reviews and additional controls on discharges that are not causing water quality concerns for the Kanawha River.

As most of you know, the Dow Chemical Company and Union Carbide are merging this year. We will be competing for investment with current Dow facilities around the country and world. We do not want to be placed at a competitive disadvantage here in West Virginia with this investment.

Thirdly, the proposal should do more to encourage investment that reduces pollution level. The Dow Chemical Corporation, which will become our parent company here soon, has set corporate wide goals on waste water and waste reduction. Projects for specific locations will be chosen on the cost and benefits of implementing these projects.

We want South Charleston to be the leading site for investment by Dow including new units and improvements of existing units. West Virginia should encourage facilities to achieve voluntary reduction.

The training provisions in the proposal could, in principle, make compliance easier and cost effective by allowing sites to offset increases in one discharge by decreasing in another. The provisions in the proposal are cumbersome, however, and should be made more workable. Thank you for allowing Union Carbide to comment on this proposal.

MR. SNYDER: Thank you, Mr. Meadows. Hal Foss, please, and Jim Mosby will be next.

MR. FOSS: Good evening, Mr. Chairman. My name is Hal Foss. I'm the plant manager of the Cytec Industries Plant in Willow Island, West Virginia. Thank you for allowing me to comment on these water quality regulations.

Cytec Industries is one of the world's leading specialty chemicals and materials companies. Our plant is located on the Ohio River in Pleasants County. The plant has been in operation since 1948 and presently supplies world markets in paint and coatings, plastic packaging and petroleum refining.

West Virginia chemical manufacturers provide a tremendous economic benefit to the state and its citizens.

Cytec's West Virginia operations are no exception. Our plant is the largest private employer in Pleasants County, which is the second smallest county in West Virginia. Almost 400 employees and contractors earn their livelihoods at the plant. We pay salaries of almost 30 million dollars a year, buy goods worth six million dollars a year and pay approximately a million and a half dollars in state and local taxes.

We are a very competitive international situation in our international market. Over 50 percent of our products go overseas. Overbroad and burdensome environmental regulations that if written in a manner that disregards the industrial development and competitiveness in the state is not in the interest to West Virginia.

It is not simply a prudent approach to take into consideration the economic impact of proposed rules, it is public policy and the law of the state. Cytec further supports the Board in its efforts to protect the state water as a resource. We share in the same goal.

The state has long had a policy concerning anti-degradation of surface waters consistent with federal law; however, application of the policy to regulated activities have been inconsistent. Cytec supports efforts for clarity and consistency in the implementation of this anti-degradation policy. However, we believe that the presently

proposed implementation procedures are unworkable. Given the very low threshold for anti-degradation of tier 2 waters, the number of government agencies involved in the anti-degradation review and the lack of standards and direction for socioeconomic analysis, the proposed regulations will present a practically insurmountable barrier to projects that in no way interfere with the maintenance and protection of waters in which projects are otherwise beneficial to the state economy.
In this regard, we think these procedures are overly broad and over shoot their mark.

We believe that the proposed expansive definition of tier 2.5 waters and anti-degradation, if adopted by the Board, will have the unattended but practical effect of stopping any planned expansions or changes at Cytec and in the state as a whole, and if not corrected in a manner that reasonable sets water quality standards consistent with West Virginia public policy.

The most troubling of all is the failure of the Board to engage in any meaningful economic analysis of the impact of this proposal. The Board is charged by the law to evaluate its water quality standards against the state public policy to promote the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy

industrial development. This can only be done through a thorough and detailed evaluation of the impact of the proposals supported by findings and made on the record.

The Board's failure to do so renders this action outside the grand scope of its authority and I believe puts it in violation of the West Virginia Administrative Procedures Act.

Finally, the Board's work, if not done, in the proposed procedures may be premature. We have found no state that sets its definition of significant degradation as high as that proposed in the regulations. The extreme nature of these regulations alone presents a strong inference that the proposal is unreasonable and inconsistent with the public policy of the State of West Virginia. We therefore ask that the Board withdraw its proposal and engage in a meaningful dialogue with the stakeholders to address, at a minimum, the impact of the amendments of the anti-degradation policy and proposed procedures on the economy of the State of West Virginia. Thank you.

MR. SNYDER: Thank you, Mr. Foss. I do want to make sure we hear everyone, I do appreciate everyone's comments. Mr. Mosby and then Greg Towns will be after Mr. Mosby.

MR. MOSBY: Thank you, Mr. Chairman. Ladies

and gentlemen, I am Jim Mosby. I'm manager of Business Retention and Expansion with the West Virginia Development Office here in Charleston.

Prompted by calls from a number of companies in our state, our office conducted an informal survey of a number of major manufacturers primarily of metals and chemicals in the Ohio and Kanawha River Valleys regarding the proposed rules.

These companies collectively employ about 20,000 people and make a significant contribution to the state's economy in both payroll and taxes.

They were unanimous in their concern that the proposed rules will result in additional time delays and costs in the permitting process. Additionally, the rules are perceived as more stringent than surrounding states and many other locations where they operate manufacturing facilities.

This will place them at a competitive disadvantage not only in world markets but also put West Virginia at a disadvantage in obtaining new investment or expansions from their respective companies.

Moreover, the proposed rules may not achieve the desired effect on our water as several of the listed streams pass through adjacent states with less rigorous controls, thus encouraging waterways users to locate in

those states rather than West Virginia.

In your deliberations, I respectfully request that you give due consideration to West Virginia's need to compete with other states for new business investment and in retaining our existing industry. Thank you.

MR. SNYDER: Thank you, Mr. Mosby. Mr. Townes will be next and Jon McKinney after Mr. Townes.

MR. TOWNES: Mr. Chairman and members of the Board, my name is Greg Townes and I am the site manager of the Aventis Institute Site. Additionally, I am the vice-president of North American Manufacturing Operations for Aventis CropScience which includes responsibilities for plants in Michigan, Tennessee and Georgia. Therefore, I am representing several facets of an international organization this evening from a very local, to North American and worldwide when I address the particular environmental quality issue.

First of all, let me say that Aventis is strongly in favor of maintaining clean waterways. We support the need for an anti-degradation implementation policy, but we, like other speakers tonight, have concerns about the present proposals.

As a background, Aventis is a very large, multinational corporation focused on two core businesses,

pharmaceuticals and agriculture and are dedicated to improving life through the discovery and development of innovative products. We employ around 95,000 people around the world in more than 120 countries. At Institute, we are part of the agricultural operations and have just under 1,000 direct Aventis employees and around 400 employees of other companies working on our site.

Now, as a manufacturing facility, as you've already heard this evening, we compete for business, investment and for jobs. We compete with other sites from within our own company, and we compete for business from other companies, trying to attract them to come and conduct their manufacturing operations at our sites. This competition is on a regional, national, and worldwide basis. When companies, and especially large companies like Aventis, are looking for site manufacturing facilities, they evaluate a number of factors during the determination phase. Among these are business factors but also regulatory factors and often perform those evaluations on a comparative basis, comparing one site option to another. So when locales adopt regulations that are significantly more stringent, and ultimately more costly, and take a lot more time through the permitting process than other areas, it puts those locales at a distinct disadvantage. As a prediction, I'm sure this will happen in West Virginia if

these regulations were to be implemented as proposed.

The State of West Virginia and the Institute Site, as my particular concern, will be put at a further disadvantage compared to other locations and ultimately risks being the loser of new investment and the loser of new jobs.

I intentionally use the words "further disadvantage" because over the past decade or so the Kanawha Valley has witnessed an exodus of good, solid manufacturing jobs, many of which went for support of operations elsewhere in the United States. We have already seen companies voting with their checkbooks and these good jobs are now gone. Further unbalanced regulation will only continue to tip the scales away from investment and jobs in West Virginia.

We are not proposing that we neglect our responsibility in protecting water quality, but we do seek fair, balanced, science-based and efficient environmental regulatory support. We suggest that the state needs to be very careful about establishing requirements that are more onerous than those established by other states or by the federal rules.

MR. SNYDER: Thank you, Mr. Townes. Jon McKinney will be next, followed by James Saulter.

MR. TOWNES: Thank you. Good evening. My

name is Jon McKinney and I'm the plant manager at Flexsys Nitro. I'm here to provide oral comments on the proposed anti-deg rule. Flexsys will also provide more extensive written comments.

The Flexsys environmental policy is based on the principle that excellence in environmental responsibility maximizes the long-term value that Flexsys brings to our communities and to our shareholders. We support parts of the EQB version, specifically those that apply to only new and expanded regulated activities rather than the EPA version that has a potential to shut down many current facilities.

We are currently studying two products for the Nitro plant. And even with the EQB version, it will take either too long to react to one product decision or will be too extensive for the other. Both products are considered to be environmentally friendly with low amounts of discharge to water.

The impact is clear, with either the current proposal or the amended proposal from EPA, Flexsys will not be able to compete for these two new products and the Nitro plant will continue to decline in jobs.

We request the EQB to make the three following changes: establish the trigger at 10 percent assimilative capacity which is the lowest level proposed by any state;

not assign any streams tier 2.5 or 3.0 without public input on each stream; and to have the default at tier 1, again which follows the proposals of other states; specify one body as having a review and approval authority of the socioeconomical review.

This is to allow chance for efficiency and reasonable time limits of permit approval in this age of quick product changes.

I am constantly trying to bring new products into the Nitro plant, thereby providing new jobs for the community and protecting jobs that we currently have. It is very difficult. To add another obstacle here in West Virginia where it makes it non-competitive makes this near impossible.

I believe that by using sound science, we can protect our environment and grow our economy. I am certain that our recommendations are in concert with those beliefs. Thank you.

MR. SNYDER: Thank you very much. James Saulter, please, to be followed by Joe Carney.

MR. SAULTER: Good evening, my name is James Saulters. I'm a citizen of West Virginia, and according to our dear governor, I qualify as a radical environmentalist.

I have a great deal of respect for grandfathers. I have no respect for the wording of the proposed standard

that grandfathers existing polluters.

West Virginia has a sad history of industries that have extracted wealth from the land and left a legacy of ruined land and water.

Not all of the polluters have left the state. Why should the existing polluting industries be allowed to continue unabated? I cannot drink product X. I cannot swim in product X. I cannot fish in product X. I cannot kayak in product X. I strongly urge you to reconsider all language that pertains to the concept of grandfathering in the proposed standard. Thank you very much for your time.

MR. SNYDER: Thank you, Mr. Saulter. Mr. Carney, followed by E. H. Crum.

MR. CARNEY: My name is Joe Carney. I live here in Charleston. I've lived here probably about 20 years. I really didn't come here to talk about any specific technical details. I really -- I saw the ad about the public hearing. I really wanted to come and just express my appreciation that the Board is looking at this issue, because I remember as a kid, I lived in Weston. I came down here probably 30 or 40 years ago, and I couldn't believe that people actually lived in Charleston. I mean the smell was so bad, the river was so bad, but then as I became an adult, things have really been cleaned up and I've lived here for 20 years. And I think it's fantastic

the job that the chemical companies have done from what it was when I was a kid and I would hope that the Board will not do anything that would let this be degraded back to where it was or head back that way.

I think that every river has a carrying capacity for an intended use and I hope that you will use scientific methods to figure out what that carrying capacity is for all the different parameters. At some point in time there is going to be a limit on some rivers that you can't put anymore in. I think we all have to realize that. Do we bit the bullet now or do we bite it later. And I would urge you just to use good scientific data in setting these limits, and I applaud what you're doing.

MR. SNYDER: Thank you, Mr. Carney. Mr. Crum followed by Fred Rader.

MR. CRUM: Hello, my name is Ed Crum. I'm here today representing the West Virginia Council of Trout Unlimited, which is approximately 1,200 trout fishermen all over the state.

I was formerly a water resources board member and I used to sit up there where you sit. I'm not sure whether it's better to be up there or back here.

I understand all these procedures are basically compromise documents. We totally support an anti-degradation policy, but we think there are a few points

that need to be changed in the procedure so that it would be what we view as an anti-degradation policy.

First of all, we think no entities should be exempt. A review should be done on all proposed activities which affect water quality. There should be no grandfathering. We are not opposed to trading if, and only if, water quality is improved. Supposed improvements must be verified, penalties should be assessed or those improvements will turn out not to be improvements. Trades should only be made between entities which have good compliance records. Cumulative effects on water quality should be considered for all proposed and continuing activities.

Thank you for hearing my proposals.

MR. SNYDER: Thank you, Mr. Crum. Mr. Rader followed by Les Sallie, Jr.

MR. RADER: Good evening. My name is Fred Rader. I'm the Community Development Director for the Mid-Ohio Valley Regional Planning and Development Council. Our members are concerned that the Board has not evaluated the financial impact of these proposed rules on publicly owned waste water treatment facilities and what the impact of the user rates would be for compliance.

The members feel that they, themselves, cannot adequately comment on the rules without a clear

understanding of the financial impact which will be felt from that. Thank you.

MR. SNYDER: Thank you very much. Mr. Sallie followed by Jeff Simmons.

MR. SALLIE: Thank you very much. It's a pleasure to be here, and I appreciate the opportunity to talk with you. Of the group in front of me here, are there any farmers?

AUDIENCE MEMBER: Past.

MR. SALLIE: A bunch of intelligent people. I happen to be a farmer in Jackson County. I'm the president, vice president of finance and the total work force. My wife and I own a farm that has been in the family 175 years. And that might be weak-mindedness on my part, I don't know. But while I am not familiar with the total suggested regs, it appears to me that each time we initiate a regulation, not just in this state, it happens everywhere, there's always ways to expand it.

Now, the farm I'm on has raised cattle for some 175 years. The stream that runs through it has fish in it, believe it or not, but I'm sure that as time goes by there's going to be ways to figure out how it is that, as all the rumors have indicated, we'll be fencing out every stream. Folks, you fence out a stream and my cattle will starve, there's no water.

Now, the deer drink out of the stream and the bear and the coyote, and all the other things that the DNR has helped us with, and if we fence them out, we can't fence those things out and I'm only suggesting that we, as time goes by, look at this thing with a common sense glance. Some of us are off of welfare simply because we're managing to survive on these small family farms, and I sure do hate to go on welfare. Thank you very much.

MR. SNYDER: Thank you, Mr. Sallie. Mr. Simmons, followed by Richard Tetrick.

MR. SIMMONS: Good evening, I'm Jeffery Simmons. I live in Buckhannon up in Upshur County. I'm a member of the Tygart Valley River Water Shed Association. I teach environmental science at Wesleyan College, and so I've visited a lot of streams in many different areas around West Virginia, a lot of really beautiful streams and a lot of really degraded streams.

The thing I'm most worried about with the current proposal is a possibility of cumulative impacts, that is with a diminutive of 5 percent or 10 percent or whatever is decided on, the way it's worded right now it's 5 percent below ambient levels, which are the current levels in the stream. And so it's possible that over time Company A could move in and degrade the stream 5 percent without review and the Company B could come in downstream a little

bit later and degrade it 5 percent below that and so on and so on. And that would be the cumulative impact. And I'm worried that there's no stop gap for that kind of degradation and I think that should be made a little more clearer.

And just a reminder that anti-degradation, this whole process is to prevent the slide of water falling down to the maximum contaminate levels or the TMDL levels. Without an anti-degradation rule in legislation, probably over time all of our streams would be eroded down to those minimum levels and there will be very few water bodies that will be anymore clean or less polluted in those maximum or minimum levels, and that's the concern that I have. Thank you for your time.

MR. SNYDER: Thank you Mr. Simmons. Mr. Tetrick, followed by Mr. VanMet.

MR. TETRICK: Good evening. My name is Richard Tetrick. I am the Environmental and Safety Manager at Cecil I. Walker Machinery Company. And I want to thank you all for this opportunity to speak. I offer these comments on behalf of Walker Machinery and its more than 550 West Virginia based employees.

As you all may know, Walker Machinery sells and services Caterpillar equipment in locations throughout central and southern West Virginia. Because of the nature

of our business, Walker Machinery primarily discharges only storm water from its facilities into West Virginia streams. Yet, Walker has the potential to be severely impacted by the Board's proposed anti-degradation procedures.

Walker Machinery is one of a large group of West Virginia businesses who provide services for industries throughout this state. While Walker may not ever have to undergo an anti-degradation review, our livelihood depends on the continued viability of a strong industrial base in this great state. In particular, our business depends on new construction projects and the use of heavy equipment.

You have heard comments from many people tonight regarding the potentially devastating effects of this proposed rule on their businesses. These effects are both direct and identifiable. Simply put, if industries can get an NPDES permit easily elsewhere, they're will no longer expand in West Virginia and they may relocate entirely. When this happens, the need for service providers such as Walker Machinery disintegrates.

In particular, our objections, we feel the trigger for socioeconomic review in tier 2 needs to be revised. The trigger should be based on a larger percentage than 5 percent. Additionally, the definition of significant degradation should be based on assimilative capacity not ambient conditions.

You have heard others discuss the percentages used as the trigger for socioeconomic review in other states. I prefer to take another route and provide an example in lieu of percentages or hard numbers, if I may.

Let's assume a new business would like to locate on the Ohio River, in particular, in either in Marietta, Ohio or in Parkersburg, West Virginia. If this business locates in Marietta, then it may discharge 10 percent of the remaining loading capacity of the Ohio River. If this same business were to choose to locate in Parkersburg, it can only discharge 5 percent of either assimilative capacity or ambient concentrations, whichever is more restrictive under this policy.

Let me ask you one thing. If you were this businessman, where would you choose to locate? I think the answer is obvious, they would become a Buckeye.

West Virginia's trigger for anti-degradation should be no more restrictive than any of the surrounding states.

The Board should also revise its criteria for designating 2.5 streams. These changes should be made and the criteria set forth in the main text of the rule.

MR. SNYDER: Thank you, Mr. Tetrick. I'm sorry, your time is up.

MR. TETRICK: That's alright. Walker

Machinery will also be providing detailed written comments later. Thank you.

MR. SNYDER: And we appreciate your written comments. That helps us a great deal. Thank you. I would next like to call Jeff VanMeter, followed by Cindy Rank.

MR. VANMETER: Good evening. My name is Jeff Vanmeter and I'm the manager of Environmental Affairs at Century Aluminum. On behalf of Century, I would like to thank the Board for the hard work on the triennial review of its water quality standards. Specifically, we commend the Board for its efforts over the last three years in revising the aluminum criterion.

The Board's criteria now more adequately reflects the bioavailable portion of the aluminum concentrations. We also acknowledge the incredible investment of time the Board has expended on its anti-degradation implementation procedure.

You've heard comments from many industries tonight regarding the potentially devastating effects of the proposed anti-degradation procedures on the business community in West Virginia. I do not dispute these comments, however, I do think that the work by the Board in its stakeholders group has resulted in a document that is primarily a good work product. It is not entirely favorable to industry, nor should it be. This is evidence

of an ultimately successful albeit painful stakeholder process.

However, there are several issues where the stakeholders cannot reach consensus. These issues are narrow, yet critical to the regulative community.

The first is a definition of significant degradation in the tier 2 procedures. Century believes that the current language in the draft rule must be revised, specifically decisions to use ambient water quality to determine significant degradation is not scientifically defensible.

Whenever possible, water quality decisions should be made by taking water quality standards into consideration. Ambient conditions simply looks at existing water quality. On the other hand, assimilative capacity compares existing stream quality to water quality standards prior to making water quality decisions. Assimilative capacity is related to ambient water quality. It is a refinement which allows better scientific decisions to be made where discharges should be allowed.

Century is also concerned about EPA's decision to expand an anti-degradation review on the renewal of existing NPDES permits. This is an oxymoron. It's not consistent with EPA's actions in other states and regions. If a discharge already exists, then its continued presence

cannot alter existing water quality at the time of the permit.

Finally, consensus was successfully reached on the tier 2.5 language, acknowledging the need to provide additional protection to certain special streams. However, DEP's final draft -- first draft of the tier 2.5 streams included virtually every stream in the state. Clearly, a category of special streams cannot be all inclusive effectively negating the other categories, thus the language defined in tier 2.5 streams in the main text of the rule needs revised.

Century's concerns regarding the anti-degradation procedures are specific, however these specific concerns must be resolved to secure a sound anti-degradation policy.

With the exception of these concerns, the rule would be painful to the regulative community, but it is workable.

Century urges the Board to resolve these concerns to allow the anti-degradation procedures to be functional to the regulative community.

Century will also be providing detailed written comments, and thank you for the opportunity to comment.

MR. SNYDER: Thank you Mr. VanMeter. Ms Rank, followed by Don Gasper.

MS. RANK: My name is Cindy Rank. I am here

tonight just to represent the West Virginia Highlands Conservancy and the Friends of the Little Kanawha. I'm not going to get into the details of our comments. You all have comments from us over the past 20 years and conversations and other comments over the past year on these particular issues and which we will be re-submitting a lot of those. I would encourage you to read the submission on behalf of West Virginians for Clean Water, which we have been a part of and party to all the comments. I would urge you to read the letter from our lawyer that has been sent to the Environmental Protection Agency outlining some of our difficulties. I also sent to you, with grandfathering, the cumulative impacts, and exemptions, the trading and the whole coordination of the process itself.

Also, we'd recommend that, despite everybody else's comments, that you listen to EPA. They didn't go far enough, but I think those comments are important, worthy to include.

Again, the national groups have sent, four or five national groups have sent a letter to EPA expressing some concerns about national issues that might be impacted by what we do here in West Virginia, and I would urge your consideration of those. If you don't have a copy of that letter, I'll be happy to submit that to you with my

comments.

I would like, however, to take a moment just on a personal note and suggest that every time we go through one of these reviews, the triennial review or the anti-degradation policy, I always have to go back and read the Clean Water Act, and I think it's always enlightening to me, and I think if we don't mention what the basic goals of the Clean Water Act are today, for people who don't read those things on a regular basis, I think that we'll be missing something, because I think if we remember -- the three things that I remember about the Clean Water Act, and I always remind myself, are P, R & E, we prevent, reduce and eliminate pollution. The other ones are we preserve, we restore, and we enhance the water resources of the nation.

I always go back and say, is this what we're doing? I would suggest to you that this anti-degradation policy is not necessarily following those goals of the Clean Water Act. And it's extremely frustrating to people like me who live on very small streams and depend on them on a daily basis to come here year after year after year trying to defend some of those minuscule parts of the regs that will protect my stream and the stream of many people like me who live on small streams far away from even the secondary roads where people don't normally see. And we

depend on things in the water quality standards. We depend upon the stream use, we depend upon the standards, and we depend upon the narrative in the anti-degradation.

Anti-degradation has been the last refuge . I've come here year after year and we no longer have the assumption that every water out there is capable of supporting drinking water the way we have for historic reasons here in the State of West Virginia. We already have degraded, we've degraded on the standards, themselves and the anti-degradation policy does not guarantee the review that we need when we have high quality streams. Thank you.

MR. SNYDER: Thank you, Ms. Rank. Don Gasper followed by Dave Miller.

MR. GASPER: Hi, my name is Don Gasper. I live in Buckhannon. I represent myself, probably here. This is the nation's clean up to restore water quality. A lot of our economy is based on clean water. A lot of our recreation is based on clean water. A lot of our lifestyle is based on clean water. Anti-degradation is a wonderful word. Restoration is even better, but let's talk about anti-degradation.

It doesn't mean a 5 percent loss in water quality and water uses. How is 5 percent determined rather? Let the agency move on the problem as soon as it is discerned.

Sustainability demands that we have no degradation of our water quality, and if we have real protection and the agency is moving on problems as soon as they're discerned, there would be no cumulative effects.

Well, this is long overdue. The EPA has finally ruled because its citizens demanded, citizens court ordered, so grandfathering the polluters who have been doing it all along should be given no special privilege. They should not be polluting today. Those are my remarks. And I hope that we can restore our water quality, at least not degrade them any further. Thank you.

MR. SNYDER: Thank you, Mr. Gasper. Dave Miller to be followed by Jim Sconyrs.

MR. MILLER: Mr. Chairman, members of the Board, my name is Dave Miller, Deputy Commissioner of Agriculture for the State of West Virginia. I thank you for the opportunity to share our concerns with you this evening. More importantly we wish to thank you for the opportunity to serve as a stakeholder in the effort to develop consensus on many important aspects of the proposed rule. The stakeholder process certainly resulted in a much clearer understanding of the challenges facing the State as we begin to implement an anti-degradation policy for our waters.

Commissioner Douglass will be submitting detailed

comments on the proposed regulation on or before the August 16, 2000 deadline. We wish at this point to only outline our major concerns so as to alert you early on important considerations that we know will be of great interest to the West Virginia Legislature when this rule comes before them.

We wish you to look at the economic impact. It must be analyzed by the Environmental Quality Board and DEP and the results accompany the rule when submitted to the Legislature. We believe the West Virginia Code requires a fiscal note be provide which includes the cost of implementing the rules as they relate to this state and to persons affected by the rules and regulations. As drafted, this is a far reaching rule with significant economic impasse.

We are very concerned about DEP having the necessary resources to properly implement the rules. Without additional resources the people of the State will experience delays, less than adequate socioeconomic impact consideration and most importantly inadequate data to determine appropriate levels of protection. DEP is clearly on the record as having said they do not have necessary resources for anti-deg or TMDL implementation.

Tier 2.5 waters are defined way to broadly. In fact the majority of the state is captured by the

definitions of "waters of concerns." We put together a map which we will give to you of all 800 streams that are listed on that and what it does to the state. Surely it is not the intent of the Board to propose limiting future development in most of our state. Our Governor, on numerous occasions, has stated that single use considerations, such as onerous water quality rules, should not drive broad based land use restrictions. The Board should delete the tier 2.5 and 3.0 for each stream designations. The tier 2.0 designation alone is intended to maintain the high quality streams. Maintaining high quality is stringent enough requirements.

Lastly, these rules as proposed are much more stringent than neighboring states. While the rest of the nation is enjoying unprecedented economic growth, West Virginia is still struggling. We continue to believe we can maintain high quality water and grow our economy.

In conclusion we believe the Board has the beginnings of a workable rule, however, some major glitches remain. And once again, we thank you for the opportunity to appear before you this evening. We will participate in the remaining steps of the anti-degradation rulemaking process and working with the legislature consideration. Thank you once again.

MR. SNYDER: Thank you. Jim Sconyrs

followed by John Smolak.

JULIAN MARTIN: When I came in there were six people in the room. I signed the list. I was number 21. I think you're on 60 or something now. Why are all these industrial suits going before the rest of us? I don't understand that. This room was empty when I came in.

MR. SNYDER: We'll get you up here Mr. Martin.

MR. MARTIN: I don't understand why I'm 60th hen I was signed up 21st.

MR. SNYDER: We moved around the list where we had so many.

MR. MARTIN: Why did you move it around? For the advantage of the industrial speakers, because none of these people were here when I was here. I came here early so I could speak early and all the industrial suits got to get up there and speak. That's what happened. Why did you do that?

MR. SNYDER: I'll get you next. We took one by one as they appeared on the list.

MR. MARTIN: I'm number 21.

MR. SNYDER: Here is what happened. We took them one by one as they appeared on the list.

MR. MARTIN: I'm number 21.

MR. SNYDER: Just a minute. What happened

was there were so many industry speakers early on that we decided that we needed to get more of the other side heard early on and so we started to try to mix them up, bringing some of the later names -- we apparently did that right before somewhere, where you were to speak.

MR. MARTIN: All the industry people have already spoken.

MR. SNYDER: That's what we tried to do, sir.

MR. MARTIN: You didn't do a very good job of it.

MR. SNYDER: We're going to get you right up here.

MR. MARTIN: We're going to be here all night.

MR. JENKINS: We will, too.

MR. SCONYRS: My name is Jim Sconyrs. I'm director of the West Virginia Sierra Club with twelve hundred members statewide. I live on Snowy Creek in Preston County. Our members live all over West Virginia. We all drink the water. We recreate in the water. We canoe, swim and fish and play in the streams and rivers of West Virginia. We value the plant and animal life that live in or depend on our clean waters. We not only want you to keep West Virginia's clean water clean, we need you

to fulfill your responsibility to keep it clean.

Clean water is becoming a scarcer resource all over the world every day, soon to be the subject of wars and so on. I hope you won't let it become scarce in West Virginia.

We urge you to hold all polluters with no grand fathering and few or no exemptions to a true anti-degradation standard for our families for our future. Thank you.

MR. SNYDER: Thank you, sir. Mr. Smolak followed by Mr. Martin.

MR. SMOLAK: Thank you very much. My name is John Smolak. I'm the Manager of Economic Development for American Electric Power Company in West Virginia and also Kentucky. I'm here this evening not only as a representative of a business, even though I don't have a suit on, but also the economic and development community in the state.

In particular tonight, I would like to comment on the Board's proposed new Appendix F to the Standards, the Anti-degradation Implementation Procedures and the potential impact of these new procedures on economic development in the state.

In looking at this proposal, the one thing which I believe no one will disagree with is the new procedures

will make it more difficult and more expensive to obtain water quality permits in West Virginia.

When I deal with business people who are interested in bringing a new business or investment to the state they always have the problem of dealing with all the regulatory and business costs when making a decision for a new operation. Deciding on a new business requires the analysis of a large number of factors, such as labor force availability, cost construction, infrastructure, transportation, utility costs and many others.

These are experienced business people competing in a global environment to make a profit. They have to analyze and weigh the pluses and minuses of each pertinent development factor. And if they encounter a rule that make establishing their business more difficult in one state than in another, a mark goes in the minus column. If the minus is not then offset by a positive factor, the business usually doesn't locate their investment here.

People want to know that the environment is safe to live and work in. As I understand it, the West Virginia laws already protect people's health in these areas. People want to know that they will be allowed to use the water for recreation or to withdraw water for use in their business or industry process. West Virginia laws already protect the water for these uses.

The way I see it, the policy is more closer related to a philosophical question than a practical one. The question is how much better than clean should the waters of this state be. I am perfectly satisfied with the standard being as strong as needed, as long as it does not hurt the economic vitality of our state in other ways.

The Board's proposal goes beyond what other states, especially those states that border West Virginia and those we compete with, have decided about this philosophical question. I believe these states are just as concerned about their environments as we are. I know from experience what it is like t compete with these other states for new business and I know these state's leaders are just as aware as I am of the desire of the prospective businesses for an attractive place for their businesses and their employees.

Other states have set anti-degradation trigger levels, at which the same kind of restrictions that are in the Board's proposal will kick in. However, to their credit and vision, they have placed these trigger levels at much higher standards and levels. They have, apparently, decided that their water quality can be protected without placing this additional burden on economic activity. I suggest to the Board that we learn from these states and take the time to evaluate what they have done.

MR. SNYDER: That's time, Mr. Smolak. Thank you, very much. Mr. Martin, followed by Brenda Harper.

MR. MARTIN: I don't believe I've ever seen such admiration for the State of Ohio. We want our rivers to be as good as theirs. I remember when the Cuyohoga River caught on fire in Cleveland. People from Ohio can't even drive. We don't want anything like what they've got. We want to be a whole lot better than what they are. We want to set the standards for the country, we don't want to follow everybody else. It's a good thing that our neighbor is not Mexico or you could poop in the river. It's a darn good thing we're not bordered on a third world country. It's a big race -- Now, listen, it's my turn to speak. I was 21st on the list, they put me up to 60-some, by golly, you let me speak. You had your turn. Okay. If you don't like what I say, talk to me in private.

We dare not be better than other states, it's a race to the bottom. And we have had the industry speakers get up here and say, one after another, what they will do. They will go to the place that will let them dump the most pollution in the rivers. That's where they'll go. And they'll say, "Wouldn't you, too?" I wouldn't. I wouldn't go where I could dump the most stuff in the river, I think that's immoral. They're going to go where they can make the most money and where they can rape the most people.

And if we will let them rape us, easier than Ohio or Kentucky, they'll stay here. And as soon as we crack down on them, they'll leave. They'll take their ball and they'll go home. They don't like us. Their industries are owned by out-of-state people. They couldn't care less about our rivers. Our rivers have been used as sewer pipes for the industry all my life. I've live on Coal River and I've lived on the Kanawha River and if you've ever seen a carp floating down Kanawha River belly up, you wonder why anybody would ever water ski on that river.

I have given a list, written list of my formal complaints about the technical details. I just wanted to point out that I think we should quit trying to imitate Ohio. And I accuse you of favoring the industry speakers ahead of me.

MR. SNYDER: Ms. Harper followed by Ann Bradley.

MS. HARPER: Chairman Snyder, Doctor Jenkins, Doctor Samuels, thank you so much for your patience and thank you so much for the opportunity to have diversity of opinion on this regulation, because in diversity of opinion, we find that everyone wants clean water, industry and the citizens. We find without question that everyone wants jobs, industry and citizens.

Without question the West Virginia Manufacturers

Association, which I am vice-president of, believes that the anti-degradation implementation procedures should be objective, based on good science and efficient to administer. The anti-deg review should focus on true impacts to water, recognizing that certain projects, including those of limited impact or a great environmental or social import like brownfields projects, do not warrant extensive review. Without question, the proposed anti-degradation implementation procedures impose far more restrictions than necessary to accurately protect the waters of the state. The regs greatly exceed federal requirements for anti-deg review and go far beyond what other states require. As a matter of fact, I find it most interesting that the Commonwealth of Pennsylvania applies their anti-degradation to only new and expanded facilities and USEPA approved that.

As a matter of fact, if you look at all of the exceptions every exception that is written in the West Virginia Anti-degradation Implementation Procedure has been approved by USEPA in another state. And there's two you all missed. One deals with research and development projects and the second deals with brownfields project. It is without question that these type of exceptions encourage good product development and improvement to the quality of life.

The proposed rules amount to an absolute prohibition right now on new and increased discharges. Therefore, West Virginia is going to be at a distinct disadvantage in attracting new investment, including research and development investments, and to utilize the brownfields spaces that we have in this state.

One of the problems that really bother me is right now, your regs puts the West Virginia DEP Office of Water Resources in an untenable position to make land use decisions without statutory authority to do that either in your body or in the DEP. I suggest there needs to be some rewording, and in our written comments, we will make those suggestions.

The best efforts of the stakeholders here should be considered. They have done an excellent job in many areas and you need to respect them as your advisors that you appointed. Without question the 5 percent trigger that you now have for socioeconomic analysis either in option one, which is the 19 member, or option two, which is the standing committee versus the comments all around, don't you think you should look at West Virginia state law to those entities that are charged by law to do economic analysis and community analysis.

There are two bodies, in Chapter 5, the West Virginia Economic Development Council and also the Regional

Planning and Development Council.

MR. SNYDER: Thank you, Ms. Harper. Thank you very much. Ms. Bradley followed by Pam Casey.

MS. BRADLEY: Thank you, Mr. Chairman. We evidence tonight no good deed goes unpunished. My name is Ann Bradley from the firm of Spilman, Thomas & Battle. I've been asked to read into the record this evening a statement on behalf of the Mayor of Weirton, who could not be here, and he regrets that.

"My name is Dean M. Harris, Mayor of the City of Weirton. I am speaking with regard to the Environmental Quality Board's anti-degradation rule and its possible impact on economic development in our region of the state. Living and working in the Northern Panhandle, I have heard many of my constituents say that decisions made in Charleston are made in a vacuum without any input from the real people whose lives are affected by state level governmental decisions. I am, however, relieved that the Board took the time to get input from different sources about the proposed anti-degradation rule. Yet, unfortunately the result appears to be a regulation that does not achieve a balance between environmental concerns and business needs in the Northern Panhandle, as well as across the state.

I think what is missing here is a proper

balancing of the environment and economic development. No one wants a rule which supports one of these and ignores the other. I understand that we have to have an anti-degradation implementation policy in West Virginia. I also understand that other states have found a way to meet the state and federal law requirements for anti-degradation without choosing between environment and economic development. It is my hope that these comments will be of use to the Environmental Quality Board in formalizing an anti-degradation rule which is responsive to the needs of business, as well as being environmentally responsible.

If I or any of my staff can provide any assistance to you in this regard, please do not hesitate to contact me at anytime. Thank you for the opportunity to present these comments."

Thank you.

MR. SNYDER: Thank you very much. Kevin Hanson.

AUDIENCE MEMBER: He had to leave but he will be submitting written comments.

MR. SNYDER: Thank you, we appreciate that. Thank you very much. Tom Boggs.

MR. BOGGS: My name is Tom Boggs, and I'm here on behalf of the West Virginia Chamber of Commerce.

Before I start my remarks, I would like to preface them by saying that we do expect to submit extensive comments and our silence on any of the issues does not diminish our concern and interest in them, so we will submit those later.

We would also like to say that the Chamber has been very supportive of the anti-degradation process. Our presence here tonight, our presence throughout the process as a participant and observer is an indication of our importance on that issue.

The West Virginia Chamber of Commerce has surveyed all 50 states with respect to their various proposed and implemented standards to kind of get of feel for how the standard would apply, and we've had about a response of about half of those states have come back to us with their answers. And what we have found that all those states, all the states that have responded have their policies applied to new or expanded NPDES discharge, no existing ones. And no state has indicated a significant definition of 5 percent. In fact, of those who volunteered their levels, it's generally -- states like Maine, New Hampshire, Kentucky, have a 20 percent trigger. Utah is considering a 10 to 20 percent trigger and some of the states, including Connecticut and Texas, don't have a trigger, don't use a percentage at all. They look at

various factors like impacts of remaining assimilative capacity, quality and value of the resource quality, those types of things.

And in conclusion, in our preliminary results, we think the 5 percent of assimilative or ambient, whichever is more restrictive, is no parallel in this country. In fact, the Board's proposals, being so conservative, in the interest of the Chamber is that 90 percent of our membership is made up of many small businesses that have marginal economic capabilities. The West Virginia profile, if you set and look at the business profile of the state, you'll see that it's heavily populated with small businesses, and with the narrow proposal of the Board that they propose that it virtually puts any need for expansion into the socioeconomic study which greatly increases the cost of the small business in order to do that. And what it really does is seriously raises the issue of whether West Virginia needs to be that different.

With respect to -- and what we would like to see the Board consider and propose or adopt is our proposal of 10 percent.

With regard to the 2.5 percent waters of special concerns, the Chamber urges the Board to consider the fact that it defines 2.5 so generally that it virtually covers all over the streams of the state, and that's not the

intent of 2.5, and so we would like to see you redo that and because if you can't look at it from that way, then it's going to be left to the legislature to consider how that's going to be done.

MR. SNYDER: Thank you very much. Your time is up. Denzil Huff followed by Rodney Branson.

MR. HUFF: Thank you. I appreciate the opportunity to speak this evening. I'm Denzil Huff, a farmer in Gilmer County, West Virginia, and also vice-president of the West Virginia Farm Bureau representing 14,200 family members in our great state.

The topography of West Virginia is such in most of the state that stream areas are a part of any farm. Farmers over the past few years have made significant strides in improving the environment with the aid and directions from the NRCS and other USDA agencies. Best Management Practices have been implemented by many farms and most other farmers are employing practices that improve the quality of our streams. It is true that at one time or another some farmers were somewhat neglectful in favor of economics. However, in more recent years through education and a better understanding of soil movement and underground aquifers, farming practices have changed drastically for the better.

Farmers are concerned about the statements in

your proposal. The implications throughout the proposal seem leaning toward mandatory BMP's for all farmland within the state. Even though with a voluntary BMP, the farming practice is sufficient to meet water quality standards. The implication is that regardless of how reasonable or cost effective the BMP is to the farming operation, if water quality is not met, then the farming operation will be required to stop.

It appears that through a permitting process or a mandatory BMP is the only way we will be able to farm in West Virginia. When a young farmer or an out-of-state person wants to come in and consider beginning a new farming operation on any watershed in West Virginia, the permitting process alone will turn them away. The up-start cost of beginning a farming operation is almost prohibitive; thus, any additional cost or work load, such as mandatory BMP, may be the "straw that broke the camel's back."

I do not often have the privilege of visiting you working under the golden dome. But as you look out your window of your silver palace with ivory towers and contemplate other standards or other obstacles to continue farming and driving young people from West Virginia, I would hope that you exercise better judgment in your decisions. As you drive down I-79 now, yo can already see

many hillsides covered with multiflora rose and autumn olive, both of these species crowd out grasses that protect the soil and inhibit soil loss. Both of these species are rapidly spreading over the hills because of the excessive cost of control. As a result, many farmers no longer take care of their land and cease farming to be gainfully employed in another occupation or move to another state. Continued efforts by the Environmental Quality Board Environmental Protection Agency and various other permitting agencies will only speed up the degradation of our waters. We would recommend that the Environmental Quality Board encourage voluntary BMP's with continual incentives by NRCS and educational programs by West Virginia University Extension Service as a means of improving water quality.

Regardless of how many so-called environmental groups feel about the farming industry, farmers care about the total environment and are working to protect it. Words of encouragement will work miracles and you might even get some positive feed-back. I encourage you to drop the "big stick" in favor of the "carrot."

MR. SNYDER: Thank you. Mr. Branson followed by Roger Sherman.

MR. BRANSON: Thank you for the opportunity to speak. My name is Rodney Branson. I am also a farmer.

I live over in Hardy County, West Virginia. We raise cattle and turkeys. It is a family farm. I live there with my father and brother, who also farms on our farm.

What I would like to do is paint you a scenario of what can happened in just one valley. And if it can happen in our valley, it can happen in a lot of places.

We have a valley that has two unique characteristics. It has a lot of agriculture and it has a large influx of people coming for recreation, enjoyment of that community, and they're building homes, vacation homes, permanent residents, and a lot of them are day users. They come for one reason, the beauty of that valley. They come because of the rural landscape. They come because of the farms. They come because of the river that goes through it.

Under the anti-degradation regulations that could be very easily abused by these people unconsciously because we are bombarded by the water quality issue today. They could nominate our stream for a tier 3 stream. Mandatory BMP's could come in. We already have BMP's on most of the farms, a very large percentage of the farms and cost sharing programs, incentive programs, under voluntary programs. But the BMP's are subject to change.

If you go to look at that, take a water sample this year of that stream and find fecal coliform is up a

little bit, DEP doesn't realize that that white tail deer had two fawns this year instead of one. It ovulated, dropped a few more eggs this year. It doesn't realize that the raccoon population is up. Where is that habitat? Before they get to our cornfield, they cross that stream. They get a drink, they take care of their business, then they come into the field. In the evenings or in the mornings they go back the same way, taking care of the same situation.

DEP comes in, recognizing that the need to take care -- to bring this problem down, so they say, you're going to have to fence off the stream. The grass buffer just isn't working. So the fecal coliform goes up again. Why does it go up? Well, all of a sudden we've created a habitat along those streams. A habitat for the white tail deer that now doesn't have to come from the woods down to the cornfield, he's right there at the edge of the cornfield, the wild life fence. Not only that, but all those farms that are going out of business because they can't afford those BMP's, and you're talking four or five thousand to drill a well, put in a power source, put in a water trough to water those cattle, they can't all afford that. Our farmers are made up of five family farms that's went out of business because they couldn't keep up the production in that environment. The greatest threat today

to the family farm is environmental regulations that are mandated.

So when we have a situation like this, it only compounds and deteriorates even further. Why can't we go back? Why can't we use a voluntary approach? If we need to solve the problems, people like NRCS Soil Conservation Service has been doing a great job and continues to do so. Cost share programs spread the cost out. The farmer can't pick up the tab for Best Management Practices. They can't afford it but yet under these anti-degradations they have to pick up the tab.

MR. SNYDER: Thank you, Mr. Branson.

MR. BRANSON: I thank you for the time.

Mr. SNYDER: Now, Mr. Sherman, followed by Mark Roach.

MR. SHERMAN: My name is Roger Sherman. I'm a registered West Virginia forester employed by Westvaco Corporation. I'm here this evening on behalf of the West Virginia Forestry Association as its legislative and policy chair .

The issue that's most important to the Forestry Association is the need to clarify the provisions addressing BMP's. The stakeholders agreed on language that, after more careful review, does not reflect the intent of several, perhaps most, of the stakeholders. Our

discovery of the ambiguity of the language came too late to correct it as a simple drafting error, therefore we suggest a remedy to the Board.

First, the proposed addition of language to 4.1.b of the rule could be read to allow the Director to require a forest, farm or other non-point activity to cease operations, leapfrogging the BMP process and the structures and procedures that are presently in place. I guess maybe -- am I interrupting something?

AUDIENCE MEMBER: It just appeared that I was here before a whole lot of people, and I thought I would see how I got shuffled.

MR. SHERMAN: I hope you have resolved that.

The proposed addition of language to 4.1.b could be read to allow the Director to require a forest, farm or other non-point activity to cease operations, leapfrogging the BMP process and the structures and procedures that are presently in place and being effectively applied by the West Virginia Division of Forestry. To change the structure of state government by creating broad new authority through this rule clearly was not the intent of the stakeholders. Although one participant now declares a preference for this language that would potentially shift non-point source control to the DEP. The language as proposed makes the rule

absolutely unacceptable to the non-point source community. The language added at the end of 4.1.b is superfluous since, without the offending phrase, it is fundamentally a restatement of existing language. I urge that the added sentences be withdrawn.

Secondly, our proposal obviates the need to deal with a new issue which has surfaced since the release of the draft. This issue was not addressed by the stakeholder group but it needs to be addressed by the Board. The proposed added language provides that BMP's will meet water quality standards. The Stakeholder Group never discussed whether such a requirement is technically feasible. In fact, the very nature of BMP's and non-point sources is antithetical to predicting their ability to meet an in-stream numerical standard. BMP's do not have numerical effluent limitations that allow a calculation of impact on water quality. BMP's should be required to be protective of high quality waters which current language in the rule requires. As already indicated, withdrawing the proposed new language will take care of this concern and will not weaken the rule.

We agree that others who have spoken to the need to improve the way the 2.5 list is generated and have submitted written comments.

MR. SNYDER: Thank you. We will place in

sign-in sheet over on the table so people know where we are. Mr. Roach followed by Sante Carducci.

MR. ROACH: My name is Mark Roach and I'm the Chairman of the Sheet Metal Division for the Independent Steelworkers Union at Weirton Steel Corporation.

On behalf of the Independent Steelworkers Union at Weirton Steel Corporation, I offer these comments expressing the concerns of my members with respect to the impact of the Environmental Quality Board's proposed anti-degradation rule and it's direct impact on our jobs.

As you are aware in recent years the US steel industry has been subject to brutal attacks by overseas companies and foreign governments through the dumping of foreign made steel on our US markets.

Dumping involves selling steel in this country below it's price through the country of origin. For the past two years, as a result of illegal dumping, the livelihood of 45 other workers at Weirton Steel have been in jeopardy. During January of 1999, our members participated in a march in Washington in an attempt to alert Congress to the crisis posed, not only for our regional economies but for the economic health of our country.

Despite the efforts of West Virginia's

Congressional Delegation, our federal government has turned a cold shoulder to the crisis in the steel industry. Do not be mislead by the lack of current national attention on this issue, the crisis is not over. We who grew up out of the trenches of the trade wars are very discouraged to learn a new threat that is lurking at the state level, a threat to our jobs and our future of our families.

If Weirton Steel is to survive in the 21st Century, we must be able to make technological and process changes in our mill that are necessary to respond to market conditions.

We find it difficult to believe that a State Board would adopt a policy that makes it more difficult to expand an existing business or bring in new business.

We have experienced the federal government turning its back on us and telling us our jobs and future are not important to them. Please show us greater consideration than that.

Every one of us supports a clean and healthy environment. We must find a way to protect our environment and our jobs. This proposal is not the way.

We support specific recommendations or changes to the rule that are being made in written comments that will be filed by Weirton Steel Corporation, the West Virginia Steel Advisory Commission and the West Virginia

Manufacturers Association. Thank you.

MR. SNYDER: Mr. Carducci followed by Sam Lockard.

AUDIENCE MEMBER: Mr. Carducci has left.

MR. SNYDER: Okay. Sam Lockard followed by Don Garvin. We still have many speakers to go and we want to hear you, we will be here listening.

MR. LOCKARD: I haven't been here for three weeks, at least. Did you miss me? My name is Sam Lockard. I serve as the Natural Resources Coordinator for the West Virginia Farm Bureau. Forestry and farming are non-point activities, and, in fact, non-point activities have done more to create, develop and protect the various streams that this anti-degradation policy is addressing. Our efforts are continuing and improving, they're not declining or deteriorating. We're far from perfect, but we still maintain we've done more to enhance, develop and protect these streams than any other entity in this state.

We all agree on the concept of anti-degradation, we agree substantially with the issues and suggestions by the members of the regulated and point source community. The economy of the state affects us and our land values. It's been said West Virginia is behind in the nation in about every spear of the economy. And we really need to balance. We just must balance this protection of our

streams with some rational reasonable sound growth and that includes the agricultural industry.

Specifically, we think the committee ought to exempt non-point sources from anti-degradation with the use of cost effective and reasonable Best Management Practices, and that's in there specifically so stated. The minutes should verify that. Other language doesn't appear to express that intent. The rules state you have anti-degradation applies to new and expanded regulated activities and defines a regulated activity to include any activities subject to non-point source control requirements and regulations. It further states the authorities are to insure the BMP's are sufficient.

The written word appears to make agriculture regulated activities subject to anti-degradation policies contrary to the committee's statements. In order to display the committee's intent, we feel, we suggest that specific language be added to the definition of regulated activity to effectively exclude non-point activities and that the definition of non-point activity be defined as one for which an NPDES permit is not required.

As an additional kicker, in the new rule the definition of regulated activity includes any activity which is otherwise subject to state requirements and regulations developed to protect the water quality. And as

all activities of whatever nature, including the occurrence of this meeting, are subject to protections afforded water quality, we ask that that section be rewritten to limit application on anti-degradation to NPDES permitted activities.

Tier 2.5 streams are far too extensive without some defining criteria. It just isn't going to fly.

MR. SNYDER: Your time is up, Sam.

MR. LOCKARD: Okay. Thank you.

MR. SNYDER: Thank you very much. And before we go to Mr. Garvin, just a second, would everybody stand up for just a minute? I don't know about the rest of you, but I can't handle this any longer. We have 26 more speakers. That's slightly over an hour. We'll take just two minutes here just to stand up and stretch a little bit. We can do this in over an hour and we want everybody to have a chance to be heard. So we'll be here.

(WHEREUPON, a brief recess was taken, after which the following proceedings were had.)

MR. SNYDER: Mr. Garvin.

MR. GARVIN: My name is Don Garvin. I am president of the West Virginia Environmental Council and on so many Boards, I can't count all the hats I wear. As you know, I'm frequently at EQB speaking on behalf of the

trout. Ed Crum did that very well tonight, so I'll speak on behalf of the West Virginia Environmental Council.

And I just have basically some observations as I sat here tonight. TMVL's, anti-degs, CCP's, water quality standards, tier 1, tier 2.5, BMP's, the average West Virginian has absolutely no idea what we're doing here tonight.

The Clean Water Act was enacted in 1972. In fact, it was part of federal law in 1968. It predated the Clean Water Act, and people here tonight are saying, "My, we're moving awfully quickly." We will submit comments on the various technical aspects, and I just want you to know we support clean water, but we support clean water.

So members of the Board, I believe you have a historic opportunity to do the right thing and to insure that West Virginia's clean streams remain clean, and I just believe that's what any definition in any dictionary will tell you about the word anti-degradation. Thank you.

MR. SNYDER: Thank you very much, Mr. Garvin. Chuck Merritt followed by Janet Fout.

MR. MERRITT: Thank you. First, I want to say you all have my sympathy. You seem to have a hard time pleasing anyone. I would like to have a little demonstration here first with everybody here and the Board. That's water and that's water directly out of the Shaver's

Fork River. I live on the Shaver's Fork River. And Shaver's Fork River has some problems. It's lucky, it doesn't have a major industrial point source pollution up stream. It does have some pollution upstream. It has some unregulated and possibly improperly permitted subjects. It has siltation from logging roads, old logging roads, new logging roads, but I enjoy living on a stream of high quality water. And I think the manufacturers association and the people who are worried about industrial development in this state don't understand the positive effects on economic growth that clean water and quality of life that is inherent in that. This is priceless.

The manufacturers association seems to want to -- is very much worried about their ability to compete. But this seems to be translated into, as one other person said, a quick slide to the bottom. And I just think that you have the opportunity to make West Virginia one of the very best. How often are we the last or the worst? Now we have an opportunity to be one of the very best and influence the states around us instead of trying to keep up with Ohio or keep up with whatever.

And this leads into diminimous, to me it does, because it means that we can degrade 10 percent or 20 percent we will be following the other states, my gosh, if every state keeps going, and I don't know if the cascades

this way exactly, but I think the gods I don't live in Alabama, Mississippi, or Louisiana, because everybody knows the environmental record of Louisiana, it's so great, if they make it any worse, but I would like to make a strong push for strong regulations on non-point source pollution and I think that's a very important aspect of these regs.

And, further, I would just like to say that I support wholeheartedly the written recommendations of the West Virginians for Clean Water in both their written comments and their oral comments. Thank you.

MR. SNYDER: Thank you Mr. Merritt. Janet Fout followed by Jeremy Muller.

MS. FOUT: It looks like you're getting demonstrations two in a row, but mine is a little different. Can you hear me? I'm with the Ohio Valley Environmental Coalition. I want to talk to you about the importance of water, period. We'll submit technical comments, but we also concur with the comments that are submitted by the West Virginians for Clean Water.

Just for all of us to remind ourselves what we're talking about here, and I'll put this in a global perspective, the world's fixed supply of water in all forms, vapor, liquid and solid is enormous, however 97 percent of the earth's volume of water is found in the oceans and too salty for drinking, growing crops and most

industrial uses except for cooling.

Now, what we have here, if we could take the entire supply of the world's water and condense into a hundred liters, which would be equivalent to 26 gallons, we wouldn't be able to use 97 percent of it, in fact, the world's useable water supply of fresh water is 3 percent, which would be condensed to about this amount if we start first with the 26 gallons of all the water in the world and we condense it down to the fresh water, this is what we would have, but what's available for use.

What would be available is that which is not tied up into ice caps, that which is not too economically unfeasible to reach by drilling, what we would have is about half of a quart of water. Remember we're looking at proportions here.

But what it really boils down to, we're polluting an awful lot of this and what we really have is half a teaspoon of useable fresh water and this is useable fresh water for all the things such as, let me see, fresh water supplies continually collected to or from a distributed in a hydrologic cycle, this naturally recycling and purification process works as long as we don't pollute fresh water faster than it's replenished, overload it with slowly degradable and non-degradable ways to withdraw it from slowly removable underground deposits faster than it's

replenished. Unfortunately, we're disrupting the water cycle by doing all of these things.

I think one thing that we've left out in all of this is future generations. I hope that we are not partaking all of us in intergenerational theft of water from our children, our grandchildren and future generations of West Virginians. It is the life blood of our economy and we've heard folks talk about balance tonight, but how many of us this week have bought bottled water. Why are we already drinking bottled water? And most of us do that. A lot of people can't afford that. So we're already in trouble. If you want to talk about balance, let's talk about restoring our waters, not degrading them.

We support strong standards for clean water. That's all.

MR. SNYDER: Thank you very much, Ms. Fout. Mr. Mueller.

MR. GARVIN: Jeremy just got sick and he's leaving and he asked if I would read his statement. I'll just read half of it because the other half is related to the technical things that we will have submitted in writing. I don't know if he will submit the other part.

My name is Don Garvin and I'm speaking on behalf of Jeremy Mueller. He's executive director of the West Virginia Rivers Coalition. I'm secretary of the Board of

the West Virginia Rivers Coalition.

The Rivers Coalition has 2,300 members and 48 affiliates. He says thank you for holding the hearing. I think just a few of his comments here need to be said. You'll hear a lot of rhetoric tonight about this anti-degradation policy and our economy, and a lot of it will be misrepresentations or at least gross exaggerations of the truth.

First, of our neighboring states, Virginia, Ohio, Pennsylvania and Kentucky do not have EPA approved anti-degradation implementation policies, so we cannot compare West Virginia's policy with these. It's apples and oranges.

Second, the suggestion that anti-deg will cripple industry and our economy is false. It is a review of an activity, simply a review. If the activity is positive, that is, it creates jobs and provides valuable services, the activity will be permitted.

Third, it is said this review will be exhausting, a bureaucratic nightmare between the various agencies, but there isn't a process even outlined in this document to suggest how this aspect of a review will be carried out.

Fourth, facts, figures and studies all prove that strong environmental regulations help not hinder, but helps strengthen an economy. West Virginia needs this help.

Discharging into the waters of West Virginia is a privilege particularly so when discharging pollutants, it is a privilege granted by the public. This needs to be kept in mind as this policy is finalized.

Thanks for allowing me to read these comments.

MR. SNYDER: Thank you very much. Winnie Fox next, followed by Mr. Gibson.

MS. FOX: Hi, I'm Winnie Fox of the West Virginia Environmental Council -- or Ohio Valley Environmental Coalition. I'm from Huntington and I've lived in West Virginia for 70-some years and all that time have been listening to all this same thing from all these same people over and over and over.

All these corporations say they can't do business without loosening environmental standards. They can't produce jobs without reducing environmental standards, and they're still here and they're still doing it. And we've still got a horrible Ohio River, Kanawha River and all the other rivers. And a lot of people here are dying from cancer, and don't fool yourself, ask any Vietnam Vet what happened to him when he was exposed to Agent Orange, which is produced right here in West Virginia. We can't keep this up. We're going to have to stop and clean up our rivers and clean up our air. They are the most valuable things we have and the things that our children and

grandchildren will either inherit from us or they'll suffer from not having it. Thank you very much.

MR. SNYDER: Thank you, Ms. Fox. Mr. Gibson followed by Bill Samples.

MR. GIBSON: I've been here so long, I almost forgot what to say. I'm kind of disappointed though at you people here today, because I had to sit here and hear all kinds of stuff from the people back there and the company people were putting out here. And they're gone and they won't hear what I've got to say. You should have locked the door on them and kept them here.

Another thing, too, I don't know if you people realize how important your position is here. I really don't. I represent the Ohio Valley Coalition, I also represent my own foundation, and I think that I'm going to be representing a lot more people who are not here tonight because they don't know the danger we're in here.

I lived in West Virginia in the 40's through the 50's and left and I came back thinking it should be better and it's worse. And I look in here and come to find out the coal company ain't the only one messing up the water, you know. People know I'm kind of upset with the coal companies.

I look back here and I see people from the companies that's been here tonight and it comes down to one

thing. It comes down to profit again, profit over clean water. I think if you think about this, it's not so hard to figure out which way you should go on this. You should go with the people that need the clean water because if you don't, one of the biggest imports you're going to have in West Virginia, and it would be a shame with all this water flowing around and these people can't drink none of it. It would be a shame to have to import water to West Virginia. We have a chance like the gentleman said before, to make this a fine state as far as getting in the front line and doing what's right. You people here should be reminded again how important your position os. That's what I'm here tonight to do. Thank you.

MR. SNYDER: Thank you, Mr. Gibson. Mr. Samples, followed by David James.

MR. SAMPLES: Good evening, Mr. Chairman, members of the Board. I'm Bill Samples. I have to say one thing, I think a Board of your all's caliber and the field that you're in, one of the first things you should work on is getting a new water cooler out there. Everyone realizes the importance of having good drinking water. I, along with my wife and children, have been a resident of the rural Putnam County for over 30 years. I was born and grew up on a farm in rural Kanawha County. Practically all my life, I have depended on private wells for a water source

or sometimes the lack of. I have also developed a love for the outdoors, especially streams and rivers, and I don't want to see any regulation that allows pollution of them.

I'm certainly not a professional lobbyist and although I've been acting over the years for various streams improvement projects, this is actually my first visit to a Board review meeting.

In review of the proposed regulations the part that concerns me the most is the grandfathering clause. I don't think that the fact that a permit is existing should allow our streams to be degraded. Thank you for permitting my comments.

MR. SNYDER: Thank you very much. Mr. James, followed by Frank Young.

MR. YOUNG: Frank Young passes.

MR. SNYDER: Andy Ragland will be after Mr. James.

MR. JAMES: Excuse me if my comments are somewhat disjointed. Thank you for your audience. I want to say, first off, the South Branch moved from one of the top 10 bass streams in the country to the 10 most endangered list in the last 15 years. I think there's some concern about non-point source. I think the non-point source relates to poultry industry that Gus Douglass says alright and another farmer here said it was raccoons. I

believe Gus Douglass buys his water and believes that 10 million chickens are alright for our neighbors in DC to drink after.

I like to swim in the Potomac. I've lived from Shepherdstown to Bluefield to Morgantown all over the state, I'm now in Roane County. The water is pretty fair there. There isn't coal there. Allegheny Power believes it's okay for New York to take the pollution from the coal that they burn here, and that's another interesting factor, which I didn't know we were considering at all. We try to think what clean water is, we try to think about rain water, or I try to, and I say, well, wait a minute, we've got acid rain falling from the oxides put into the air by industry. Who is responsible for that? And are we considering that in our clean water efforts?

This grandfathering part gets to me. The past pollution has either moved to the ocean or is the ooze on the bottom of the streams that the crawdads are eating now that are getting in the fish that you're not supposed to eat out of the Kanawha River. The present pollution is what the future will have to put up with. It's what our children will have to put up with and our future pollutions for our grandchildren and our grandchildren's grandchildren will have to put up with. And this is what we're looking at now.

A couple more concerns, siltation causes floods, floods cause massive pollution when the water gets out of the bounds and floods all the septic tanks and all the areas where the water is not supposed to be, siltation, I believe can be traced pretty directly to mining activities and lumbering activities and other development that we need to use best available practices to limit the damage done by that. We need to look at that.

By the way, my grandfather, he was a logger and a coal hauler, but he showed me trout in the South Branch River and compared them to his forearm, and thinking about the cost of things and the value of the state, I just wonder what the recreational and quality of life value is of a five pound native trout and when we might see them come back.

MR. SNYDER: Mr. James, I'm sorry, I have to stop you. Thank you very much, sir. Mr. Ragland followed by Dick Latterell.

MR. RAGLAND: Hi, my name is Andy Ragland. I'm a private citizen here in Charleston, although I am a member of the West Virginia Rivers Coalition. I thank you for this opportunity to speak. I'll make it pretty brief given the later hour. I will right up front say I'm much opposed to the grandfather clause. I would like to see that removed.

I, like a lot of other people, work in industry; however, the industry that I work in prefers very much clean water. In fact, the current water situation makes our industry limited. I work in the whitewater industry and, in fact, I work as a guide and we have a constant problem where when the E-coli warnings are up, we have to somehow explain that to people who are participating in the growth of our state and not in sunset industries, but one of the growth industry, which is tourism, and the whitewater industry is one of the big portions of that growth in outdoor recreation and tourist.

We can't really afford to go backwards. I grew up in the DC area, and I have to admit, I'd prefer swimming in chicken poop over swimming in human poop from the Blue Plains Treatment Center which was what our problems was three decades ago when this legislation was designed to have this actual policy in place. It is better there actually, there's less E-coli overall. We're not done yet. We actually will grow, I think, as said before, when we actually get clean water here in West Virginia. Thank you.

MR. SNYDER: Thank you very much. Dick Latterell followed by Wendy Radcliff.

MR. LATTERELL: You all have been listening to adversarial views regarding importance of water quality.

What you are dealing with are claims of privileges advanced by special financial interests for economic arguments on behalf of those who profit from pollution opposing the rights of the public, the public interest who have no financial state to protect, but only the guts and integrity to advocate protection of the quality of the most precious resource consistent with the rights of all citizens.

We've heard some incredible arguments from the special interests including such things as brownfields are economic assets. Yes, who profits from the creation of the brownfield, who pays for cleaning up the brownfields? We've heard that polluted waters is a benefit to West Virginia. We've heard that economic development of West Virginia will suffer if effective anti-degradation policies are imposed and enforced.

Well, these special interests have taken on a very heavy burden of proof. If these economic arguments are valid, why aren't massively polluted China and the former Soviet Union economic super powers instead of second class states and why isn't West Virginia among the most prosperous of these United States? It has the most underfunded Department of Environmental Protection in the nation. Seventy-six percent of West Virginia's streams and rivers are seriously polluted. And right here in this neighborhood cancer alley is a fact of life courtesy of

these same industries that have been claiming and pleading for corporate welfare and complaining about excessive anti-degradation.

The fallacies of these economic arguments have been repeatedly exposed, most recently by John Mauler in his letter to the editor of the Charleston Gazette last Monday. He pointed out that 20 percent of the states with the strongest environment protections also has the strongest economies, whereas the 25 percent of states the weakest environmental protections, which group included West Virginia, had the poorest economies. Clearly, stronger environmental protections, specifically in this connection, anti-degradation implementation is in the public interest and in West Virginia's economic interest.

Accordingly, I request and recommend that the Environmental Quality Board serve the public interest by strengthening existing anti-degradation implementation policies to insure that water, which is every citizen's right, is truly clean without qualification. Thank you very much.

MR. SNYDER: Thank you. Wendy Radcliff, followed by Nathan Fetty.

MS. RADCLIFF: I just wanted to first say that I have written comments similar to the comments I presented in May. I wanted to thank the people that hung

in here and tell you a little bit -- a couple of comments on how the process could possibly change here tonight. I think all of us realize that we were loaded heavily with industry in the beginning, and I think not many people realize that's because certain people came in and signed up many people so the deck could be stacked. So while everybody is attentive and here and listening, we have 14 plethora of the kingdom of the greatest corporate citizens in West Virginia to speak to us and talk to us about how terrible this is.

Well, I would just like you to know that there are a lot of people here that are not paid to come here, that have been waiting for a chance to talk, and have come from as far away as the Eastern Panhandle as that gentleman and as far south as the Beckley region and as far west as Huntington and they're not being paid here. The only reason I can think the urgency to get out tonight by the people that signed up, had someone else sign them up was so that they could go home and watch the show on the TV tonight so they could hear and further their comments on how they wanted to to degrade waters of the state.

I'm sorry, I'm just a little bit emotional because I think it's terrible that you have people that come in from watershed associations that never have had an experience before in administrative work like this and

their only experience is a very negative ones.

So I want to say to you, they're not all like this, it's not always like this. It's so hard to get people to come out that believe and care about clean water to come to these hearings and when they come and have to experience something that is very negative, it's going to be hard for us to try to get them to come back. And so I think it's important for you to maybe look at how we do the sign-in process, maybe do a pro, con or not allow people to sign in a bunch of people in the beginning.

MR. SNYDER: Wendy, can I interrupt you?

MS. RADCLIFF: Yes.

MR. SNYDER: And talk about that issue. I've been on this Board since 1982. We've never had a turn out like this for a public hearing of any kind on any issue. And so we agree with you, by the way, in the sign up process. We erred on that. We just didn't expect it. I mean we've never been faced with this before. And we tried to rectify it and we upset that one gentleman by trying to rectify it and maybe that was an error, too, but anyway, Wendy, we're going to take your comments to heart and all of you who came and are still here, this is not the normal way we do it. We try to hear everybody in a fair an equitable way. Cindy will tell you that, I think she just has -- or Wendy. And I just wanted to comment that we're

going to take those comments to heart and in the future try to resolve that so that things go in a more equitable way.

MS. RADCLIFF: I understand that that was not your fault. That's why I'm trying to make a point that what did happen so that everyone knows.

Second, I think that maybe you might want to start thinking about taking sworn statements from people, so they have to have some level of tell the truth, the whole truth and nothing but the truth. We have heard some very misleading statements tonight.

Specifically there's some things I'm concerned about that deal with grandfathering, also with intergovernmental coordination, too many exemptions. We should be looking more at the cumulative impacts. I agree what Jeremy said in terms of economic development, that strong environment does mean good economic development and so with that, I thank you for putting up with me.

MR. SNYDER: Thank you very much, Wendy. Scott Goldman.

MR. FETTY: I'm Nathan Fetty.

MR. SNYDER: I'm very sorry, Nathan. Someone said you weren't here. Nathan. I heard it from the audience. I apologize. You have to realize I've been trying to coordinate for about as long as I'm capable of doing a fair job and I'm starting to deteriorate. So I

apologize.

MR. FETTY: My name is Nathan Fetty. I'm a native West Virginian. I'm from Roane County originally. I'm up in Buckhannon now, ten minutes away from Buckhannon. And I just wanted to speak to you mostly because I see the future of West Virginia not so much in the health of industry and industrial profits but in the health of strong environmental regulations, and in particular, strong water protection laws, and there are some serious deficiencies with the anti-degradation policy as it has been drafted.

I'm speaking in particular tonight for the West Virginians for Clean Water Campaign, which is a campaign comprised of 32 state and local organizations throughout the state, and the campaign is made up of West Virginians who use the states water for drinking, swimming, fishing, boating and other recreational uses; people who basically, as the name implies, care about clean water.

We have some particular concerns about the anti-deg policy as it stands, the most concerning would be in the grandfathering clause that applies only to new and extended activities, that ought to include everything meaning renewals of existing permits.

The grandfathering gives a permanent advantage to existing polluting industries and stifles both environmental protection and economic development.

The campaign is also concerned with all of the exemptions in the draft policy. These exemptions aren't consistent with federal law and there's really no scientific basis for them. There are other more appropriate ways to grant those exemptions through the Clean Water Act than giving blanket exemptions in this anti-deg policy.

We're also concerned about cumulative impacts along with the diminimous portion of the policy. The problem with this is that it looks at our rivers and streams as a resource to pollute not as one to protect and that's contrary to the concept of anti-degradation. The idea of the Clean Water Act is to eliminate and reduce pollution and not determine a maximum percent of allowable degradation. The diminimous value for the record ought to be zero percent.

Plus, the policy, like I said, doesn't look at cumulative impacts of these multiple 5 percent degradations. The diminimous language doesn't account for cumulative impacts.

We're also concerned about the language on tier 3 waters. These high quality waters are defined to include only those in wilderness areas in the state, but to be consistent with federal law, West Virginia's language should include waterways in natural and state parks and the

wildlife refuges.

And finally, we are concerned about trading, the trading language is weak and full of loopholes that will allow degradation. Discharging pollutants into our rivers is a privilege that the public gives to private interests. Trading is an additional privilege on top of that that the public gives excepting some risks that the trade will be properly implemented. The trade is supposed to lead to an overall improvement in water quality, but this language does not guarantee that it will happen. Thank you very much.

MR. SNYDER: Thank you, Mr. Fetty. Now, Scott Goldman followed by Jim Green.

MR. GOLDMAN: My name is Scott Goldman and this evening I am going to offering comments on behalf of Mike Brown, one of the stakeholders, who, for obvious reasons, is unable to be here. Because of this late hour, I have a feeling I'll not get any objections if I skip through some of these comments. We will be providing them in written comments through AEP, but I would like to make a few points this evening.

Speaking as the industrial point source representative who served on the anti-degradation state board review, I would like to express my appreciation to the Board for the opportunity to make these comments. The

four point source industry groups that I have represented will be filing detailed written comments covering a number of the proposed amendments to 46 CSR 1 by the close of the public comment period.

However, I will focus my comments tonight on those select anti-degradation provisions where consensus was not reached and where I believe the Board made preliminary decisions that must be reconsidered in order to have an anti-degradation rule that is fair and implementable.

Before delving into the details of my comments, I would like to briefly offer clarification on a common misconception that has been pervasive in recent print media covering anti-degradation. The specific misconception I refer to it gives false assumption that the Clean Water Act has a clear mandate outlining specific anti-degradation provisions. Based on recent print media coverage, it appears that many of the special interests groups have tracked the progress of the Board's anti-degradation implementation efforts under the false assumption that the anti-degradation program has a clear and specific mandate within the federal Clean Water Act. This assumption is false and the United States Environmental Protection Agency itself has clarified that there is no specific requirement for such a policy in the Clean Water Act.

Similarly, there is no guidance by EPA as to how the anti-degradation policy should be implemented. There is no federal mandate on this policy. An example illustrating this point is the fact that the following key terms of the federal anti-degradation rule have never been defined within federal regulation; high quality water, lowering of water quality, degradation and important economic and social development. The meaning of all these terms were subject to hours of debate within the state core meetings and consensus on how to apply many of these terms within the state could not be reached.

When the Board's first anti-degradation policy was approved, the regulated community had a number of grave concerns about its workability, its fairness and its impact on the economic climate in West Virginia, particularly when our draft rules compared to the rules and policies of other states. Our greatest concern and the one most responsible for the huge number of negative comments delivered to the Board at the time was the exceptionally stringent significant threshold chosen for full tier review.

Throughout the state core process, I urge and continue to urge this evening that the Board establish more reasonable significant threshold, however, the language of the Board ultimate approved within Appendix F establishes an even more stricter threshold than was first proposed in 1998.

And we'll briefly discuss this final issue. I would like to briefly discuss the anti-degradation provisions in the surrounding states. In the mid 1990's the USEPA initiated sweeping changes to water quality standards applicable to the Great Lakes region of the United States. One of the primary reasons for the Great Lakes Water Quality initiative was to insure that this unique eco system receive special protection for the aquatic life indigenous to the area. Further, one of EPA's underlying considerations was to insure consistent state and regional regulation with federal anti-degradation policies.

MR. SNYDER: Scott, I'm afraid you're out of time. Do you have one sentence that can sum?

MR. GOLDMAN: I have one sentence that can sum. It's a long one. EPA has -- each state, which you've heard this evening, have approved and EPA has not objected to new or increased discharge of the threshold of 10 percent or more of assimilative capacity and the applicable exclusions or waivers within these rules. Again, all of these are provisions the EPA has approved in other states.

MR. SNYDER: Jim Green followed by Randy Carpenter.

MR. GREEN: I want to start off by saying, I'm not getting paid to be here. I want to be sure

everybody knows that right up front. My name is Jim Green. My comments tonight are on behalf of the Morgantown Utility Board and the West Virginia Municipal Water Quality Association. The Water Quality Association is an active coalition of approximately 25 members, including municipal and POTWS's or PSD POTW's located throughout West Virginia. Our membership includes the smallest and the largest facilities in the state, facilities that treat between 0.4MGD to 17MGD per day. And by the way, we're not polluters. We clean up the water.

I participated as a stakeholder in the anti-deg advisory committee. As a result, I am pretty familiar with the proposed rule. There are some things yet that we don't endorse as a Water Quality Association, three issues.

First of all, I believe and the Morgantown Utility Board believes that POTWs should be exempt from the anti-degradation procedures when expanding an existing facility. In every case, consolidated POTW service is far superior to small package plant or septic tank treatment methods. Our facilities offer economy of scale, professional management, and are readily inspected and regulated by the DEP. Section 4C.2.a.2.L acknowledges this in part by exempting from anti-degradation review new or expanded waste water treatment plants that will alleviate public health concerns arising from failing septic systems

and untreated or inadequately treated sewage.

So I think the point is well made if we're going to eliminate pollution, why are we going to also possible going to be subject to anti-deg review. We believe the Board should support and promote the expansion of POTWs and the replacement of septic systems and package plants without regard to the operating condition of smaller facilities. Therefore, we propose that the exemption in Section 4C.2.a.2.L be expanded to include any expansion of public sewerage systems.

Point number 2 -- well, let me go on to say, I'm trying to make sure I get it done in three minutes. Study to expand municipal sewage to unserved areas. We in Morgantown have recently accomplished this by extending sewage service to the Cheat Lake area. It took an extraordinary effort by our staff. We spent about 150,000 dollars in planning and start up costs alone, just to get this system worked out. If we're faced with additional cost due to an anti-deg review, you can imagine that cost gets higher and higher. Once again, I say we're not polluters, we're eliminating pollution.

The second point, this 5 percent tier 2 threshold, it's unreasonable and based upon nothing more than merely inclination and a majority vote at this point in time. This threshold is far too important to be settled

upon without any scientific analysis or estimate of its impact upon our state. We really believe that the assimilative capacity should be a 25 percent as it is in Virginia. That's an appropriate starting level. If the Board finds that this threshold is not sufficient to adequately protect our waters, it may promulgate a more restrictive threshold at a later date. I'm done? I've got one more sentence?

MR. SNYDER: You know, the slippery slope -- My attorney tells me I should never allow myself to do that. I allowed Goldman and -- one quick one.

MR. GREEN: My third point is valid only if the Board chooses to ignore our recommendation and apply the anti-deg procedure to expanded POTW facilities. And that is, it should not be required to go through an anti-deg review if there's increase in permit levels. I know that's been talked about many times. So thank you very much.

MR. SNYDER: Thank you, Mr. Green.

MR. GREEN: You will get our written points, also.

MR. SNYDER: Randy Carpenter followed by Lew Baker. Okay. Lew Baker.

MR. BAKER: I'm Lew Baker, a citizen from Huntington, West Virginia, downstream from almost everybody

else in the state. In regard to grandfathering, I don't believe anybody should be grandfathered, in other words, exempt. I think it's a bad policy. However, I think, to be practical, it makes sense to enforce whatever rule you have against the largest discharges first, leave the smaller guys however you define it for later. I also believe to put that off as long as you can. That's done in other rules, and I know the drinking water, Safe Drinking Water Act, EPA has a different time line for different size entities.

In regard to diminimous, I know that in a perfect world we would have zero percent diminimous and that should always be a goal, but I know that in the real world it's hard to see and know the difference between one sample and another. In other words, there's an awful lot of scatter in the data and so 10 or 20 percent is what industry makes sense, maybe EPA ought to make that as a minimum national anti-deg standard and then states could be free to set some standard that's more stringent than that.

In regard to whether you should look at background quality, you know, what's going in the stream upstream and downstream discharge. I think that makes an awful lot of sense, but also so does how much of a sediment capacity is being used. I don't see any reason why it should be either/or. If you're collecting data, why not

run the numbers both ways and set certain limits to both methods.

I know Mr. McKinney from Flexsys spoke earlier and he certainly didn't want Flexsys a/k/a Solutia or Monsanto to be covered under this. He wanted them to be grandfathered, but if you look at dioxin in the Kanawha River, it's already too much, according to one sample upstream of Nitro, by the time you get to Nitro, it's 3,000 percent of the assimilative capacity and you've increased 5,000 percent from the upstream sample.

I think if you look at the big guys first and you don't grandfather anybody out of this, we can catch the worse first and worry about them, and I think if you collect a lot of data, upstream and downstream at a lot of the major discharge points throughout the state, it should be public information.

MR. SNYDER: Thank you. Charles Wilfong followed by Perry Bryant.

MR. WILFONG: Thank you for the opportunity to speak with you here this evening. I am Charles Wilfong, president of the West Virginia Farm Bureau. I guess I came in late, so I guess I'm the last on the list. So I'll remember that the next time to get here a little earlier.

MR. SNYDER: You also didn't cheat.

MR. WILFONG: I just want to say that I am a

full time farmer. I'm from Pocahontas County, the birth place of rivers. We do have good water there. We also have agriculture there. We have forestry there. Those are the main industries we have with recreation as well.

I have heard a lot of comments tonight on both sides of the issue. I'm a third generation farmer. I hope that my kids can be the fourth generation on our farm as full time farmers. And I hope the generations after that can continue in that tradition.

As farmers, you know, we have voluntarily done the things that we can to keep the water clean. We think that these regulations that are being proposed go too far. They go to the point where we're afraid of whether or not our existence as farmers will be allowed, you know, down the road especially with restrictions that are tier 2.5 and 3. We do have agriculture that is upstream of some of the tier 3 proposals. You know, most people don't realize it mostly talks about tier 2, tier 2.5, there are areas in the state where there are private lands above tier 3.

The restrictions on those land really amount to a taking of that property from the farmers and property owners that have owned that land. I haven't seen anything in the proposal that allow anything for compensation of those takings which really it amounts to through the restrictions in that proposal.

I also believe that the restrictions in the 2.5 tier is too restrictive. There are many things, like I say, that have been done voluntarily. We in agriculture try to do the best that we can to guarantee the purity and the cleanness of the water.

I heard several people say that they didn't eat or drink product X or different things, you know, most people do eat the products that we raise on the farms, most of us are dependent on the products that come from agriculture.

And we just want to let the West Virginia Farm Bureau and we represent full time farmers, part-time farmers, rural landowners, they're all concerned about the regulations that are being proposed through these tiering systems.

Our friends in the environmental community, sometimes I don't understand the fervor that seems to be focused on non-point source pollution, agriculture, in particular. We are the entity that is protected the open space, which is important to us as well as to many people that are even extremists in the environmental community. That open space protection is something that we hope we can continue. That open space protection is something that is dependent upon being able to continue agriculture in these water sheds.

With the restrictions that are being proposed, many of us doubt that that continuation can occur.

MR. SNYDER: That's it.

MR. WILFONG: One sentence. With the tiering system, with the restriction of the 2.5 and 3, we are very concerned that especially in Pocahontas County and the areas in our part of the state, as well as many other parts of the state, are the ones that will be hit the hardest with the 2.5 as well as the limited areas with tier 3 protection. Really, we feel like we're being penalized for doing a good job of protecting the water quality in those areas because we will be carrying the brunt of it because we have kept those water qualities high. Thank you. And we will have written.

MR. SNYDER: Thank you very much. We appreciate that. Perry Bryant to be followed by J. D. Wilkins.

MR. BRYANT: Before I give my remarks, I just like to say I appreciate the explanation that the process appeared not to work as smoothly as it could, because it appeared to a lot of us it was manipulated tonight to the benefit of the industrial users and I appreciate that explanation and accept that.

My name is Perry Bryant and I'm an East End resident here in Charleston. And most of what we've heard

an awful lot tonight pitted the environment versus the economy. I would like to suggest that that's not the case. For example, 30 years ago resolved oxygen in the Kanawha River, particularly during August and the first part of September, was zero. It was a flat line. Between untreated sewage and poorly or non-treated chemicals, you couldn't get ten people together to come down and celebrate the Kanawha River. Due to the investment in sewage treatment facilities and the limits established through the MPES process limits that were thought to be punitive and unrealistic and put industry out of business, but through those processes, today the Kanawha River attracts thousands of visitors and the Regatta Festival generates, according to some sources, 50 million dollars a year in revenues for Charleston businesses. This economic bonanza could not have happened without environmental protection.

Indeed, I would suggest that as old economies inevitably fade, it is our educational system and the quality of life including the quality of our environment that will attract the new economies of the future. So I would hope that you would reject the economic blackmail that was subtlely and at times not so subtlely placed before you tonight.

To specifically address the regulations, I would like to talk about two issues. One is the trading, clearly

trading should be limited to reductions in the same parameters. You should not be able, for example, to reduce trapidity and increase heavy metals. I would also agree with those who recommended a two for one ratio should be established when dealing with non-point sources of pollution given the uncertainty of measuring the concentration of pollutants.

Secondly, little or no attention is paid, although you've heard an awful lot about the 5 percent threshold for the tier 2 reviews, there has not been adequate consideration given to the cumulative impact of the 5 percent. 5 percent here and 5 percent there, and to paraphrase Everett Dirckson, pretty soon we're talking about real pollution. And I think it's important that that five percent be cumulative so that there can't be continuous degradation without triggering a review.

Finally to say about the why people are so concerned about non-point sources of pollution, I think if you go out after tonight's rain and look at the Elk River, tomorrow it will resemble what John Leslie Powell said about the Colorado River, it's two wet to plow. It may be just barely too wet. But it is a filthy river, it will run dark brown tomorrow and it all comes from non-point sources of pollution. It's a wonderful river that we ought to protect and it's being degraded every time it rains. And I

would hope that we would put an end to it. Thank you.

MR. SNYDER: Thank you Mr. Bryant. J.D. Wilken followed by Andy Wilken.

MR. WILKEN: Good evening, or should I say good night. It's getting that time of the day. I'm from Pendleton County over three hours away, so I'm not going to stick around too long after I'm done. I enjoy the stream that is clean and I am ninth generation of people who have been in the area that is now Pendleton County. If you start calculating that back, that goes back before the United States of America.

A majority of my ancestors were farmers, so I'm right proud of the job that they done to lead Pendleton County to the area that it is right now. I and the farmers that I know, though, are going to be opposed to this legislation as it stands, this proposed regulation, for a variety of reasons.

Part of it is the BMP part of it. Opposed to BMP's that become mandatory for the farmers for a variety of reasons. We feel that in this legislation it does that in Appendix F4614.a.2. Opposed to this because it becomes an additional regulation for them to be adhering to. Opposed to it because there is no way that a best known practice that's set up in Kanawha County is applicable in Pendleton County. Those management practices need to be

determined on the site, not by an individual in a particular point in the state. They need to be determined with a variety of input, not by one organization or individual. Opposed to it because one person is going to have that ability. 4614.1.b, you make the points about BPM's, I also want to stress that I'm not sure that that's the worse part of this legislation or regulation for agriculture. I think that other points of it are even worse.

Tier 2 we talked about the most significant degradation, we've heard about 5 percent and other things that are going on and it makes it very plain that best management practices may not be sufficient, the best way we know how to do things may not be sufficient to farming in the way we know and do it and have for nine plus generations in our area of West Virginia.

Tier 2.5 says no degradation period. Best management practices don't even come into play, non-point source pollution also. Best management practices don't even come into play. And my father owns some of that land that's above the tier 3 designation. And the way I understand the regulation, basically to do any change in anything that he does in that, he'll need a permit with an environmental quality statement and other things.

Now, if you disagree with some of the things that

I've said, then please go back and look at the regulation and make sure that it's clarified. One of the things that I fear most about this and other regulation is that lawsuits interpreting the regulation will come down and actually in the end determine what we have to abide by. We need to set the standards now. We need to make sure we're clear and we need to make sure that we're all clear and it can't be interpreted in a variety of different ways. At a meeting we had in Riverton, we had 23 landowners from that tier 3 section representing over 6,000 acres and as individuals they are all opposed to what they read in the situation right now.

MR. SNYDER: Thank you Mr. Wilken. Andy Wilkens followed by Chris Hamilton.

MR. WILKENS: My name is Andy Wilken. My personal situation is the land I live on now has been in my wife's family for over 200 years. My mom was raised on a farm that has been in her family for over 200 years and we have some pasture land that's been in my dad's family for approximately 130 years.

As I read over these regulations, they seem to be saying to me that -- this is in the head waters of 2.5 and above the 3 tier. As I read over these regulations, they seem to be saying to me that while private ownership has maintained the water quality of this land, we don't trust

you with your own future. And if you don't do it our way, we're going to take this land away from you and put you out of business.

This is especially true above the tier 3 land, although this land is now called the natural falls, the natural part is misleading. My grandmother used to call this the burn, because it was originally forest land, that was either timber and burned or girted and burned to create the pasture that is there now. This is beautiful open pasture and the unique ecological niche is currently maintained by grazing. I have seen land in this area that was purchased by a natural forest and it is rapidly growing forest to reach forestation. In order for us to be able to maintain this unique grass lands, we have to be allowed the freedom to earn a reasonable living.

I come from over 200 years of farmers and I recognize the value of clean water. I see the point for BMP's. However, these BMP's must be economically viable and reasonable for a landowner. As a personal example of this, I looked at the property I moved when I got married five years ago. It contained ponds that needed to be cleaned out, however this was not viable for me until we got drought relief funds this last year.

The best BMP's possible but don't mean a thing if they are not economical viable. Thank you.

MR. SNYDER: Thank you very much. Chris Hamilton followed by Gail Graban.

MR. HAMILTON: Chris Hamilton will be submitting written comments.

MR. SNYDER: Okay. Thank you very much. Gail Graban.

MR. GRABAN: My name is Gail Graban. I am the Environmental Affairs Manager for Pechiney Rolled Products. I did sign that sign up sheet myself. Pechiney Rolled Products is a subsidiary of Pechiney-Rhenalu, which is headquartered in France and is one of the largest aluminum producers in the world. Pechiney is a new comer to the United States and West Virginia. Just last year Pechiney purchased the rolling mill at Ravenswood, West Virginia from Century Aluminum. The Ravenswood facility is one of two mills that Pechiney owns in the United States and is the largest of the thirteen aluminum rolling mills that Pechiney owns world-wide. I am here this evening to ask this Board to find a way to address anti-degradation of water quality that ensures protection of West Virginia's waters without imposing unreasonable obstacles to economic development in West Virginia.

To make Pechiney's Ravenswood facility competitive in the world market, Pechiney is currently implementing capital projects to upgrade the facility's

equipment and processes to reflect a state-of-the-art, world class aluminum facility. However, the proposed anti-degradation rule may limit the ability of Pechiney to implement these changes because the rule designates the Ohio River as an Outstanding State Water Resource, or a Tier 2.5 waterway. The proposed rule prohibits any new or expanded activity that causes any reduction of the ambient water quality in tier 2.5 waterways. In fact, the proposed rule is one of the most stringent anti-degradation implementation rules in the country and consequently will put West Virginia businesses, such as Pechiney, at a serious economic competitive disadvantage, particularly as to surrounding states. For instance, under Ohio's rules, facilities that discharge into the Ohio River are permitted to operate new and expanded facilities as long as they do not cause more than a ten percent change in the ambient water quality.

Pechiney supports the comments of the West Virginia Manufacturers Association and respectfully requests this Board to revise this rule so that it meets the requirements of state and federal law, but does not impose an unnecessary obstacle to the economic future of Pechiney in West Virginia or other industry in the State. Thank you.

MR. SNYDER: Jim Campbell. And is Dave

Yaussey still here? Mr. Campbell.

MR. CAMPBELL: My name is Jim Campbell. I'm here on behalf of the Lower Paint Creek Watershed Association. We have an area of 52 square miles of 700 stakeholder homes and we're here to ask that the anti-degradation trigger at 5 percent remain as it is. In the grass roots organization, we believe that the surrounding states need to come up to our standards, not for us to slip back to theirs. We would like to have an anti-degradation policy of the Clean Water Act enforced. Anti-degradation literally means no degradation.

Allowing the policy to state that water can be polluted to a specific level before a review occurs is contrary to the intent of the law. Thank you very much.

MR. SNYDER: Thank you very much, Mr. Campbell. Our last speaker is -- I don't have your name, sir.

MR. GILLISPIE: I'm Reuben Gillispie. I'm with the West Virginia Bureau of Public Health. I just wanted to present a map, I didn't know if you all had an easel, for public water systems of the state. We're providing this as an exhibit to the Board, written comments to follow.

MR. SNYDER: Thank you very much. At this point, is there anyone else who would like to speak? Thank

you very much for coming. We greatly appreciate your comments and your tremendous patience. It was awesome.

MS. CHARLES: We do want to make one last announcement about scheduling. The next Board meeting is scheduled for August 17th and 18th, the discussion of the water quality standards will begin at one o'clock on the 17th and continue that afternoon and all day the 18th, if necessary.

(WHEREUPON, the hearing adjourned at 10:30 p.m.)

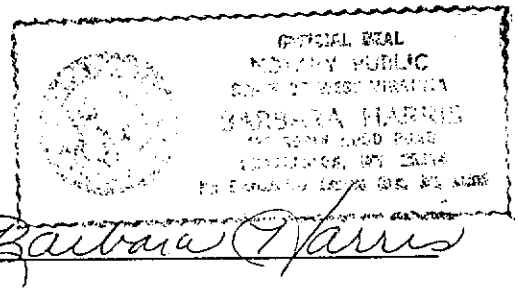
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit;

I, Barbara Harris, Certified Court Reporter and Notary Public, do hereby certify that the foregoing is, to the best of my skill and ability, an accurate record of the proceedings held at the time and place forth herein.

Given under my hand this 18th day of August, 2000.



Barbara Harris, CCR

My Commission expires August 30, 2003.

WV Environmental Quality Board

PUBLIC HEARING

August 3, 2000

7:00 P.M.

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
1. Ty LoLLini	YES
2. Cisq Dooly	Yes
3. Ray George	(Y)
4. [redacted] Randall Lewis	Y
5. [redacted] Karen Price	Y
6. Craig Skaggs	Y
7. Rick Herd	Y
8. Tim Mallen	Y

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
9. Dave Robertson	Y
10. Mark Vignovic	~~Y~~ No
11. Dillard Meadows	Y
12. ~~Bill Smith~~ Hal Foss	Y Yes
13. Jim Mosby	Y
14. Greg Towns	Y
15. Jon McKinney	Y
16. John Smolak	Y
17. Brenda Harper	Y
18. ~~Jim Williams~~ AND. BRADLEY	Y
19. Pam Kasey	Y
20. Evan Hansen	Y
21. JULIAN MARTIN	Y

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
22. ~~Richard Heed~~	~~YES~~
23. Richard Tetrick	YES
24. Casey Sears	NO
25. Michelle Brogan	NO
26. Jennie Hentorn	NO
27. Jeff VanMatre	Yes
28. Cindy Rank	Yes
29. Don Gasper	YES
30. Dave Miller	Yes
31. Tom Brand	No
32. Tom Boggs	YES
33. Wayne Appleton	No
34. Jim-Bob Williams	No*

*Will speak for Dave Taylor, S. Charleston Waste Treatment Works, if the Board permits

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
35. Alan Booth	No
36. Kenneth Semmens	No
37. James Saulters	YES
38. Joe Carney	Yes
39. Charlie Armstead	No
40. E. H. Crum	YES
41. Fred H Radke	YES
42. Lee Sadler Jr	Yes
43. Bill Monks	No
44. Jeff Simmons	Yes
45. Kenzie Huff	Yes.
46. Rodney A Brannon	Yes
47. Roger L. Sherman	yes

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
48. Mark Roach	Yes
49. Sante Casducci	Yes
50. Sam Lockard	Yes
51. Gordon Smith	No
52. Don Garvin	Yes
53. Gene Kistler	Yes
54. Chuck Merritt	Yes!
55. Janet Fout	Yes
56. Jeremy Muller	Yes
57. Dillard Meadows	Yes
58. Winnie Fox	Yes
59. Larry L Gibson	Yes
60. Doyle Conkley	NO

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
61. Jim Sconyers	Yes
62. BILL SAMPLES	YES
63. ~~Bob~~ Turner	NO
64. DAVID JAMES	SURE
65. Frank Young	Maybe
66. R GARRY ROBINSON	NO
67. ANDY RAGLAND	YES
68. Dick Lattenell	Yes
69. Jim MARTIN	No
70. SALLY NAAS	NO
71. ~~Wood~~ NAAS	NO
72. TOM Rudd	no
73. Wendy RADCLIFF	Yes

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
74. Debbie Paden	No
75. Nathan Fetty	yes
~~76. Tim Mattan~~	~~yes~~
77. Scott Colman	Yes
78. [redacted]	[redacted]
79. Jim Green	Yes
80. Olivia Carpenter	NO
81. Randy Carpenter	YES
82. Sherry Belcher	NO
83. James M Park	NO
84. Lew Baker	Yes
85. George Belling	No
86. Mary Ann Belling	No

Sign-In Sheet

NAME:	SPEAKING: (yes/no)
87. Charles Wilfong	Yes
88. Dave Robertson	Yes
89. ~~Ann Bradley~~	~~Yes~~
90. Joe Dawley	NO
91. Jim McIntosh	No
92. Joan Rectenwald	No
93. David Rectenwald	No
94. Terry Bryant	YES
95. REGINA HENDRIX	NO
96. J D Wilkins	Yes
97. Andy Wilkins	Yes
98. Chris Hamilton	Yes
99. GAIL GRABAN	Yes
100. Jim Campbell (LPC#)	Yes
Eugene Peters	YES
Luke Pocrajac	No

(over)

103	Dave Yaussy	Y
104	Allyn Turner	N
105	W.V. DePaulo	N
106	C B Bergmark	N

(28)

Ty Lollini - Wheeling-Nisshin, Follansbee, WV

Mr. Chairman & fellow members of the Environmental Quality Board:

I welcome the opportunity to state my company position on antidegradation.

First let me say that Wheeling-Nisshin takes a lot of pride in its Environmental Management Programs.

The making of an environmental standard needs to address not only environmental issues but economic issues as well.

"Sustainability" should be and can be a workable goal. We can sustain the environment and still maintain our economic growth, but only if we are balanced and reasonable in our approach.

Economic growth in the Northern Panhandle can compete with both Ohio and Pennsylvania for a piece of the pie if we all are held to the same standards.

I urge you to promulgate a standard which both protects our waters and at the same time protect our economic position.

"Sustainability" should be and can be a workable goal.

(1)

MEDIA IS DIFFERENT BUT THE LOGIC IS THE SAME

Abstract

More Than Forty Prominent Economists Urge Supreme Court to Allow EPA to Consider Costs and Consequences of Clean Air Regulations. Kenneth J. Arrow, Elizabeth E. Bailey, William J. Baumol, Jagdish Bhagwati, Michael J. Boskin, David F. Bradford, Robert W. Crandall, Maureen L. Cropper, Christopher DeMuth, George C. Eads, Milton Friedman, John D. Graham, Wendy L. Gramm, Robert W. Hahn, Paul L. Joskow, Alfred E. Kahn, Paul R. Krugman, Lester B. Lave, Robert E. Litan, Randall Lutter, Paul W. MacAvoy, Paul W. McCracken, James C. Miller III, William A. Niskanen, William D. Nordhaus, Wallace E. Oates, Peter Passell, Sam Peltzman, Paul R. Portney, Alice M. Rivlin, Milton Russell, Richard L. Schmalensee, Charles L. Schultze, V. Kerry Smith, Robert M. Solow, Robert N. Stavins, Joseph E. Stiglitz, Laura D'Andrea Tyson, W. Kip Viscusi, Murry L. Weidenbaum, Janet L. Yellen and Richard J. Zeckhauser. Books and Monographs. July 2000.

More than forty prominent economists filed a Friend of the Court brief with the Supreme Court, asking the justices to overturn a lower court ruling that the Environmental Protection Agency (EPA) may not take into account the costs of regulations when setting standards under the Clean Air Act. Calling the lower court ruling "economically unsound," the economists argued that the EPA "should be allowed to consider explicitly the full consequences" of regulatory decisions, including costs, benefits, and any other relevant facts.

In their *Amici Curiae* brief, the economists contended that the "plain aim" of the Clean Air Act "is protecting the public health." That aim, they said, "is unlikely to be achieved without, at least, an implicit balancing of benefits and costs."

The Supreme Court filing was organized by the American Enterprise Institute-Brookings Joint Center for Regulatory Studies. The bipartisan group of economists signing the brief included three Nobel laureates, seven former chairmen of the President's Council of Economic Advisers, and two former directors of the White House Office of Management and Budget.

The case, *American Trucking Association v. Carol M. Browner, Administrator of the Environmental Protection Agency*, was appealed to the Supreme Court after a Federal Court in Washington D.C. ruled that the EPA was not permitted to consider costs in setting regulatory standards for enforcing the Clean Air Act.

"We believe it would be imprudent for the EPA to ignore costs totally, particularly given their magnitude in this case," the economists stated in the brief. "The EPA estimates that those [clean air] standards could cost on the order of $50 billion annually."

The brief argued, "Not considering costs makes it difficult to set a defensible standard, especially when there is no threshold below which health risks disappear."

Ignoring costs, the economists said, "could lead to a decision to set the standard at zero pollution," which would threaten "the very economic prosperity on which public health primarily depends."

The economists declared: "The importance of this issue cannot be overstated. Both direct benefits and costs of environmental, health, and safety regulations are substantial–estimated to be several hundred billion dollars annually."

If the Supreme Court overturns the lower court ruling and allows the EPA to consider costs in establishing clear air regulations, the brief argued, it would be "a historic moment in the making of regulatory policy."

(2)

Public Hearing Statement of Ray George, EPA
Regarding Proposed Revisions to WV Water Quality Standards
August 3, 2000

My name is Ray George. I am the West Virginia state liaison officer for the Environmental Protection Agency, Region III. I thank the Environmental Quality Board for providing this opportunity so EPA may speak about the proposed revisions to West Virginia's water quality standards.

As you know, EPA Region III is extremely interested in two key areas of the proposed water quality standards revisions. These key areas are the proposed antidegradation implementation procedures and the proposed revisions which address EPA's outstanding disapproved elements of the West Virginia water quality standards.

With respect to antidegradation, in previous correspondence EPA had identified three main areas of concern.

The first issue of concern pertains to the applicability of these procedures. The opening line of Appendix F indicates that the antidegradation implementation procedures are intended to apply only to "new and expanded activities." EPA Region III interprets this statement to mean that existing discharges would not be considered in light of antidegradation but would, in effect, be "grand fathered" from any level of antidegradation review. EPA has concerns with this application of the antidegradation implementation procedures

The Region's second concern is with the numerous exemptions included under the Tier 2 portion of the procedures. Many of these exemptions appear inconsistent with both state and federal antidegradation policies and need to be removed.

Lastly, the proposed procedures are silent on how West Virginia will assure the achievement of the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. This is an important component of the antidegradation policy and needs to be addressed in the implementation procedures.

As for disapproved water quality standards, EPA finds it essential for states nationwide to resolve all items determined to be inconsistent with the Clean Water Act. Therefore, we are very pleased to see the Board take actions to resolve a large majority of the items disapproved by EPA. We are concerned, however, that the Board has not proposed to address EPA's disapproval of the iron criteria.

I would like to take this opportunity to speak briefly about West Virginia's iron criteria. EPA is aware of the influx of letters received by the Board requesting that the iron criteria be removed for various reasons. I remind the Board that EPA had disapproved West Virginia's current iron criteria. Surely an iron standard is necessary to protect the citizens and the streams of West Virginia against elevated iron as a result of extensive coal mining.

We trust that the Board will adopt final antidegradation implementation procedures that are consistent with EPA's and West Virginia's antidegradation policy and will make appropriate revisions to the disapproved elements to the state water quality standards. It is important to note that based on recent revisions to EPA's water quality standards regulation, any adopted revisions to the state water quality standards cannot be implemented in NPDES permits until those standards are approved by EPA.

I again want to thank the Board for this opportunity to comment on the water quality standards. EPA will provide detailed comments in writing in the near future.

(3)

UCAR

UCAR CARBON COMPANY INC.

Philippi Pike, Anmoore
P.O. Box 2170, Clarksburg, WV 26302

Telephone: (304) 624-7651

August 3, 2000

Members
Environmental Quality Board
1615 Washington Street East
Charleston, WV 25311

Ladies and Gentlemen:

UCAR Carbon Company Inc. would like to go on the record in opposition to the Board's proposed anti-degradation implementation policy as currently drafted in Title 46 Series 1 Legislative Rules for requirements governing water quality standards.

UCAR has a number of concerns regarding the potential impact of this proposed rule as currently drafted because of its certain negative impact on the economy of the State and on industry.

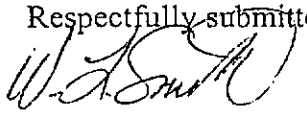
This policy, at best, employs arbitrary, unscientific and highly subjective rationale in nominating waters for Tiers 2.5 and 3 classifications. Additionally, the EQB has apparently deviated from the long-standing policy of "no more stringent than applicable Federal Standards" in establishing the "significance threshold" trigger for Tier 2 waters. By adopting this approach, EQB has placed West Virginia at a serious economic disadvantage in its efforts to attract new business to the State and to maintain and grow existing businesses.

Many NPDES Permit holders have received multiple extensions of their permits due to resource constraints at WV DEP Water Resources. The requirements set forth in this proposed implementation policy for "socioeconomic analysis" for Tier 2 waters as currently drafted will be prohibitively expensive for both the business community and State Government and will only serve to further delay an already unacceptably drawn out permitting process. Furthermore, the triggers for the "socioeconomic analysis" are not truly protective of the waters of the State because they ignore the assimilative capacity of receiving waters to handle increased loading. For many industries, process changes, which might require NPDES Permit modifications, will be difficult if not impossible to implement due to the high costs of the "socioeconomic reviews". In many cases the technology constraints required to achieve unnecessarily restrictive loading allocations will not be economically feasible and will not, in the end, improve water quality.

Finally, the nomination process for Tiers 2.5 and 3 waters is so loosely defined, that it absolutely guarantees that anyone planning new development of any type will have to battle special interests that will use the nomination process as a means to prevent any new development regardless of its impact on the receiving waters of the State. By taking this approach, the EQB is, in effect, determining "land use" issues for which it has no statutory authority.

This proposed policy is not balanced and it ignores good science. I urge the Board to reconsider this policy in light of the many issues brought forth in the Stakeholder process and to adopt a policy that does not put West Virginia at an economic disadvantage.

Respectfully submitted,



W.L. Smith
Environmental Administrator
UCAR Carbon Company Inc.

Comments to the Environmental Quality Board
Regarding the proposed Antidegradation Policy
Aug. 3, 2000
Craig Skaggs
Regional Manager
DuPont

I'm Craig Skaggs, regional manager for DuPont and am pleased to have the opportunity to speak to you regarding the proposed antidegradation policy. I cover WV, KY and OH government affairs for my company. DuPont's payroll is among the top three for private employers in WV. We provide nearly 3500 jobs at our Martinsburg, Parkersburg and Charleston plants. The average DuPont hourly employee earns $53,000 per year, plus benefits totaling more than 30 percent of pay. Chemical manufacturers in our state are an important economic engine and produce another 3-5 jobs in the community for each job at a plant.

DuPont supports West Virginia's strong environmental protection ethic, and encourages the state to search for common-sense ways to achieve solid environmental goals. However, we are concerned that the antidegradation policy as drafted would pose a serious barrier to business investment in West Virginia. We think the State can implement an antidegradation policy in a workable fashion that achieves environmental goals without disadvantaging West Virginia, and we would like to offer some suggestions in that regard.

I would like to describe two important factors in investment decision-making by major manufacturers that are relevant to how this policy is implemented. Those factors are certainty and timeliness. When a new market for a product, call it product "X", opens up in Europe, dozens of supplier companies throughout the world who manufacture product X rush to be first to supply that customer with a quality product. The first supplier of X to have his product qualified at a reasonable cost by the new market or customer "wins."

When the new market for product X opens up, a manufacturer looks at existing plants to see if they can produce enough product X for that market. Usually 2-5 plants at various points on the globe are evaluated. As the business considers capability to make product X for the new market, managers need to know that if they make the decision to build the new facility at Nitro, for example, (versus their other plants) that they will be able to ramp up production in a **timely** manner and with **certainty** the facility will be up and running to supply customers in, a competitive time-frame.

The antidegradation policy as it now stands, with or without the changes suggested by EPA, seriously endangers timeliness and certainty for any WV investment.

With the stringent five-percent trigger for a complete review, it is uncertain whether any proposed permit would be granted without a required socioeconomic study. The likelihood is that virtually all investments will require such a study. And the way such studies now are contemplated, it would take at least a year for all the evaluations by public bodies. And at the end of that year, there is no certainty that a permit ever would be granted. **Timeliness** and **certainty** are badly compromised . . In the "business world", if a company cannot beat the competition to the customer, the opportunity disappears and the company is in trouble. Given such a choice, WV would be disadvantaged as a competitor for virtually any investment decision. Other states, not to mention other countries, will be getting those investments. We encourage the state to adopt an antidegradation policy that both achieves environmental protection AND allows West Virginia to continue to compete in the global economy.

The West Virginia Water Pollution Control Act, whence the Board derives its authority to develop water quality standards, requires three tests for developing policies and standards such as the one we are considering tonight. One of the three is consideration for (I quote) "(3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development."[*W.Va. Code § 22-11-2(a)]*. **This is state law.** I'd ask the Board to consider whether this proposed Rule is consistent with the Board's Statutory mandate.

Another concern is what this policy will do to WV's Brownfields remediation program. Most waste cleanups at some point require some type of groundwater treatment. This means a water discharge permit will be required. Under the proposed policy, socioeconomic studies will likely be required. This will significantly delay cleaning up the state's brownfields and putting them back to work for the people

However, we believe the Board can implement an antidegradation policy that both achieves environmental protection and is not a barrier to economic vitality. The efforts of the State of Ohio provide a useful template. We suggest the Environmental Quality Board adopt an antidegradation threshold commensurate with trigger levels adopted by the state of Ohio. We also suggest that any required socioeconomic studies follow the method of the state of Ohio. This would accomplish the objective of improved timeliness and certainty I have described.

I also urge the state's brownfields and VRRDA programs be exempted from socioeconomic studies because brownfields remediation and redevelopment are, at their core, socioeconomically beneficial.

Thank you for your consideration.

(5)

Testimony on Proposed Revisions to Title 46 Series 1 Requirements Governing Water Quality Standards Before the Environmental Quality Board, August 3, 2000.

Mr. Chairman, members of the Board and staff, my name is Richard Herd and I am employed as Water Resources Manager by Allegheny Energy, a diversified energy services company serving approximately 1.3 million customers across portions of five states. Allegheny appreciates the opportunity to offer these comments and requests that the Board consider them along with those of others concerned with the impact of the proposal on the economy of West Virginia. In the interest of time these comments will be brief and to the point.

First let me say, Allegheny appreciates the efforts of the Board to address what has recently been an overwhelming number of complex water quality issues and to attempt to strike that delicate balance between environmental protection and economic stability and development. We have attempted to help with your efforts where and when we could and will continue to offer our support to ensure that your recommendations are based on sound science and policy.

I'd like to touch on four issues: The site-specific criteria at Allegheny's Albright Power Station, The dissolved Aluminum criterion, Natural background exemption and of course the antidegradation provisions.

1. *We obviously are in agreement with the site-specific selenium criterion that was developed in cooperation with and support from the DEP, EPA and Board. We and the agencies believe that this criterion is protective and Allegheny has committed to periodic biological monitoring to verify that there will not be any adverse impact to the receiving stream.*

2. *EPA's aluminum criterion is flawed. EPA admits it and the science supports a dissolved criterion. Therefore the Board is correct in proposing a dissolved aluminum criterion if for no other reason than to avoid listing every waterbody in the state on the 303(d) list. Moreover, the iron criterion is seriously flawed and must be revised as soon as possible.*

3. *Regarding natural background conditions I have one concern: You propose to establish natural condition as the highest value measured during an annual season. In theory this approach sounds rational but it fails to incorporate temporal water quality variability as well as analytical and sampling variability into the derived value. Failure to incorporate this inherent variability will subject an NPDES permittee with a permit limit derived from the highest stream value to potential compliance liabilities. A more pragmatic and scientifically sound approach is to statistically derive the background criterion from a data set using the prediction interval method. I submitted this recommendation with appropriate documentation to Board earlier this year and ask that you reconsider it for inclusion.*

4. *And last but not least your antidegradation proposal is so restrictive as to be unworkable for both industry as well as DEP (and EPA's comments if incorporated would make it much worse). If this proposal is finalized and implemented the state's economy will suffer from unnecessary delays, expense and administrative burdens imposed by the regulatory process. I'm sure that it is no surprise to this Board that the lackluster economic growth, new business development, employment expansion, and income levels of West Virginia rank last or next to dead last in all respects for all 50 states. While there are many factors that affect our economy the overall regulatory environment of the state, including its environmental agencies, and their policies toward business are of critical importance. We therefore ask that you carefully consider the economic implications of this antidegradation proposal before sending it on to the Legislature.*

   We suggest that you:

   a. *Make the program no more restrictive than our surrounding state programs. The trigger level should be 10% of the assimilative stream capacity not 5% and should not be based on ambient conditions;*

   b. *Most of the streams in the state should be classified in tier 2 not 2.5. A stream should not be put in tier 2.5 without full opportunity for public input;*

   c. *Ignore EPA comments unless they are specifically required by law or regulation. Under the CWA Congress intended for the states to have flexibility to manage our resource protection programs without unwelcomed and unwarrented interference from EPA.*

Thank you again for the opportunity to comment.

(6)

Comments of David L. Robertson
Executive Vice President–Human Resources and Corporate Law
Weirton Steel Corporation
Weirton, West Virginia

Public Hearing on Proposed Antidegradation Regulation
before the West Virginia Environmental Quality Board
August 3, 2000
Charleston, West Virginia

Good evening and thank you for this opportunity to address the Board. My name is David Robertson. I am executive vice president – human resources and corporate law at Weirton Steel Corporation.

Weirton Steel is located in Weirton, West Virginia, situated along the Ohio River in the state's Northern Panhandle.

The company is the eighth largest integrated steel producer in the United States and West Virginia's largest industrial employer with forty-three hundred employees.

Weirton Steel's annual production of raw steel totals three million tons. We produce hot-rolled, cold-rolled, galvanized and tinplated steel. We also have our own product development and manufacturing process research center. The center, known as WEIRTEC, is recognized internationally for its endeavors.

Beginning in 1998, and continuing through today, the U.S. steel industry has faced significant adversity as domestic markets have been saturated with illegally priced steel imports. These imports are sold in the U.S. at prices that violate federal trade laws, a practice commonly referred to as "dumping."

Weirton Steel has been a leader in the fight against steel dumping and against subsidies foreign producers receive from their governments, also a violation of federal trade laws and international regulations.

Although Weirton Steel has worked diligently during the past several years to reduce the volume of unfair steel imports, 1998 ended as the all-time record year for such imports.

In 1999, the import problem continued and that year ended as the second highest for imports. In regard to this year, the latest government data reveals that 2000 likely will end just 1 million tons shy of record year 1998.

As a result of this assault by foreign steelmakers and their governments, the steel industry is extremely vulnerable to production losses or cost increases

that can undercut its ability to compete in the national and international marketplaces. We are here this evening to ask this Board to find a way to address antidegradation of water quality in a reasonable fashion that does not impose unnecessary obstacles to economic development in West Virginia.

Weirton Steel is constantly assessing new and innovative projects for improving production efficiency and generating products that are responsive to customer needs and market demands. From time to time, accomplishing these ends requires upgrades in the technology employed at our mill as well as modifications to our production processes.

Existing environmental regulations already require new equipment or processes to yield less pollution to the environment than the equipment or the processes they replace. As a general matter, we believe the policies of the Board should promote these types of changes and improvements. However, we also believe that the proposed antidegradation rule does the opposite.

We appreciate the long hours that were invested in the stakeholder process by representatives of various interest groups and Board members. Consensus was not reached on many issues and the Board became the arbiter of unresolved issues. However, somehow the proposed rule that went to public notice does not reflect the rational balancing of environment – public health – and expansion of employment opportunities required by law. Rather, the result is a proposed rule that is considerably more stringent than is required by federal or state law and which would put businesses in West Virginia at a serious competitive disadvantage, particularly compared to surrounding states.

We believe this proposal will seriously hamper, if not totally block, our efforts to make changes rapidly to our equipment and operations to respond to evolving market demands. We are convinced it does not have to be this way.

We will be filing written comments with specific suggestions for fixing the proposed rule.

The U.S. steel industry, specifically here in West Virginia, is currently in a fight for survival. We urge this Board to fix the rule so that it meets the requirements of state and federal law, but does not impose an unnecessary obstacle to the economic future of our industry in this state. Thank you.

– END –

7

August 3, 2000

I am Jim Mosby, manager, Business Retention and Expansion, Business and Industrial Development Division, West Virginia Development Office.

The West Virginia Development Office conducted an informal survey of a number of major manufacturers of metals and chemicals in the Ohio and Kanawha River Valleys regarding the proposed rules.

These companies collectively employ about 20,000 people and make a significant contribution to the state's economy in both payroll and taxes.

They were unanimous in their concern that the proposed rules will result in additional time delays and costs in the permitting process. Additionally, the rules are perceived as more stringent than surrounding states and many other locations where they operate manufacturing facilities.

This will place them at a competitive disadvantage not only in world markets but also put West Virginia at a disadvantage in obtaining new investment or expansions from their respective companies.

Moreover, the proposed rules may not achieve the desired effect on our water as several of the listed streams pass through adjacent states with less rigorous controls – thus encouraging waterways users to locate in those states rather than West Virginia.

In your deliberations, I respectfully request that you give due consideration to West Virginia's need to compete with other states for new business investment and in retaining our existing industry.

(8)

Oral Comments from
Greg Townes of Aventis CropScience to
Proposed Revisions by the Environmental Quality Board to
46 CSR 1

August 3, 2000

My name is Greg Townes and I am the site manager at the Aventis Institute Site. Additionally, I am the vice-president of North American Manufacturing Operations for Aventis CropScience and serve on the worldwide manufacturing steering committee. Therefore, I am representing several facets of Aventis interests tonight – from very local, to North American and world-wide - when I address the July 3, 2000 proposed revisions of the Environmental Quality Board to 46 CSR 1, "Requirements Governing Water Quality Standards."

First of all let me say that, Aventis is strongly in favor of maintaining clean waterways. We support the need for an antidegradation implementation policy, but we, like others speakers tonight, have concerns about the present proposals.

As background, Aventis is a very large, multinational corporation. We are focused on two core business areas - pharmaceuticals and agriculture - and are dedicated to improving life through the discovery and development of innovative products. Our businesses employ around 95,000 people around the world in more than 120 countries. At Institute, we are part of the agricultural operations and have just under 1,000 direct Aventis employees and another 400 or so indirect employees from other companies. These employees operate Aventis facilities and those of other major companies doing business at the Institute Site.

As a manufacturing facility, we compete for business, investment and jobs. We compete with other sites from within our own company, and we

compete for business from other companies, trying to attract them to come and conduct their manufacturing operations at the Institute Site. This competition is on a regional, national and worldwide basis. When companies, and especially major concerns like Aventis, are looking to site manufacturing facilities, they evaluate a number of factors during the determination phase. Among these are business and regulatory factors and often they perform this evaluation on a comparative basis – comparing one site option to another. So, when locales adopt regulations that are significantly more stringent, and ultimately more costly, than those implemented by others, it puts those locales at a distinct disadvantage. That is what I predict will happen if these regulations were to be implemented as proposed. The State of WV, and the Institute Site as my particular concern, will be put at a further disadvantage compared to other locations and ultimately risks being the loser of new investment and of jobs.

I intentionally used the words 'further disadvantage' because over the past decade or so the Kanawha Valley has witnessed an exodus of good, solid manufacturing jobs, many of which went for support of operations elsewhere in the United States. We have already seen companies voting with their checkbooks and these good jobs are now gone. Further unbalanced regulation will only continue to tip the scales away from investment and jobs in WV.

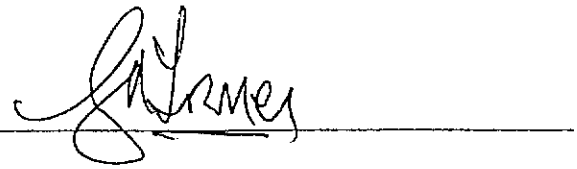
We are not proposing that we neglect our responsibility in protecting water quality, but we do seek fair, balanced, science-based and efficient environmental regulatory support. We suggest that the state needs to be very careful about establishing requirements that are more onerous than those established by other

states, or by the federal rules, and that determinations be made on the basis of sound science, not emotional argument. We suggest that the administration of the rules and regulations needs to be clear and efficient, so that permits can be readily and expediently obtained when all the requirements are met. With that, when companies like Aventis conduct their siting determinations, WV may become a more viable candidate.

We at Aventis want to protect our environment - and this includes maintaining waterways that are safe to work and play in. However, we also want to maintain good jobs in West Virginia and to see the regional economy prosper. We are asking that the Environmental Quality Board seeks to attain this balance, that the rules and regulations promulgated here be based on sound science and be balanced and reasonable with respect to other locales. The market for new jobs is highly competitive and companies have a lot of choices. We don't want to see the job-loss trend exacerbated by regulatory requirements that are unbalanced or unreasonably onerous compared with other competing locales.

I thank you for your time and consideration of these and other important issues that are being raised this evening.

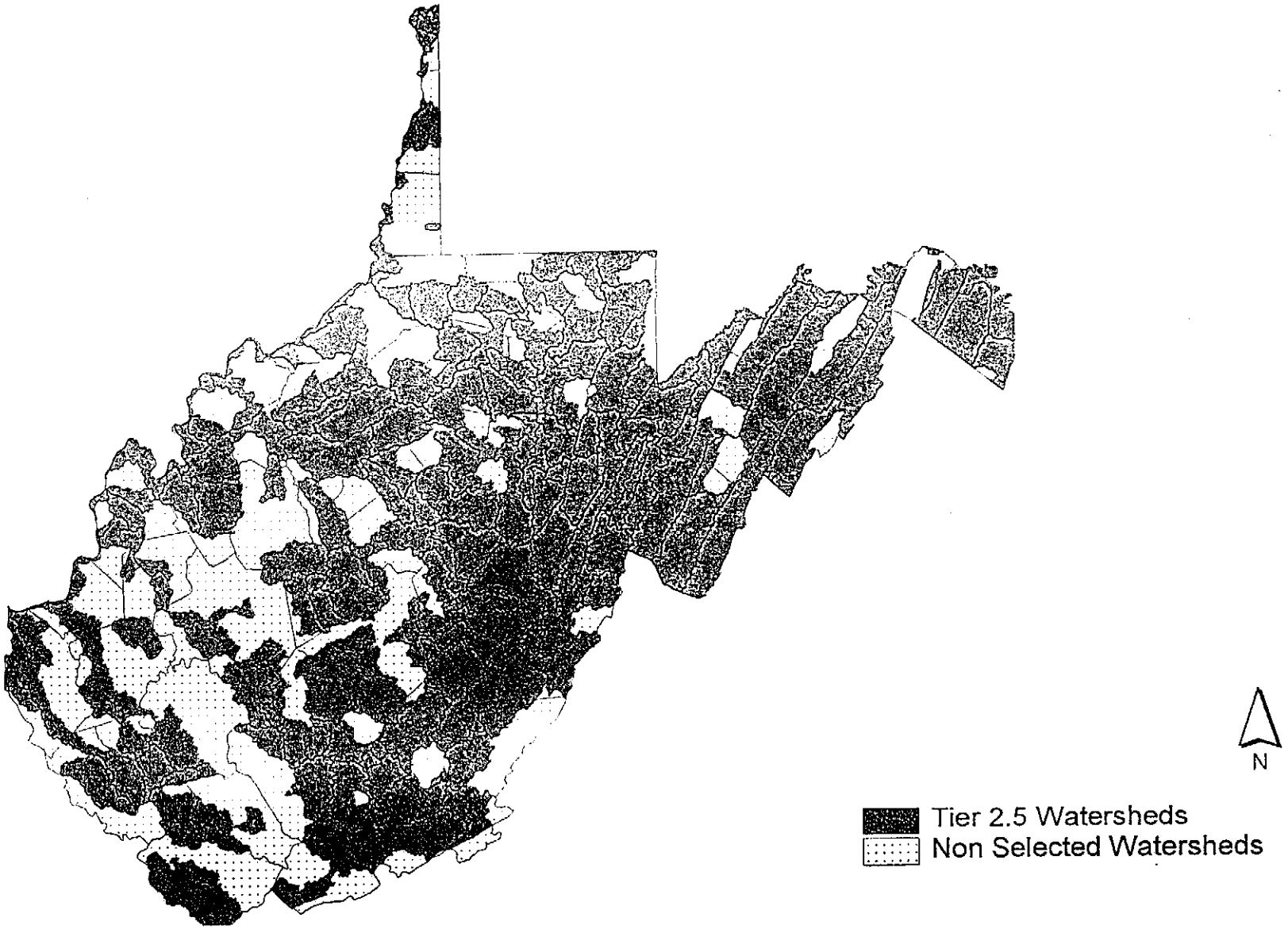
Respectfully submitted this 3rd day of August, 2000



Greg Townes, vice-president, Aventis CropScience LLP.

7A

Anti-Deg Tier 2.5 Streams



(9)

Anti-Degradation Rulemaking Public Hearing Statement
Of Deputy Commissioner David E. Miller
On behalf of the West Virginia Department of Agriculture August 3, 2000

Mr. Chairman, members of the Board, my name is David Miller Deputy Commissioner of the West Virginia Department of Agriculture. Thank you for the opportunity to share our concerns with you this evening. More importantly we wish to thank you for the opportunity to serve as a stakeholder in the effort to develop consensus on many important aspects of the proposed rule. The stakeholder process certainly resulted in a much clearer understanding of the challenges facing the State as we begin to implement an anti-degradation policy for our waters.

Commissioner Douglass will be submitting detailed comments on the proposed regulation on or before the August 16, 2000 deadline. We wish at this point to only outline our major concerns so as to alert you early on to important considerations that we know will be of great interest to the West Virginia Legislature when it considers the rule.

1. The economic impact must be analyzed by the EQB and DEP and the results accompany the rule when submitted to the Legislature. We believe the West Virginia Code requires a fiscal note be provided which includes "the cost of implementing the rules as they relate to this state and to persons affected by the rules and regulations." As drafted, this is a far-reaching rule with significant economic implications.
2. We are very concerned about DEP having the necessary resources to properly implement the rules. Without additional resources the people of the State will experience delays, less than adequate socio-economic impact consideration and most importantly inadequate data to determine appropriate levels of protection. DEP is clearly on the record as having said they do not have necessary resources for Anti-Deg or TMDL implementation.

3. Tier 2.5 waters are defined way to broadly. In fact the majority of the state is captured by the definitions of "waters of concerns." *(Show Map) In these waters "no change" can occur. Surely it is not the intent of the Board to propose limiting future development in most of the state. Our Governor, on numerous occasions, has stated that single use considerations, such as onerous water quality rules, should not drive broad based land use restrictions. The Board should delete the tier 2.5 and 3.0 stream designations. The tier 2.0 designation alone is intended to maintain the "high quality" streams. Maintaining "high quality" is stringent enough requirements.
4. Lastly, these rules as proposed are much more stringent than neighboring states. While the rest of the nation is enjoying unprecedented economic growth, West Virginia is still struggling. We continue to believe we can maintain high quality water and grow our economy.

In conclusion we believe the Board has the beginnings of a workable rule, however, some major glitches remain. Again, thank you for the opportunity to appear before you this evening. We will be participating in the remaining steps of the Anti-Deg rulemaking process including legislative consideration.

(6)

AEP AMERICAN® ELECTRIC POWER

AEP: America's Energy Partner™

My name is John J. Smolak and I am manager of Economic Development for American Electric Power Company for West Virginia and Kentucky. I have over 26 years experience in the economic and community development field working with new and existing industry and working to prepare our local communities for new investment opportunities and better paying job opportunities.

Statement for Environmental Quality Board Hearing on Proposed Changes to 46CSR1, West Virginia Water Quality Standards

In particular tonight, I would like to comment on the Board's proposed new Appendix F to the Standards, the Antidegradation Implementation Procedures and the potential impact of these new procedures on economic development in the state.

In looking at this proposal, the one thing with which I believe no one will disagree is that the new procedures will make it **more difficult** and **more expensive** to obtain water quality related permits in West Virginia.

When I deal with people who are interested in bringing new a business and investment to the state they always have to assess the administrative difficulties involved in beginning their operation. The siting of a new business requires the analysis of a large number of factors, such as (labor force availability, cost of construction, infrastructure, transportation, utuility costs and many others).

I have never talked to a business where I thought they were interested in coming to West Virginia because they felt that they would be allowed to do environmental harm in this state they could not get away with in another state. I, personally, would not be interested in bringing such a business to West Virginia.

The businesses and industry with which I have dealt are usually eager to ensure that the areas in which they locate are better off in all ways after they have come here. But these are hard-nosed business people competeing in a global environment to make a profit. They have to analyze and weigh the plusses and minuses of each pertinent development factor. And if they encounter rules that make establishing their business more difficult in one state than in another, a mark goes in the minus column. If the minus is not then offset by other factors, the business may not locate their investment here.

I have dealt with a lot of businesses that have moved to West Virginia because they have seen a lot of advantages for being here. I have seen businesses favorably impressed with the natural beauty and the state of the environment we have here. I have seen prospective businesses select a site over a similar site because they believed the environmental particulars of a specific site led to a better place for their employees to work. These business people are indeed

concerned about clean air, clean water, and recreational opportunity. And we need to ensure the protection of this environment to help us attract new business to the state.

But in talking and listening to those who understand this new set of procedures better than I can hope to, I do not see where this policy is going to contribute in any real way to these goals. People want to know if the environment is safe to live and work in. As I understand it, West Virginia laws already protect people's health in these areas. People want to know if they will be allowed to use the water for recreation or to withdraw water for use in their business or industry process. West Virginia rules already protect our water for these uses.

The way I see it, this policy is more closely related to a philosophical question than a practical one. The question is how much **"better than clean"** should the state's waters be. I am perfectly satisfied with that standard being as strong as possible, as long as it does not hurt the economic vitality of our state in other ways.

But the Board's proposal looks like it goes beyond what other states, especially those states that border West Virginia and those we compete with, have decided about this philosophical question. I believe these other states are just as concerned about their environments as West Virginia. I know from experience what it is like to compete with these other states for new business and I know these other state's leaders are just as aware as I am, of the desire of prospective businesses for an attractive place for their employees.

Other states have set antidegradation trigger levels, at which the same kind of restrictions that are in the Board's proposal will kick in. **However to their credit and vision, they have placed these triggers at much higher levels.** They have, apparently, decided that their water quality can be protected without placing this added burden on economic activity. I suggest to the Board that we learn from these other states and take the time to evaluate what they have done.

Unless the Board has been able to clearly identify some water quality advantage that justifies imposing this added burden on business located in and hoping to locate in West Virginia then I strongly urge that this policy be changed to be in line with the states with which we must compete in the area of economic development.

Thank you.

Respectfully submitted,

John J. Smolak

August 3, 2000

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STATEMENT OF DEAN M. HARRIS, MAYOR, CITY OF WEIRTON
BEFORE THE ENVIRONMENTAL QUALITY BOARD
AUGUST 3, 2000

MY NAME IS DEAN M. HARRIS, MAYOR OF THE CITY OF WEIRTON. I AM SPEAKING WITH REGARD TO THE ENVIRONMENTAL QUALITY BOARD'S ANTI-DEGRADATION RULE AND ITS POSSIBLE IMPACT ON ECONOMIC DEVELOPMENT IN OUR REGION OF THE STATE. LIVING AND WORKING IN THE NORTHERN PANHANDLE, I HAVE HEARD MANY OF MY CONSTITUENTS SAY THAT DECISIONS MADE IN CHARLESTON ARE MADE IN A VACUUM WITHOUT ANY INPUT FROM THE REAL PEOPLE WHOSE LIVES ARE AFFECTED BY STATE LEVEL GOVERNMENTAL DECISIONS. I AM HOWEVER RELIEVED THAT THE BOARD TOOK THE TIME TO GET INPUT FROM DIFFERENT SOURCES ABOUT THE PROPOSED ANTI-DEGRADATION RULE. YET, UNFORTUNATELY THE RESULT APPEARS TO BE A REGULATION THAT DOES NOT ACHIEVE A BALANCE BETWEEN ENVIRONMENTAL CONCERNS AND BUSINESS NEEDS IN THE NORTHERN PANHANDLE, AS WELL AS ACROSS THE STATE.

I THINK WHAT IS MISSING HERE IS A PROPER BALANCING OF THE ENVIRONMENT AND ECONOMIC DEVELOPMENT. NO ONE WANTS A RULE WHICH SUPPORTS ONE OF THESE AND IGNORES THE OTHER. I UNDERSTAND THAT WE HAVE TO HAVE AN ANTI-DEGRADATION

IMPLEMENTATION POLICY IN WEST VIRGINIA. I ALSO UNDERSTAND THAT OTHER STATES HAVE FOUND A WAY TO MEET THE STATE AND FEDERAL LAW REQUIREMENTS FOR ANTI-DEGRADATION WITHOUT CHOOSING BETWEEN ENVIRONMENT AND ECONOMIC DEVELOPMENT. IT IS MY HOPE THAT THESE COMMENTS WILL BE OF USE TO THE ENVIRONMENTAL QUALITY BOARD IN FORMALIZING AN ANTI-DEGRADATION RULE WHICH IS RESPONSIVE TO THE NEEDS OF BUSINESS, AS WELL AS BEING ENVIRONMENTALLY RESPONSIBLE.

IF I OR ANY OF MY STAFF CAN PROVIDE ANY ASSISTANCE TO YOU IN THIS REGARD, PLEASE DO NOT HESITATE TO CONTACT ME AT ANY TIME.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THESE COMMENTS.

(12)

Statements to Environmental Quality Board – August 3, 2000

The topography of West Virginia is such in most of the state that streams are a part of almost any farm. Farmers over the past few years have made significant strides in improving the environment with the aid and directions from the NRCS and other USDA agencies. Best Management Practices have been implemented on many farms and most other farmers are employing practices that improve the quality of our streams. It is true that at one time many farmers were somewhat neglectful of the environment in favor of economics. However, in more recent years through education and a better understanding of soil movement and underground aquafiers, farming practices have change drastically for the better.

Farmers are concerned about the statements in your proposal. The implications throughout the proposal seem leaning toward mandatory BMP's for all farmland within the state. Even though with a voluntary BMP, the farming practice is sufficient to meet water quality standards. The implication is that regardless of how reasonable or cost effective the BMP is to the farming operation if water quality is not met, then the farming operation will be required to stop.

It appears that through a permitting process or a mandatory BMP is the only way we will be able to farm. When a young farmer or an outsider considers beginning a new farming operation on any watershed in West Virginia, the permitting process alone will turn them away. The up-start cost of beginning a farming operation is almost prohibitive; thus, any additional cost or work load, such as a mandatory BMP, may be the "straw that broke the camel's back."

I do not often have the privilege of visiting you working under the golden dome. But as you look out the window of your silver palace with ivory towers and contemplate other obstacles to continue driving young people from our state, I would hope that you exercise better judgment in your decisions. As you drive down I-79 now, you can already see many hillsides covered with multiflora rose and autumn olive. Both of these species crowd out grasses that protect the soil and inhibit soil loss. Both of these species are rapidly spreading over the hills because of the excessive cost of control. As a result, many farmers no longer take care of their land and cease farming to be gainfully employed in another occupation or move to another state. Continued efforts by the Environmental Quality Board,

Environmental Protection Agency and various other permitting agencies will only speed up the degradation of our waters. We would recommend that the Environmental Quality Board encourage voluntary BMP's with continual incentives by NRCS and educational programs by West Virginia University Extension Service as a means for improving water quality.

Regardless of how many so called "environmental groups" feel about the farming industry, farmers care about the total environment and are working to protect it. Words of encouragement will work miracles and you might even get some positive feed-back. I encourage you to drop the "big stick" in favor of the "carrot."

Darryl Huff

304-462-8738

(137)

Oral Comments of the
West Virginia Forestry Association Regarding
Proposed Revisions by the Environmental Quality Board to
46 CSR 1

August 3, 2000

My name is Roger Sherman, I am a WV Registered Forester employed by Westvaco Corporation. I am here this evening on behalf of the West Virginia Forestry Association as its legislative and policy chair to comment on the July 5, 2000 proposed revisions of the Environmental Quality Board to 46 CSR 1, "Requirements Governing Water Quality Standards." The WV Forestry Association was a participant in the Stakeholder Process which presented you with a number of proposed changes to the Rule.

The issue that is most important to the Forestry Association is the need to clarify the provisions addressing BMPs. The Stakeholders agreed on language that, after more careful review, does not reflect the intent of several, perhaps most, of the stakeholders. Our discovery of the ambiguity of the language came too late to correct it as a simple drafting error therefore we suggest a remedy to the Board.

First, the proposed addition of language to 46 CSR 4.1.b could be read to allow the Director to require a forest, farm or other non-point activity to cease operations, leapfrogging the BMP process and the structures and procedures that are presently in place and being effectively applied by the WV Division of Forestry. To change the structure of state government by creating broad new authority through this rule clearly was not the intent of the Stakeholders. Although one participant now declares a preference for this language that would potentially shift non-point source control the DEP. The language as proposed makes the rule absolutely unacceptable to the non-point

source community. The language added at the end of 4.1.b. is superfluous since, without the offending phrase it is fundamentally a restatement of existing language. I urge that the added sentences be withdrawn.

Secondly, our proposal obviates the need to deal with a new issue which has surfaced since release of the draft. This issue was not addressed by the Stakeholder Group but needs to be addressed by the Board. The proposed added language of 46 CSR 4.1.b provides that BMPs will meet water quality standards. The Stakeholder Group never discussed whether such a requirement is technically feasible. In fact, the very nature of BMPs and non-point sources is antithetical to predicting their ability to meet an in-stream numerical standard. BMPs do not have numerical effluent limitations that allow a calculation of impact on water quality. BMPs should be required to be protective of high quality waters which current language in the rule requires. As already indicated, withdrawing the proposed new language will take care of this concern and will not weaken the rule.

The WV Forestry Association joins others in expressing concerns over the Tier 2.5 stream list and the need to establish a process to generate a list of actual "high quality waters."

Thank you for your service on the Board and for this opportunity to present our concerns.

Charleston West Virginia, August 3, 2000.

(14)

ENVIROMENTAL QUA...
BOARD.

Walker Machinery
Oral Comments

Good evening. My name is Richard Tetrick, and I offer these comments on behalf of Walker Machinery. As you may know, Walker Machinery sells and services Caterpillar equipment in locations throughout central and southern West Virginia.

Because of the nature of its business, Walker Machinery primarily discharges only stormwater from its facilities to West Virginia's streams. Yet Walker has the potential to be severely impacted by the Board's proposed antidegradation procedures.

Walker Machinery is one of a large group of West Virginia businesses who provide services for industries throughout the state. While Walker may not ever have to undergo an antidegradation review, our livelihood depends on the continued viability of a strong industrial base in West Virginia. In particular, our business depends on new construction projects which use heavy equipment.

You have heard comments from many people tonight regarding the potential devastating effects of this proposed rule on their businesses. These effects are direct and identifiable. Simply put, if industries can get an NPDES permit more

easily elsewhere, they will no longer expand in West Virginia, or they may relocate entirely. When this happens, the need for service providers like Walker Machinery disintegrates.

In particular, we feel the trigger for socioeconomic review in Tier 2 needs to be revised. This trigger should be based on a larger percentage than 5%. Additionally, the definition of significant degradation should be based on assimilative capacity, not ambient conditions.

You have heard others discuss the percentages used as the trigger for socioeconomic review in other States. I prefer to provide an example in lieu of percentages or hard numbers.

Let's assume a new business would like to locate on the Ohio River, either in Marietta, Ohio or in Parkersburg, West Virginia. If this business locates in Marietta, then it can discharge 10 percent of the remaining loading capacity of the Ohio River. If the same business were to locate in Parkersburg, it can only discharge 5 percent of either assimilative capacity or ambient concentrations, whichever is more restrictive. Where will that business choose to locate?

West Virginia's trigger for antidegradation should be no more restrictive than any of the surrounding States.

The Board should also revise its criteria for designating Tier 2.5 streams. The changes should be made to the criteria set forth in the main text of the rule.

Clearly, the criteria should not be so broad as to require that all streams in the State be classified as Tier 2.5. This Tier 2.5 classification should be limited to those streams where existing water quality is imperative to the continued viability of the existing stream use, ~~such as naturally reproducing trout streams~~.

In conclusion, Walker Machinery asks the Board to consider the socioeconomic impact of its proposed antidegradation procedures not only on the businesses who need NPDES permits to operate or expand in the State, but also on the many service providers whose livelihood is tied to the ability of these companies to receive NPDES permits.

Walker Machinery will be providing more detailed written comments for the Board's consideration. Thank you for the opportunity to comment tonight.

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UNION CARBIDE CORPORATION
P. O. BOX 8004, SOUTH CHARLESTON, WV 25303
South Charleston Plant

To: Environmental Quality Board
Anti-degradation Public Hearing
August 3rd, 2000

Comments by: Dillard Meadows, Assistant Plant Manager
Union Carbide South Charleston Plant

My principal concerns with the proposed Anti-degradation regulations are as follows:

First, the regulations may have significant impact with no tangible benefits.

The existing NPDES permit program requires technology-based treatment standards and pretreatment standards, and requires further controls where warranted by water quality standards. This system has led to major investments in wastewater treatment, and remarkable improvements in the Kanawha River quality. We support an anti-degradation program that will sustain these improvements, but the program must be more workable than the proposal we are commenting on tonight. The proposal does not establish the benefits of going beyond the anti-degradation requirements established by our neighboring states.

Secondly, the proposal should apply only to new or modified discharges, and not existing discharges that do not impair achievement of Water Quality Standards.

While the initial EQB proposal would apply the anti-degradation rules only to new or modified discharges, there is much sentiment for applying the rules to existing discharges.

The proposal could impose socioeconomic reviews and additional controls on discharges that are not causing water quality concerns for the Kanawha River. As most know, The Dow Chemical Company and Union Carbide are merging this year. We will then be competing for investment with current Dow facilities. We do not want to be placed at a competitive disadvantage in West Virginia when compared to other states.

The proposal should do more to encourage investment that reduces pollution load.

The Dow Chemical Corporation, which will become our parent company after our merger, has set corporate-wide goals on wastewater and waste reduction. Projects for specific locations will be chosen on the costs and benefits of implementing the projects. We want South Charleston to be a leading site for investment by Dow, including new units and improvements at existing units. West Virginia should encourage facilities to achieve voluntary reductions.

The trading provisions in the proposal could, in principle, make compliance easier and cost-effective by allowing sites to offset increases in one discharge by decreases in another. The provisions in the proposal are cumbersome, however, and should be made more workable.

(16)

SOUTH CHARLESTON WASTE TREATMENT
P.O. BOX 8515
South Charleston, West Virginia 25303
Office 304-747-2002 FAX 304-744-3400

To: West Virginia Water Quality Board 8/3/00

From: Dave Taylor, SCWTW manager

My oral comments for the antidegredation section are attached.

I will not be attending the meeting due to a death in the family, and we are traveling.

Please accept these comments without my presence, as this is a very important subject.

Thank You

DL Taylor

Dave Taylor
304-747-2002

SOUTH CHARLESTON WASTE TREATMENT
P.O. BOX 8515
South Charleston, West Virginia 25303
Office 304-747-2002 FAX 304-744-3400

My name is Dave Taylor and I am the manager of the South Charleston Waste Treatment Works, a POTW owned by the city and serving South Charleston. The workforce at the plant is proud of the plant's operation, where the plant returns the cleanest water possible to the Kanawha River and by doing so meets all applicable permits and regulations. I am also proud to point out that the plant has improved its operation in recent years in order to be able to purify the water it receives. Millions of dollars were spent to improve the operation. More spending is planned to assure the plant performs as well as possible.

I enjoy SCUBA diving, and I am a SCUBA instructor, so my interest in clean water is personal as well as professional.

I appreciate the opportunity to comment on Environmental Quality Board to 46 CSR 1, "Requirements Governing Water Quality Standards", and will speak to several parts of the antidegradation section. Written comments will follow and will contain comments not covered tonight.

The rest of this discussion will focus on the tier determination, antidegredation triggers for tier two and the proposed applicability of antidegradation.

1. The Methodology of Tier Determination Must be Improved

Different antidegradation standards apply to different tiers of water quality. It would appear that most state waters would be placed under Tier 2.5 under the proposal. Under the Tier 2.5 category, all water returned to a stream must be as clean as the stream itself.

There is no allowance for natural process variation caused by rain, time of day, seasons and so forth. If Tier 2.5 applied to our current watershed, growth for the city of South Charleston would simply stop; businesses would close or move somewhere they could be more competitive. Let's clarify the methodology of Tier determination. There should be a straightforward and workable methodology for establishing the Tier designation of a waterbody.

2. The Antidegradation Trigger for Tier Two is Too Restrictive

The Second topic is the antidegradation trigger for Tier 2 waters. In Tier 2 waters, a socioeconomic review is required when new or modified discharges exceed 5% of background.

Our neighboring states require reviews at a higher percentage of assimilative capacity.

I could find no other state in the country which the trigger is as strict as the one proposed here and do not understand why the trigger needs to be far more restrictive than any other state. Other states have implemented or are implementing Water Quality Standards with triggers that allow for at least some human presence and economic expansion. The proposed trigger will cause businesses to locate elsewhere - when they can - some may just shut down. It will also cause this state to be non-competitive when compared to other states. To be non-competitive means no population growth or economic expansion.

Our antidegradation standards should be harmonized with adjacent states, perhaps through the work of existing agencies such as the Ohio River Sanitary Commission (ORSANCO).

3. The Proposed 46 CSR 1 Has Appropriate Applicability Standards

Thirdly, I would like to speak in support of the proposed applicability standards. The proposal of applying the policy to new and expanded sources is a good one. Existing,

permitted discharges should not be subject to this policy. Existing permits have undergone numerous reviews to be sure they are protective of ambient water quality.

To summarize:

The tier methodology must be clarified or revised. There should be demonstrated need to put stream segments at Tier 2.5.

The Antidegradation trigger for Tier 2 is much more restrictive than other states and will cause economic growth to stop.

Limiting applicability to new and expanded sources is appropriate.

Respectfully:

Dave Taylor

SCWTW manager

(19)

ORAL COMMENTS OF
James L. Green, P.E.
before the
West Virginia Environmental Quality Board

August 3, 2000

Good evening, ladies and gentlemen. My name is Jim Green. I am a licensed Professional Engineer with over 25 years of experience in municipal utility service in West Virginia, and I currently serve as General Manager of the Morgantown Utility Board. My comments tonight are on behalf of the Morgantown Utility Board and the West Virginia Municipal Water Quality Association. The Municipal Water Quality Association is an active coalition of 25 members, including municipal and PSD publicly owned treatment works [aka POTWs] located throughout West Virginia. Our membership includes the largest and smallest facilities in the state, with treated flows ranging between 0.4MGD to 17 MGD. Our customers and constituents include hundreds of thousands of West Virginia home owners and small and medium sized businesses in our state.

I participated as a stakeholder in the anti-deg advisory committee. As a result, I am very familiar with the content of the proposed Rule. The Municipal Water Quality Association and the MUB do not endorse this proposal. We ask the Board to reconsider some fundamental provisions included in the Rule.

I have three issues that I would like to present to the Board this evening. Although we are very concerned that the method for setting tier levels for streams is fair, open and reasonable, I know that many others will comment this evening on this issue. Therefore, I will limit my comments this evening to other issues that are of particular concern to POTWs. Comments on all of the proposed rules will be submitted in writing to the Board.

First, POTWs in West Virginia should be exempt from the anti-degradation procedure when expanding an existing facility. In every case, consolidated POTW service is far superior to small package plant or septic tank treatment methods. Our facilities offer economy of scale, professional management, and are readily inspected and regulated by the DEP. Section 4C.2.a.2.L acknowledges this in part by exempting from antidegradation review new or expanded WWTPs that will alleviate public health concerns arising from failing septic systems and untreated or inadequately treated sewage. We believe that the Board should support and promote the expansion of POTWs and the replacement of septic systems and package plants without regard to the operating condition of the smaller facilities. Therefore, we propose that the exemption in Section 4C.2.a.2.L be expanded to include any expansion of public sewerage service.

POTWs do not create one drop of pollution. Instead, we collect and clean pollution discharged from many different sources, including the homes of most of those in this hearing room. Given the widely acknowledged shortage of public sewerage in our state, it is

counterproductive to place yet another regulatory roadblock in the process of extending public sewers to unserved areas. Instead of encouraging the expansion of well run and properly regulated public sewerage, this Rule will support the continued operation of undesirable septic systems, subdivision package plants, and straight pipes.

It is no easy task to expand municipal facilities to unserved areas. We in Morgantown have recently accomplished this by extending sewer service to the Cheat Lake area. However, it took an extraordinary effort by our staff, one of the largest in the state, to get the project off the ground. We spent almost $150,000 in planning start up costs alone. Further, we worked very hard at overcoming the aversion to change held by our current customers as well as our prospective new customers. If you apply this Rule to POTWs, you will create another roadblock against the efficient and desirable consolidation and expansion of municipal sewer service. As a result, that service will remain fragmented, inefficient and limited. Instead of improving the water quality in our state, implementation of this proposal upon expanding POTWs will frustrate the improvement of our water quality.

Please note that we do not contest the application of anti-degradation procedure to new POTWs. We question the usefulness of anti-deg review under the TMDL/watershed management framework. However, regardless of this uncertainty (and of the incomplete evaluation of the entire and rapidly changing regulatory scheme), we agree that our participation in this procedure when bringing a new facility on line may yield positive results for water quality in our state.

My second point is that the 5% Tier II threshold is unreasonable and based upon nothing more than inclination and a majority vote. This threshold is far too important to be settled upon without any scientific analysis or estimate of its impact upon our state. Because of its potential impact, we should use our best efforts in setting a meaningful, effective and science-based standard. Instead, you have before you a recommendation that was arrived at as a result of inclination, compromise and conjecture. We believe that this is a reckless way to set such an important policy.

If the Board chooses to announce a threshold for Tier II review at this time, we suggest that it use 25% of the assimilative capacity as the threshold figure. This standard, **which has been used in Virginia for years**, is an appropriate starting point for this program. If the Board finds that this threshold is not sufficient to adequately protect our waters, it may promulgate a more restrictive threshold at a later date. This conservative approach is appropriate because, in the absence of a well researched and science-based standard, it is far better to begin with a higher threshold. To bluster into the 5% threshold risks the economic well being of and quality of life in our cities and towns for a speculative gain in water quality. Let's try a less burdensome approach first, measure the results, and adjust the threshold based on those results.

The proposed 5% standard is far more restrictive than those used by all of our neighboring states. This is particularly remarkable when considering that our water quality is generally better than that of other states in this region. We do not support a race to the bottom in

our regulatory standards. However, we must acknowledge that we compete with our neighbors for commercial and residential development. If we choose to make it more expensive and difficult to construct new facilities in our state, we should do so only if we reasonably and reliably expect that we will get some certain environmental benefit from the more restrictive regulations. Because nobody can tell you that this is the case, we encourage you not to support the 5% threshold standard.

Application of the 5% threshold also makes no practical sense. With this low threshold, DEP will be conducting numerous Tier II reviews for facilities that cannot stay under the 5% level. This will be a major, intrusive delay for public and private facilities that rely upon the agency for permitting support and guidance. If we set the threshold at 25%, the DEP will be able to focus on the major increases in pollutant parameters. This is exactly where we should be allocating our limited public resources. Once we are certain that the DEP can handle the administration of the 25% level, then a lower threshold may be considered if the potential benefits to water quality warrant such an effort.

My third point is valid only if the Board chooses to ignore our recommendation and apply the anti-deg procedure to expanded POTW facilities. Rule 4C.2.a.2.E requires an anti-deg review when there is an "increase" in permit levels. We strongly disagree with this interpretation. Antidegradation should apply only when an existing facility expands, not in response to changing permit levels. This issue is vitally important now, as the DEP continues to move to a new water-quality based permit system that is more consistent with EPA's national regulatory scheme. This ongoing and fundamental shift in our water quality regulatory scheme will inevitably result in changes in permit limits. These changes should not trigger an antidegradation review. To do so would be self-defeating as it would overwhelm the agency as it is executing this paradigm shift. Review is also inappropriate and unnecessary for POTWs that do not intentionally change the composition of their discharge in response to less stringent permit limits. For these reasons this Rule should be removed or at least deferred until the DEP completes the reorganization of its regulatory scheme.

Thank you for your kind attention to these comments. The public servants of the municipal POTW community are always available to assist the Board in its important work for our state.

18

PECHINEY
ROLLED PRODUCTS

STATEMENT OF PECHINEY ROLLED PRODUCTS REGARDING PROPOSED ANTI-DEGRADATION IMPLEMENTATION RULE

My name is Gail Graban. I am the Environmental Affairs Manager for Pechiney Rolled Products. Pechiney Rolled Products is a subsidiary of Pechiney-Rhenalu, which is headquartered in France and is one of the largest aluminum producers in the world. Pechiney is a new comer to the United States and West Virginia. Just last year Pechiney purchased the rolling mill at Ravenswood, West Virginia from Century Aluminum. The Ravenswood facility is one of two mills that Pechiney owns in the United States and is the largest of the thirteen aluminum rolling mills that Pechiney owns world-wide. I am here this evening to ask this Board to find a way to address anti-degradation of water quality that ensures protection of West Virginia's waters without imposing unreasonable obstacles to economic development in West Virginia.

To make Pechiney's Ravenswood facility competitive in the world market, Pechiney is implementing capital projects to upgrade the facility's equipment and processes to reflect a state-of-the-art, world class aluminum facility. However, the proposed anti-degradation rule may limit the ability of Pechiney to implement these changes because the rule designates the Ohio River as an Outstanding State Water Resource, or a Tier 2.5 waterway. The proposed rule prohibits any new or expanded activity that causes any reduction of the ambient water quality in Tier 2.5 waterways. In fact, the proposed rule is one of the most stringent anti-degradation implementation rules in the country and consequently will put West Virginia businesses, such as Pechiney, at a serious economic competitive disadvantage, particularly as to surrounding states. For instance, under Ohio's rules, facilities that discharge into the Ohio River are permitted to

PECHINEY ROLLED PRODUCTS, LLC
P.O. Box 68 • Ravenswood, WV 26164 • (304) 273-7000 Phone

operate new and expanded activities as long as they do not cause more than a ten percent change in the ambient water quality.

Pechiney supports the comments of the West Virginia Manufacturer's Association and respectfully requests this Board to revise this rule so that it meets the requirements of state and federal law, but does not impose an unnecessary obstacle to the economic future of Pechiney in West Virginia or other industry in the State.

Subject: [Fwd: Proposed Antidegradation Implementation Policy]
Date: Mon, 14 Aug 2000 16:01:45 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>

Subject: Proposed Antidegradation Implementation Policy
Date: Mon, 14 Aug 2000 14:48:34 -0400
From: "eli heady" <eheady@utility.net>
To: <chatfe@mail.wvnet.edu>

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

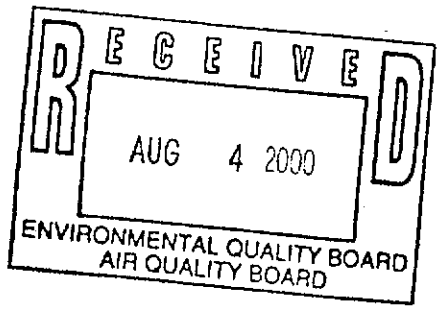
Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

Thank you for your work.

Eli Heady
304-296-5618



August 3, 2000

Edward M Snyder Ph.D., Co-Chairman
Donald C. Tarter Ph.D., Co-Chairman
West Virginia Environmental Quality Board
1615 Washington Street East
Charleston, West Virginia 25311

Re: Proposed Amendments to 47 CSR 1

Dear Sirs:

The proposed changes to the above regulation include a new Appendix F that sets out the requirements of the state's antidegradation implementation policy. I am concerned that the proposed regulation will impose unnecessary and expensive requirements on small businesses and the towns and cities of the state. I understand that this rule may be the most stringent in the nation and is more stringent than equivalent rules in surrounding states. I would also point out the clear intent of the West Virginia Legislature that regulations and rules which are more stringent than federal requirements must be justified scientifically. I do not believe that the Board has met this intention.

I can understand the desire to preserve the quality of West Virginia's streams. I fully support this goal. I can not support a program that imposes unnecessary and overly restrictive requirements on the citizens of this state. I believe that other states are also interested in preserving their water quality and have yet to hear an explanation as to why our program imposes much higher costs and additional administrative burdens on those discharging such small amounts to so many streams

I think it would be in the best interest of the state to set West Virginia's antidegradation rule to be no more stringent than our surrounding states. I understand that Indiana, Ohio and Michigan have all set the trigger for requiring a full antidegradation review at 10% of the available "assimilative capacity" in High Quality Waters. I believe that this is sufficient to protect water quality. I request that the Environmental Quality Board set the trigger level for West Virginia at a level that is no more restrictive than these neighboring states.

I also recommend that the Environmental Quality Board not assign either of the two highest classifications (Tier 2.5 and Tier 3) to any stream without full opportunity for public input on each individual stream. I would point out that the stringent antidegradation requirements proposed for these Tiers of streams would effectively stop any development activities along any stream designated as Tier 2.5 or Tier 3. I am also concerned that the description in 46CSR1 of what constitutes Tier 2.5 streams is overly broad and could result in streams being classified as Tier 2.5 inappropriately unless there is adequate public input from concerned municipalities and property owners along such streams.

I appreciate the opportunity to offer these comments and ask the Environmental Quality Board to accept and act upon these recommendations.

Sincerely,

Clyde L Hall

Mayor Rosa

WEST VIRGINIA DIVISION

The Izaak Walton League of America
Incorporated

RECEIVED
AUG 4 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter.

PRESIDENT
Don McClung
79 E. Main St.
Richwood, WV
26261

VICE PRESIDENT
Fred Ford
P.O. Box 921
Shepherdstown, WV
25443

SECRETARY
Marion Meade
P.O. Box 2600
Elkins, WV
26241

TREASURER
Gary R. Meade
P.O. Box 2600
Elkins, WV
26241

NATIONAL DIRECTORS
Marie Cyphert
Gary R. Meade

ENDOWMENT BOARD
Dr. Larry Smith

The members of my chapter of the Izaak Walton League would like to offer the following comments on your draft Anti-degradation Implementation Procedures. Our membership cares deeply about West Virginia's rivers and streams, and we believe this policy should protect our waterways to the full extent of federal law. With that position stated, our members would like to draw your attention to the following comments and requests concerning your policy statement.

*The document's grandfather clause should be removed, and ALL permits be subject to an anti-degradation review. We feel some of our worst polluters are older industries and facilities. Federal clean water laws require both new and existing permits be covered by this policy.

*Cumulative impacts which can be extremely harmful, and do as much, if not more, damage than single pollutes to rivers and streams, should be addressed in this document.

*De minimus value, the degree that waters can be maximally polluted, should not be part of this policy. Anti-degradation literally means "no degradation." Allowing the policy to state water can be polluted to an acceptable level before a review occurs, is contrary to the intent of the law and unacceptable to our membership.

*We ask that all exemptions be removed from the policy. The purpose of the policy is to review activities and allow a continuation if there is positive social benefits. Activities that seek exemptions claim to be beneficial. We believe you should allow the policy to run its course for this determination.

*We ask that an Intergovernmental Coordination Process that is adequate and functional be developed. Along with the listing of various departments and agencies in this policy, a determination of how they will interact and react to anti-degradation reviews needs to be included. The same is true for the State Continuing Planning Process. Both need to fully meet requirements to protect existing uses.

*Specific language needs to be added to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade, allowing the most miniscule improvement of water quality in one river or stream to possibly allow for significant pollution in other waterways.

*We request the removal of the 110% cost provision of the Reasonable Alternatives definition and "additional parameters of consideration" be added. Otherwise, the agency would not have authority to request the use of an exceptional alternative that costs 111% of the original proposal.

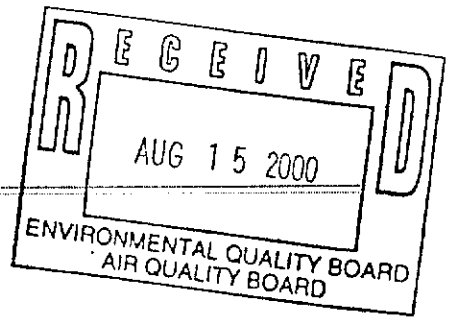
*The above suggestions are offered on issues of concern to our membership. We ask that you give consideration to incorporating these suggestions into the anti-degradation implementation policy. Our membership is confident the EQB will initiate rules and regulations for the protection of surface waters and ground waters of the State, along with strengthening the draft policy in accordance with federal requirements.

Sincerely,

Ray Lovins Pres.

The Zip Little Ch.

Subject: [Fwd: Comments on Proposed Antidegradation policy]
Date: Tue, 15 Aug 2000 13:04:29 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>



Subject: Comments on Proposed Antidegradation policy
Date: Tue, 15 Aug 2000 09:20:25 PDT
From: "Joan Breiding" <mountaineer47@hotmail.com>
To: chatfe@mail.wvnet.edu

Dr. Snyder and Dr. Tater:

I am writing as a member [however long distance!] of the Friends of Deckers Creek [FODC] to express my concern about the proposed antidegradation policy.

Nearly $10 million in state and federal funds is being s new development. This will likely lead to new discharge permilt and new construction and sedimentation in the creek.

If the EQB's proposed antidegradation policy is adopted, any gain in water quality over the standards of category B and C streams t chance of making Deckers Creek its cleanest and maintaining it.

I live in San Francisco but am a native West Virginian. You just can't take the hills out of the gal. [or the creeks!]

Thank you both for your work.

Sincerely,
Jo

August 4, 2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-ChairsWest Virginia Environmental Quality Board1615 Washington Street, East, Suite 301Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy. I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters. I request that you do not allow for a de minimus value in the policy. A deminimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law. I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this. I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses. I request that you add specific language to the proposed Trading AssessmentProcedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream. Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations.for the protection of surface waters and ground waters of the State," I am confident you will strengthen the draft policy in accordance with Federalrequirements.

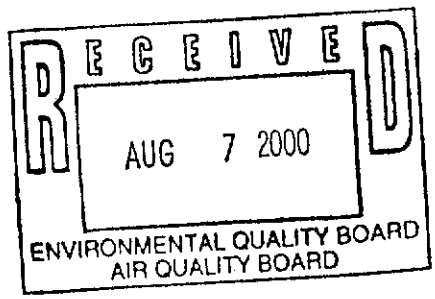
Sincerely,

Ellen Sparks

Ellen Sparks

Rt 2 Box 325

Albright WV 26519



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AUG 10 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Milton Crum
360 Bluebell Drive
Terra Alta, WV 26764
August 7, 2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Gentlemen:

This is to request and urge that your draft Anti-degradation Implementation Procedures be strengthened and loop holes closed.

Please remove the grandfather clause. Unless existing pollution sources are covered how can we clean up the pollution we already have or meet the demands of federal law?

The procedures should also address cumulative impacts that can add up to something worse than a single polluter.

I also request that allowing a level of pollution before a review occurs (the de minimus value) be eliminated. Along the same line, please do not allow exemptions. Whether activities in question have a positive social benefit should be determined after review.

The vague term "improved water quality" in the Trading Assessment Procedure is a loop hole that would allow significant pollution in one stream in return for minor improvement in another stream.

You and your staff can handle the details better than I can suggest. The main thing is a will and determination to make our rivers and streams as clean as possible for the well-being of our economy and our environment. Allowing pollution can produce short term benefits, but it is folly in the long run. It costs more to clean up rivers than to prevent pollution. And one of West Virginia's greatest assets is our mountains and streams, an asset that attracts many people as visitors and as residents—as here in Alpine Lake. Already this asset has been diminished by pollution in our streams. Having our Cheat River an endangered river and many smaller streams discolored and devoid of fish is not only sad, it makes West Virginia less attractive for visitors and residents.

Please do all you can to protect and maintain our streams and rivers. Thank you.

Sincerely yours,

Milton Crum

WEST VIRGINIA DIVISION

The Izaak Walton League of America, Incorporated

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AUG 10 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter.

PRESIDENT
Don McClung
79 E. Main St.
Richwood, WV
26261

VICE PRESIDENT
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P.O. Box 921
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ENDOWMENT BOARD
Dr. Larry Smith

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*The above suggestions are offered on issues of concern to our membership. We ask that you give consideration to incorporating these suggestions into the anti-degradation implementation policy. Our membership is confident the EQB will initiate rules and regulations for the protection of surface waters and ground waters of the State, along with strengthening the draft policy in accordance with federal requirements.

Sincerely,

Russell F. Ireland

President: Mon. Co. Chapter I.W.L.A.

WEST VIRGINIA DIVISION

The Izaak Walton League of America Incorporated

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AUG 9
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter.

PRESIDENT
Don McClung
79 E. Main St.
Richwood, WV
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NATIONAL DIRECTORS
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Gary R. Meade

ENDOWMENT BOARD
Dr. Larry Smith

The members of my chapter of the Izaak Walton League would like to offer the following comments on your draft Anti-degradation Implementation Procedures. Our membership cares deeply about West Virginia's rivers and streams, and we believe this policy should protect our waterways to the full extent of federal law. With that position stated, our members would like to draw your attention to the following comments and requests concerning your policy statement.

*The document's grandfather clause should be removed, and ALL permits be subject to an anti-degradation review. We feel some of our worst polluters are older industries and facilities. Federal clean water laws require both new and existing permits be covered by this policy.

*Cumulative impacts which can be extremely harmful, and do as much, if not more, damage than single pollutes to rivers and streams, should be addressed in this document.

*De minimus value, the degree that waters can be maximally polluted, should not be part of this policy. Anti-degradation literally means "no degradation." Allowing the policy to state water can be polluted to an acceptable level before a review occurs, is contrary to the intent of the law and unacceptable to our membership.

*We ask that all exemptions be removed from the policy. The purpose of the policy is to review activities and allow a continuation if there is positive social benefits. Activities that seek exemptions claim to be beneficial. We believe you should allow the policy to run its course for this determination.

*We ask that an Intergovernmental Coordination Process that is adequate and functional be developed. Along with the listing of various departments and agencies in this policy, a determination of how they will interact and react to anti-degradation reviews needs to be included. The same is true for the State Continuing Planning Process. Both need to fully meet requirements to protect existing uses.

*Specific language needs to be added to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade, allowing the most miniscule improvement of water quality in one river or stream to possibly allow for significant pollution in other waterways.

*We request the removal of the 110% cost provision of the Reasonable Alternatives definition and "additional parameters of consideration" be added. Otherwise, the agency would not have authority to request the use of an exceptional alternative that costs 111% of the original proposal.

*The above suggestions are offered on issues of concern to our membership. We ask that you give consideration to incorporating these suggestions into the anti-degradation implementation policy. Our membership is confident the EQB will initiate rules and regulations for the protection of surface waters and ground waters of the State, along with strengthening the draft policy in accordance with federal requirements.

Sincerely,

Clyde L. Boulton
Greenbrier Chapter Pres

Lucie T. Refsland, Ed.D.
2 Highland Circle
Lewisburg, WV 24901

RECEIVED
AUG 9 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

TO: Dr. Edward Snyder
Dr. Donald Tarter

FROM: Dr. Lucie T. Refsland

DATE: August 4, 2000

RE: Draft Anti-degradation Implementation Procedures

I urge you to protect West Virginia's rivers and streams to the fullest extent of federal law and to stengthen the draft policy for the protection of its surface waters and ground waters. Pollution of our waters is not acceptable and I seek your help in addressing this situation.

I request that measures to keep West Virginia's waters clean be incorporated within the anti-degradation implementation policy.

Thank you for your attention to my concerns.

Lucie T. Refsland

Cecil H. Underwood, Governor

WEST VIRGINIA DEVELOPMENT OFFICE

1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305-0311

Council for Community and Economic Development

Dave Arnold
Lansing

Ralph J. Bean, Jr.
Clarksburg

Mallie J. Combs
Moorefield

Ken Lowe, Jr.
Shepherdstown

Joe Manchin III
Fairmont

John F. McGee
Charleston

Rory L. Perry
Logan

Jack R. Phillips
Beckley

Don T. Rigby
Wheeling

Scott Rotruck
Morgantown

Michael G. Sellards
Point Pleasant

L. Newton Thomas
Charleston

Dana E. Waldo
Charleston

R. W. Wilkinson
Bluefield

Greg Wooten
Stollings

August 8, 2000

RECEIVED
AUG 10 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

West Virginia Environmental Quality Board
1615 Washington Street East
Charleston, West Virginia 25311

RE: Title 46, Series 1, Water Quality Standards

Gentlemen:

The West Virginia Council for Community and Economic Development wishes to express its concern that the proposed rules for Water Quality Standards in Title 46, Series 1, will impede the ability of our state to attract new industry and retain existing industry.

The consensus of opinion – expressed by our manufacturers and trade organizations – is that the implementation procedures will increase the cost of doing business in West Virginia and require standards of water purity more stringent than surrounding areas.

This perception that the environmental regulatory process in West Virginia is more onerous than in other states will put us at a competitive disadvantage in recruiting and retaining industry and securing for our citizens the jobs these companies provide.

In your deliberations we respectfully request that due consideration be given to the economic impact of your decision and its effect on West Virginia's continued participation in the global economy.

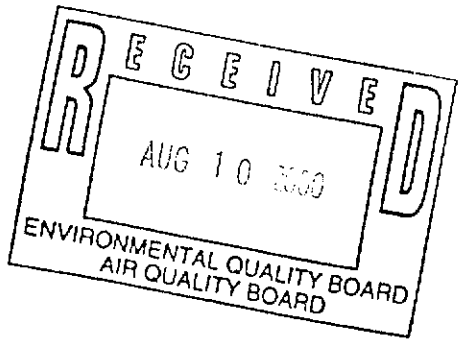
Sincerely,

The West Virginia Council for Community and Economic Development by:

Don T. Rigby
Chairman

cc: The Honorable Cecil H. Underwood
The Honorable Mike Ross
The Honorable Mark A. Hunt
Mr. Michael C. Castle

HC 71, Box 51
Orma, WV 25268
August 7, 2000



Dr. Edward Snyder, Dr. Donald Tarter, Co-Chairs
WV Environmental Quality Board
1615 Washington St. East, Suite 301
Charleston, WV 25311-2126

Dear Drs. Snyder and Tarter;

I am writing concerning proposed amendments to the Clean Water Act. The intent of the Act is to ensure that water be protected to be safe for human uses and ingestion by animals and plants. This means new and existing permits must be reviewed. No degradation can be allowed before review occurs. Cumulative impacts of all potential sources of pollution feeding into a watershed must be considered. This means industrial and recreational use; the latter should be regulated.

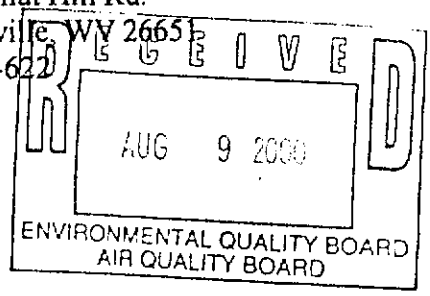
As fossil fuels and global warming have been the critical issues of the past century into this one; potable water and its distribution will be critical in the coming years. Please judge with far-seeing eyes.

Sincerely,

Jaen Sidney

Jaen Sidney

Casey Sears
309 Chestnut Hill Rd.
Summersville, WV 26651
304-872-4622



Dr. Edward Snyder and Dr. Donald Tarter
WV Environmental Quality Board
1615 Washington Street, East, Suit 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter:

Please consider my comments and recommendations on your Anti-degradation Implementation Procedures. I was present at the hearing Thursday night August 3, 2000 and I am very concerned about the polluted streams in our state. I have lived in WV all of my life and owned property on the Greenbrier river since 1970.

Please do not allow a grandfather clause. Let all permits go through the anti-degradation review. If the existing businesses cannot operate without polluting our rivers, let them move to Ohio where they can discharge product x into the sewers that they call rivers. Why is it possible to swim and drink the water in the Gauley River east of Bolair, WV? Because Dupont is not there, because Union Carbide is not there, because AEP is not there, and because A.T. Massey is not there.

Please consider the cumulative impacts on our rivers. The cumulative impact of several small polluters can be greater than one large polluter. This is important to all WV residents.

Also, I request that you do not have any exemptions. Exemptions in this policy would be like many of the uninforced surface mining regulations, which are full of exemptions, wavers, and modifications that fit the big company profitability requirements.

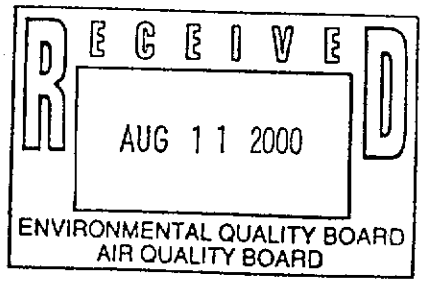
At the hearing Thursday night, "all" of the big corporate speakers wanted WV regulations to be no more stringent than the twenty-five states around us. If you go to the Gauley River and the New River, that's where you will find those people from the twenty-five other states. When I kayak on the New or Gauley River, I have to wait in line to go down the rapids because of the many out of state tourists.

The tourists that bicycle down the eighty-mile Greenbrier River Trail don't want to smell a polluted river. The tourist would not pay to float down the world class Gauley River floating in product X. They want to come to a clean wild and wonderful West Virginia. It may be difficult at the beginning for some companies and small communities to correct their pollution problems. However, the economy of this state depends on a clean environment. Paddler Magazine labels WV as the whitewater capitol of the east.

I appreciate the opportunity to comment about the rules and regulations regarding our rivers and I am confident that you will follow the intent of the federal requirements to have clean rivers for all people to enjoy.

Sincerely,

Casey Sears



Subject: FW: PROTECT OUR CLEAN WATER! (PART 4)
Date: Fri, 11 Aug 2000 12:29:00 -0400
From: "Kaskey, Casey" <Casey_Kaskey@HMIS.ORG>
To: wveqb <chatfe@mail.wvnet.edu>

Dear Dr. Tarter and Dr. Snyder ,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care for, and spend a lot of time admiring, West Virginia+s rivers and this policy should protect them to the full extent of federal law.

I request that you remove all exemptions from this policy. All activities should be held to the same standard.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading assessment Procedure. This procedure does not define improved water quality as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, for strengthening the draft policy in accordance with federal requirements, and for helping keep West Virginia's rivers clean.

Casey Kaskey

Subject: [Fwd: Deckers Creek Water Quality Comments]
Date: Mon, 14 Aug 2000 09:24:38 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>

Subject: Deckers Creek Water Quality Comments
Date: Sun, 13 Aug 2000 20:07:34 -0400
From: <chaddox@attglobal.net>
To: <chatfe@mail.wvnet.edu>

Dear Drs.Snyder & Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

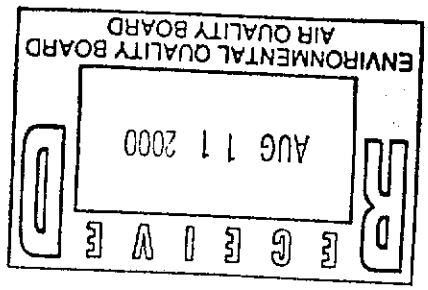
Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

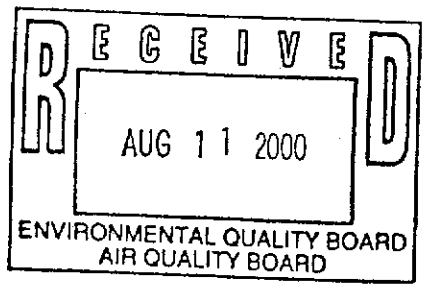
Thank you for your work.



Subject: Antidegradation
Date: Fri, 11 Aug 2000 10:00:03 -0400
From: lrayburn@wvu.edu
To: chatfe@mail.wvnet.edu

Dear Dr. Snyder and Dr. Tarter,
I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.
Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.
Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.
If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.
Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.
Thank you for your work.

Lisa Rayburn



Subject: (no subject)
Date: Fri, 11 Aug 2000 09:56:54 EDT
From: AMayer4393@aol.com
To: <chatfe@mail.wvnet.edu>

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

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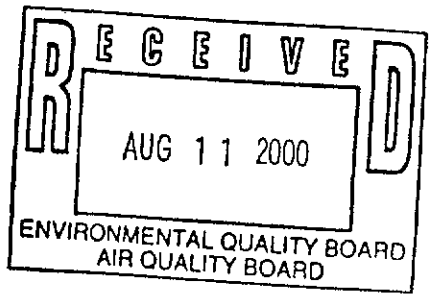
If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

Thank you for your work.

Anita Mayer, President MRTC
PO Box 282
Morgantown, West Virginia 26507-0282



Subject: Comments on Proposed Antidegradation Policy
Date: Fri, 11 Aug 2000 09:39:34 -0400
From: "K" <clubdoc@earthlink.net>
To: <chatfe@mail.wvnet.edu>

Dear Dr. Snyder and Dr. Tarter,

I live along Deckers Creek in the Richard area near Morgantown, WV.

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

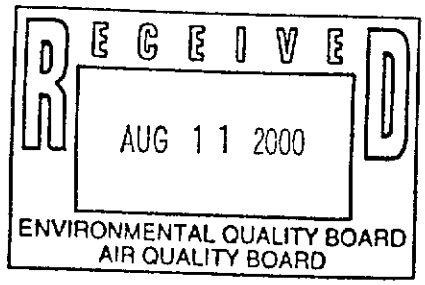
Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

Thank you for your work,
Kevin Dailey
3401 Earl L. Core Road
Morgantown, WV
26508
ksd@email.com



Subject: comments on antidegradation implementation
Date: Fri, 11 Aug 2000 15:29:36 -0400
From: "Sara Wilts" <s.wilts@worldnet.att.net>
To: <chatfe@mail.wvnet.edu>

==========

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

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Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

Thank you for your work.

Sally Wilts
PO Box 184
Bruceton Mills, WV 26525

RECEIVED
AUG 11 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Subject: Comments on Proposed Antidegradation Implementation Policy
Date: Fri, 11 Aug 2000 11:31:24 EDT
From: JRSutton74@aol.com
To: chatfe@mail.wvnet.edu

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

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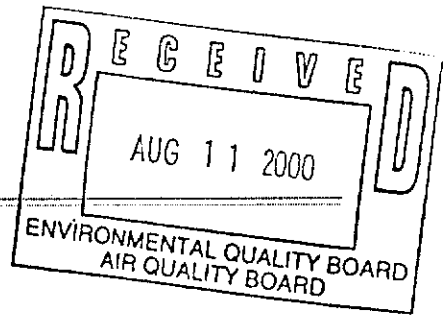
Thank you for your work.
Sincerely, Jessica R. Sutton

Subject: [Fwd: Comments on Proposed Antidegradation Policy]
Date: Mon, 14 Aug 2000 09:24:26 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>



Subject: Comments on Proposed Antidegradation Policy
Date: Sat, 12 Aug 2000 10:11:36 -0400
From: "john schmitt" <johnaschmitt@earthlink.net>
To: <chatfe@mail.wvnet.edu>

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

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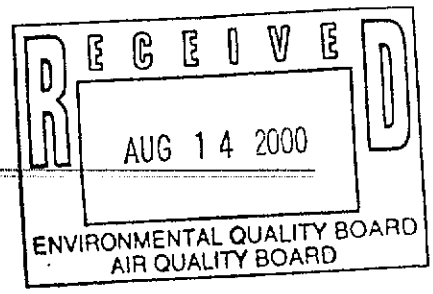
Thank you for your work.

John Schmitt
1173 Lions Ave
Morgantown WV 26505
(304) 598-1069
johnaschmitt@earthlink.net

Subject: [Fwd: Make sure antidegradation stops degradation]
Date: Mon, 14 Aug 2000 09:51:15 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>



Subject: Make sure antidegradation stops degradation
Date: Mon, 14 Aug 2000 09:41:37 -0400
From: martin christ <mchrist@wvu.edu>
To: chatfe@mail.wvnet.edu

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

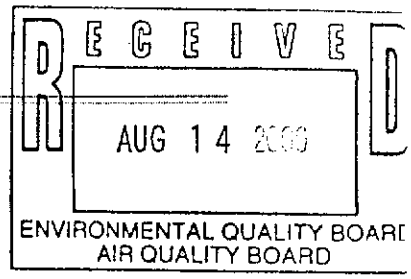
If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

Thank you for your work.

Martin Christ
495 Falling Run Road
Morgantown, WV 26505

Subject: [Fwd: Comments on Proposed Antidegradation Implementation Policy]
Date: Mon, 14 Aug 2000 09:51:34 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>



Subject: Comments on Proposed Antidegradation Implementation Policy
Date: Mon, 14 Aug 2000 09:44:42 EDT
From: NatrlLife@aol.com
To: chatfe@mail.wvnet.edu

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for antidegradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet antidegradation standards. Please require all existing permits that exceed the de minimus antidegradation trigger that you establish to undergo antidegradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

Thank you for your work.

Stephanie Wright
2032 Eugeniva Ave.
Morgantown, WV 26505
e-mail Natrllife@aol.com

WEST VIRGINIA DIVISION

The Izaak Walton League of America, Incorporated

RECEIVED
AUG 14 2000
WV ENVIRONMENTAL QUALITY BOARD
WV QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter.

PRESIDENT
Don McClung
79 E. Main St.
Richwood, WV
26261

VICE PRESIDENT
Fred Ford
P.O. Box 921
Shepherdstown, WV
25443

SECRETARY
Marion Meade
P.O. Box 2600
Elkins, WV
26241

TREASURER
Gary R. Meade
P.O. Box 2600
Elkins, WV
26241

NATIONAL DIRECTORS
Marie Cypher
Gary R. Meade

ENDOWMENT BOARD
Dr. Larry Smith

The members of my chapter of the Izaak Walton League would like to offer the following comments on your draft Anti-degradation Implementation Procedures. Our membership cares deeply about West Virginia's rivers and streams, and we believe this policy should protect our waterways to the full extent of federal law. With that position stated, our members would like to draw your attention to the following comments and requests concerning your policy statement.

*The document's grandfather clause should be removed, and ALL permits be subject to an anti-degradation review. We feel some of our worst polluters are older industries and facilities. Federal clean water laws require both new and existing permits be covered by this policy.

*Cumulative impacts which can be extremely harmful, and do as much, if not more, damage than single pollutes to rivers and streams, should be addressed in this document.

*De minimus value, the degree that waters can be maximally polluted, should not be part of this policy. Anti-degradation literally means "no degradation." Allowing the policy to state water can be polluted to an acceptable level before a review occurs, is contrary to the intent of the law and unacceptable to our membership.

*We ask that all exemptions be removed from the policy. The purpose of the policy is to review activities and allow a continuation if there is positive social benefits. Activities that seek exemptions claim to be beneficial. We believe you should allow the policy to run its course for this determination.

*We ask that an Intergovernmental Coordination Process that is adequate and functional be developed. Along with the listing of various departments and agencies in this policy, a determination of how they will interact and react to anti-degradation reviews needs to be included. The same is true for the State Continuing Planning Process. Both need to fully meet requirements to protect existing uses.

*Specific language needs to be added to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade, allowing the most miniscule improvement of water quality in one river or stream to possibly allow for significant pollution in other waterways.

*We request the removal of the 110% cost provision of the Reasonable Alternatives definition and "additional parameters of consideration" be added. Otherwise, the agency would not have authority to request the use of an exceptional alternative that costs 111% of the original proposal.

*The above suggestions are offered on issues of concern to our membership. We ask that you give consideration to incorporating these suggestions into the anti-degradation implementation policy. Our membership is confident the EQB will initiate rules and regulations for the protection of surface waters and ground waters of the State, along with strengthening the draft policy in accordance with federal requirements.

Sincerely,

Richard Hamrick
President
MOUNTAINEER CHAPTER

Judith C. Lazier
HC 68 Box 4
Bemis, WV 26268

RECEIVED
AUG 14 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 9, 2000

Environmental Quality Board
1615 Washington street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

After perusing the proposed Antidegradation Implementation Policy I find issues that are disturbing to landowners - specifically farmers.

Greater Regulation The mandatory BMP's will bring a new level of regulation for farmers already financially stressed. The accuracy of BMP's for the entire state is questionable (how do you address the BMP's for farms of different topography and operations) and could lead to inequitable enforcement.

Landowners Rights "46-1-4-1.b" - This boils down to giving someone power to decide the use of land not belonging to them!! Plus there are no provisions made to compensate a landowner for defense of his property or loss of property. This strikes me as arrogant - I strongly object and wonder at the purpose!!

These are two issues that need to be corrected before going before the legislature for surely here is an opportunity for misuse of a well-intended law.

Sincerely,

Judith C. Lazier

Judith C. Lazier

August 9, 2000

RECEIVED
AUG 14 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

After reading the West Virginia Antidegration Document prepared by your office I find several aspects of this proposed policy to be particularly restrictive to wise land use.

Beginning with the extremely low trigger levels for alternative analysis and socio/economic review under Tier 2 and the number of streams included by default in the Tier 2.5 category. Particularly offensive to the landowner is the provision granting **anyone** the power to nominate any good stream "park like" status even though it is on private land. Nor is any provision made for compensation to the landowner for expenses incurred in defending his rights as a landowner or to compensate for any losses incurred.

Tier 2.5 being the most restrictive stream categorization under this policy takes in almost every major river in WV. Further, as a landowner I do not feel adequate representation has been granted to permit our input into this decision making process, again giving those not living on or making a living from land power to decide how it is to be used.

These are issues I feel need to be changed to be more conducive to the needs of continued effective environmentally sound agricultural practices.

Sincerely,

J H. Tate
P O Box 131
Hamrahan, WV
26270

Environmental Quality Board

This letter is to let you know, that I am very much against the Antidegradation Implementation Policy.

I believe the restrictions we have on our waters at this time is very effective. We do not want our land under Park like States restrictions. How can any one person have the power to make these decisions on our land.

I think our State legislators should vote this down and put these Environmental Extremist out of our State, and help the farmers and business people, also landowners

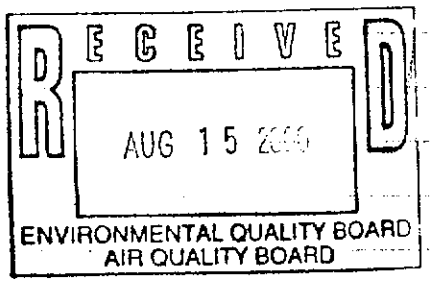
Thank You

Helen Davis
PO Box 46. Norman WV 26270

Environmental Quality Board.

As a landowner near a Steam I donot think we need a Tier 2 or Tier 2.5 Requirment in our State.

Frankie L Davis
Harman WV. 26270



Elkem

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder
Chairman – Environmental Quality Board
1615 Washington Street East
Charleston, WV 25311

Re: Antidegradation Implementation Policy

Dear Dr. Snyder:

On behalf of Elkem Metals, I would like to offer comments on the draft Antidegradation Implementation Rule that is being considered by the Environmental Quality Board. We believe that the rule being proposed by the Board, has serious flaws that must be corrected before the rule is set forward to the West Virginia Legislature.

We are specifically concerned that the definition of Tiers in the Rule could lead to an inappropriate designation of stream as Tier 2.5. The impact of this could be significant and far reaching. We have evaluated our current operation and have determined that we could meet the rules guidance and intent if the Kanawha River is designated as a Tier 2 Stream. However, we could not meet the requirements of a Tier 2.5 listing. We have reviewed all of our Outfalls, including current average discharge quantities and river loadings based on the State's Storet data bases. This review required extensive analysis AND MODELING TO DETERMINE OUR IMPACT ON THE LOADING OF REGULATED COMPONENTS TO THE KANAWHA RIVER. The net effect of imposing the Tier 2.5 list on Elkem's stretch (mile marker 89.7) of the Kanawha River would be to eliminate any future development AT OUR FACILITY and to place a significant burden on existing facilities to install treatment facilities and/or eliminate all existing discharges..

We would urge the board not to designate any stream as Tier 2.5 without adequate public participation of affected parties such as our facility.

As a matter of principal, the States Antidegradation Implementation Policy should be no more stringent than the surrounding States or the EPA's national guidance. We believe the trigger to define significant degradation should be set at 10% of the available assimilative capacity rather than being based on the ambient concentration. We would point out to the Board the difficulty in determining ambient concentrations of low concentration components in a stream and also the difficulties in measuring small CHANGES IN concentrations OF COMPONENTS in the ambient conditions.

Sincerely,

J F Holly

James F. Holly
Plant Manager

ELKEM METALS COMPANY L.P. P.O. BOX 613; ROUTE 60 EAST; ALLOY, WV 25002-0613
Telephone: (304) 779-3200 • *Telecopier:* (304) 779-3297

Quality is Our PRIORITY

August --, 2000

Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

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Beginning with the extremely low trigger levels for alternative analysis and socio/economic review under Tier 2 and the number of streams included by default in the Tier 2.5 category. Particularly offensive to the landowner is the provision granting anyone the power to nominate any good stream "park like" status even though it is on private land. Nor is any provision made for compensation to the landowner for expenses incurred in defending his rights as a landowner or to compensate for any losses incurred.

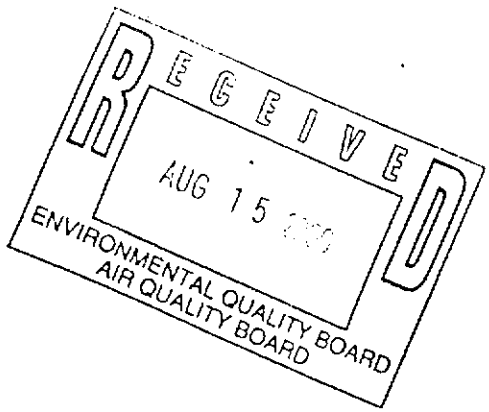
Tier 2.5 being the most restrictive stream categorization under this policy takes in almost every major river in WV. Further, as a landowner I do not feel adequate representation has been granted to permit our input into this decision making process, again giving those not living on or making a living from land power to decide how it is to be used.

These are issues I feel need to be changed to be more conducive to the needs of continued effective environmentally sound agricultural practices.

Sincerely,

Halene Ogden

August --, 2000



Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

After reading the West Virginia Antidegration Document prepared by your office I find several aspects of this proposed policy to be particularly restrictive to wise land use.

Beginning with the extremely low trigger levels for alternative analysis and socio/economic review under Tier 2 and the number of streams included by default in the Tier 2.5 category. Particularly offensive to the landowner is the provision granting anyone the power to nominate any good stream "park like" status even though it is on private land. Nor is any provision made for compensation to the landowner for expenses incurred in defending his rights as a landowner or to compensate for any losses incurred.

Tier 2.5 being the most restrictive stream categorization under this policy takes in almost every major river in WV. Further, as a landowner I do not feel adequate representation has been granted to permit our input into this decision making process, again giving those not living on or making a living from land power to decide how it is to be used.

These are issues I feel need to be changed to be more conducive to the needs of continued effective environmentally sound agricultural practices.

Sincerely, Adam Ogden

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

HC 69, Box 9
Milam, West Virginia 26838
August 13, 2000

Environmental Quality Board
1615 Washington Street, Suite 301
Charleston, West Virginia 25311-2126

Re: Proposed Anti-degradation Regulations

Dear Sirs:

My personal background is that the land I live on now has been in my wife's family for over 200 years. My mother was raised on a farm that has been in her family for over 200 years. I grew up helping to farm pasture land that has been in my father's family for over 130 years. This land is in the proposed Tier 2.5 and above the Tier 3 designated areas.

To me, these proposed regulations seem to be saying that, while private ownership has maintained water quality to this point, the landowners are no longer to be trusted to maintain water quality in the future. They also say that farmers who do not do business according to these recommendations will be put out of business (without reimbursement for loss of use of their land). This is especially what the regulations seem to be saying in relation to pasture land.

Although my family's pasture lands at the headwaters of Laurel Fork (above Tier 3) are called "natural balds," this is misleading. My grandmother used to call this "the burn," because the original forest was either timbered and burned or girted and burned to create the pasture that is there now. This pasture is a beautiful and unique ecological niche that is currently maintained by grazing. Lands purchased in this area by the National Forest are rapidly growing thorns as the first stage of reforestation. In order for us to maintain these unique grasslands, we need to be allowed the freedom to earn a reasonable living from them by grazing.

Coming from a background including over 200 years of family farming, I recognize the importance of clean water. On the property I am farming now, we are trying to implement Best Management Practices (BMP's). When I moved here 6 years ago, several ponds needed to be cleaned out and fenced, and we needed water troughs. This was not practical until we got drought relief funds in 1999. The most well-conceived BMP's cannot be implemented if farmers cannot afford them.

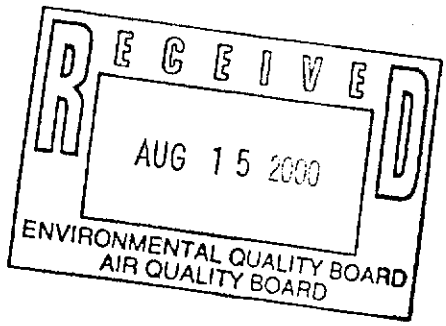
The Nature Conservancy has recognized that landowners have to make a living off their land. In Maine, they have developed a program of timbering on some of their land in order to demonstrate how logging can be done in a fashion that does not damage the environment. I hope that as you consider these regulations, you will recognize that farmers also have to be able to make a living off their land, and will not make the requirements so stringent that we are put out of business.

Sincerely,

John Andrew Wilkins

John Andrew Wilkins

HC 69, Box 74
Brandywine, West Virginia 26802
August 13, 2000



Environmental Quality Board
1615 Washington Street, Suite 301
Charleston, West Virginia 25311-2126

Re: Antidegradation Regulations

Dear Sirs:

The antidegradation regulations you are proposing will likely shut down my farm. It lies in a bend in the South Fork of the South Branch of the Potomac in Hardy County, an area proposed for inclusion in Tier 2 of these regulations.

The income from my land is important to me, and I fear it will be lost if these regulations are implemented. While the people farming it for me try to use Best Management Practices (BMP's) it is difficult to make sure they are abiding by all the many rules already in place.

BMP's can also be expensive to put into practice. Occasionally we can get funding for drought relief or other special programs, but this is not consistent and I have learned not to count on it.

If the land cannot be used for agriculture, it will become a liability to me, because much of it lies in the flood plain and could not be sold for many other purposes.

Clean water is important; so are the individuals and families who have to have the income from their land. I hope you will consider the people as well as the water when you make your decision.

Sincerely,

Margaret D. Rexrode

Margaret D. Rexrode

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

HC 69, Box 9
Milam, West Virginia 26838-9404
August 13, 2000

Environmental Quality Board
1615 Washington Street, Suite 301
Charleston, West Virginia 25311-2126

Re: Proposed Stream Anti-Degradation Regulations

Dear Sirs:

As a private landowner in West Virginia, I must oppose the proposed stream anti-degradation regulations in their present form. If these regulations are implemented and extended to include all eligible streams in West Virginia, agriculture in the state will be devastated. Some eighty per cent of the land in the state will be affected by these regulations.

The lands included in the proposed Tiers 2.5 and above will essentially be rendered useless for farming. They will also be useless for timbering and it is unlikely that they could be sold for recreation with so many regulations in place. Yet the farmers will continue to be taxed on the land from which they can no longer make a living. The land will then become a liability, and farmers will sell--if they can find buyers.

I am the eighth generation to live on the land I now help to farm. We must have been doing something right during that time, because the land has continued to produce, and the river surrounding it is a favorite of boaters and fishermen.

No one can argue that clean water is important. I believe, however, that the practices of present landowners and graziers have contributed to the quality of such streams as Laurel Fork. If the farmers upstream were not taking care of their land, the wilderness area downstream would not have its presently high water quality.

We try hard on our farm to implement Best Management Practices because we recognize the importance of taking care of the land and the water. Under these regulations, however, our efforts could be in vain if the inspectors do not approve of them. We would then have lost our ability to make anything from the land, and would not be compensated at all by the government which had shut us down.

These proposed regulations will mean the end of family farms in West Virginia. Farmers who are already struggling financially may well decide that owning useless land and paying taxes on it is not worthwhile. Abraham Lincoln described government in the United States as "of the people, by the people, and for the people." Please remember the livelihoods of the people you represent as you consider these regulations.

Sincerely,

Carmen R. Rexrode

Doyle Coakley
P.O. Box 345
Cowen, WV 26206

August 13, 2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter:

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. As I was unable to open the file at the Secretary of State's web site I will make my comments short and address only my major concerns.

The grandfather clause for existing facilities should be removed and all permits should be required to go through an anti-degradation review as required by federal clean water laws.

All automatic exemptions for specific chemicals or pollution sources should also be removed.

Also the anti-degradation rules should address the problem of cumulative impacts to our rivers and streams.

Thank you for your attention to my concerns.

Sincerely

Doyle Coakley

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Box 334
Belington, West Virginia
August 13, 2000

Environmental Control Board
1615 Washington Street, Suite 301
Charleston, West Virginia 25311-2126

Dear Board Members,

We are writing this letter in strong opposition to the "Antidegradation Implementation Policy" program. This is just another step in taking away a citizen's right to own and manage private property. It has been a goal to work for and acquire private property since the inception of the Constitution. Since that time we have seen the steady erosion of this right.

This program if ,allowed to be implemented ,will give the power of management of private property to the government. WE NEED FEWER GOVERNMENT REGULATIONS---NOT MORE! Our current regulations are fairly strict and do a good job of keeping water standards high.

Sincerely,

Robert C. Donaldson

Joan Donaldson

RECEIVED
AUG 15
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

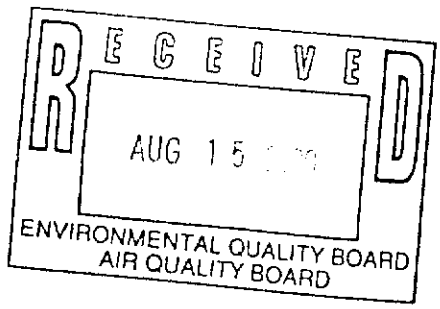
Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations...for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Deborah Fitzner
P.O. Box 69 Pellow Spring, WV 26865

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126



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Sincerely,

Joan Mathias
HC 63 Box 300C
Wardensville WV 26851

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

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Sincerely,

Caroline Henn
POB 69
Yellow Spring, WV 26865

RECEIVED
AUG 15
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

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Sincerely,

Mary A. McDonald
HC68 Box 109B
Wardensville, WV 26851

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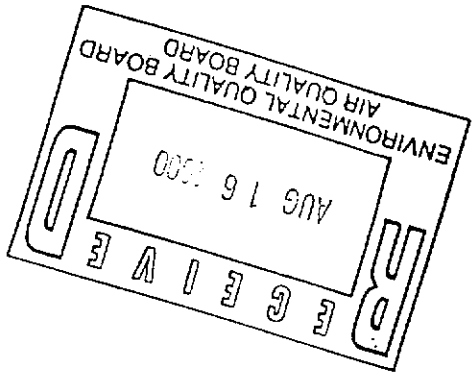
Sincerely, Robert H. Handley

HC 67 Box 508
Renick, WV 24966

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

August 16, 2000

SUBJECT: EPA's comments to proposed regulations



FROM: Mary Kuo
EPA, Region III

TO: Libby Chatfield
West Virginia Environmental Quality Board

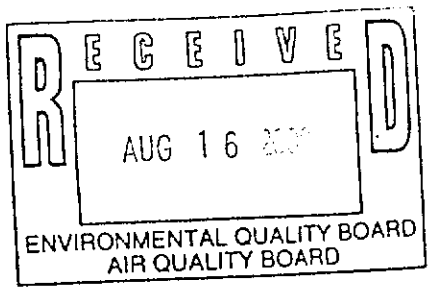
The purpose of this memorandum is to provide clarification on comments submitted by EPA Region III regarding the Environmental Quality Board's proposed revisions to West Virginia's water quality standards regulations. Specifically, we had provided detailed recommendations to the proposed antidegradation implementation procedures contained in Appendix F.

In Enclosure 1 of our letter dated August 16, 2000, we had suggested that the Board delete part of Section 4A.1. from the proposed implementation procedures. We had not intended to strike out the entire second half of the first sentence, but rather that the sentence read:

> "4A.1. The antidegradation implementation procedures herein are intended to apply to all ~~new and expanded~~ regulated activities that have the potential to affect existing water quality."

Please include this memorandum as an attachment to EPA's written comments. Otherwise, feel free to contact me with any questions.

August 14, 2000



Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

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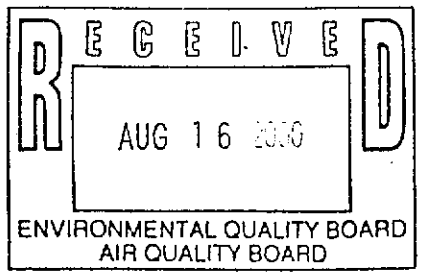
Tier 2.5 being the most restrictive stream categorization under this policy takes in almost every major river in WV. Further, as a landowner I do not feel adequate representation has been granted to permit our input into this decision making process, again giving those not living on or making a living from land power to decide how it is to be used.

These are issues I feel need to be changed to be more conducive to the needs of continued effective environmentally sound agricultural practices.

Sincerely, Kevin Howard

August 14, 2000



Environmental Quality Board
1615 Washington Street
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Sincerely,

Marshall Shearer

RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Aug. 14, 2000

Dear Environmental Quality Board Members,

Please hear this West Virginia resident's plea to STOP the Proposed plan that's in the making to adopt a water quality policy. The Antidegradation Iimplementation Policy will make it harder and more expensive to obtain a water related permit.

This plan is being made to change the regulations of water quality throughout our state. Don't get me wrong, I'm for clean and safe water. It's vital that poluting our streams cease. Why isn't this your 1st. priority. I know the laws are written, but they aren't persevered.

It appears the left-wing environmental extremists think they can tell West Virginians what they can do with their land. Gov. Underwood has said no to them; But there seems to be a part of this word they don't understand. They appear to be taking over elsewhere and want to over rule our Governor and state too.

I know they have a powerful lobby and often influence our legislators, alongwith legislation. Their aim is to get our property for wild animals, that's evident.

The government has appropriated hundreds of millions of dollars to buy up private property. Little by little environmentalist are forcing strict regulations on the private property owner, and soon we can't farm our own land. Are they trying to put the farmer out of business? Who will feed you then?

The environmental extremist caused the taxpayers millions, as they used every excuse possible to shut down Corridor H. These extremists often use taxpayer's money to fund their crusades. They seem to be very effective taking over. They have already seen the end of coal industries in our state. Now their sight is set on the timber and farming on our own property.

I'm desperately alarmed that these environmental extremists get control of our private property and then tell us what we can and cannot do on our own land. This is America, why are we being subjected to such a dictator group?

The WV Environmental Quality Board is currently regulating strict enough, and are doing a good job of keeping water standards high. We don't need our state put under park like status restrictions. Your proposed plan, can be nominated for park like status, even on our private property. No one should have this kind of power over our property. For generations our ancestors have cleared and tilled our land. Wild animals have lived among us unharmed. They are not in danger, but humans are. Please protect us humans and put us 1st. when you're developing future plans. Please protect our private property rights, and do not draft this current plan as is to be voted on by our legislators. We don't need the water rights regulated by extremists on our own property, thank you...

A Concerned Citizen and Tax Payer,
Truman L. Phillips

Truman L. Phillips

RECEIVED
1 6 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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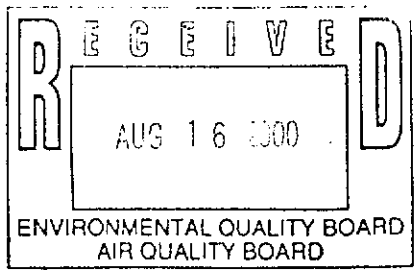
Sincerely,
Max Prichard
Lower Paint Creek Assn., Inc.

August 14 2000



Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

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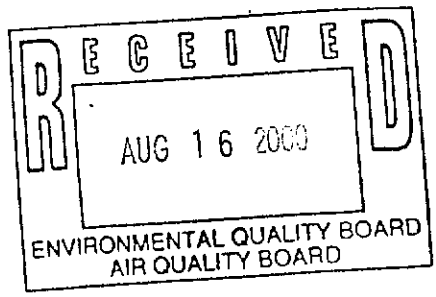
Sincerely,

Jim Howell

August 14, 2000



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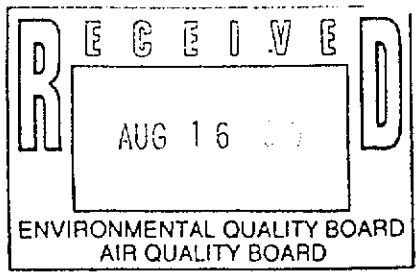
Sincerely, Conley D. Ogden

August 14, 2000



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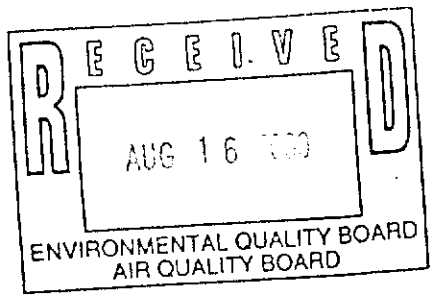
Sincerely,

Justin Arbogast

August 14, 2000



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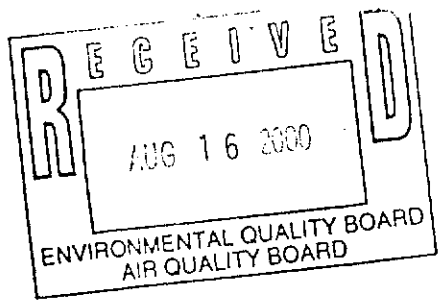
Sincerely,

Evelyn L. Jenkins

August 14, 2000



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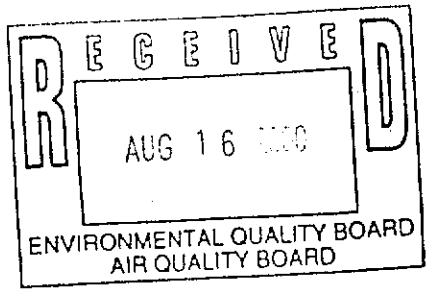

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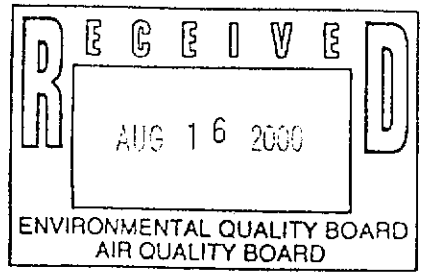
August 14, 2000



E Q B
1615 Washington St.
Suite 301
Charleston, W. V. 25311-2126

To Whom It May Concern:

I own a farm in the Laurel Fork River headwaters. I have worked hard to pay for this farm and still owe for some farm machinery. My husband and I bought this farm in 1961 and have done a good job keeping the water clean. Current regulations do a good job to keep water standards high.

I am against the plan being drafted in Charleston to control our private property. This plan is costly and unfair and a more stringent policy than those of our neighboring states. If this plan is put into effect the value of our land would be greatly devalued. The state would be much less attractive to new businesses.

Farmers of our state provide safe and affordable food for our country. We take care of our environment around us and have worked to implement practices on our farm to increase production.

The EPA should not bypass our state's rights to regulate our own water granted in the Clean Water Act. Why get a new plan when the old one works?

Linda Arbogast
A Farmer

P. S.
I request the names and addresses of the members of this board.

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

P.O.Drawer 10
Harman, WV 26270

August 12, 2000

Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

I want to voice my objection to some aspects of the West Virginia Antidegradation Document.

One of them is the provision granting anyone the power to nominate any good stream "park like" status even though it is on private land. Also, there is no provision for compensation to the landowner for expenses he may incur.

I feel there should be ample representation in the decision making process for those who are land owners and those making a living from the land.

I also question the stringent regulations for West Virginig in comparison to other states in regard to the Tier 2.5.

I would appreciate your consideration in this matter.

Sincerely,

Louis Pierantoni
Arlene Pierantoni

Louis and Arlene Pierantoni

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August --, 2000

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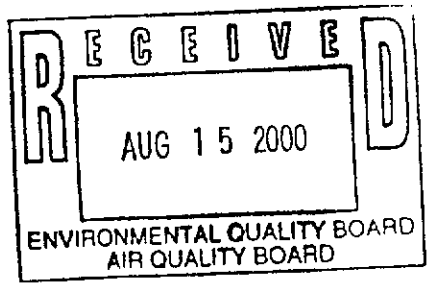
Sincerely,

Gregory L. Schumacher
110 Vector Avenue
Elkins, WV 26241

August 9, 2000



Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation Implementation Policy

Gentlemen:

With regard to the West Virginia Antidegration Implementation Policy I would like to comment.

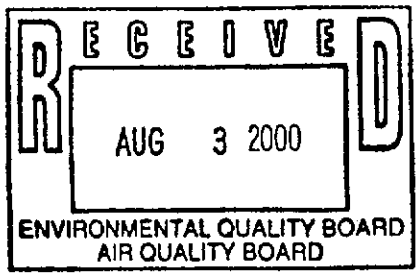
As a West Virginian, I am concerned about our water quality and believe we have the resources available to keep our streams clean and improve those that have been polluted in the past.

However, in our endeavor to improve and preserve these waters it is incumbent upon the policy makers to respect the rights of the property owners involved. Therefore, I am stating my disagreement with your proposed amendment section **46-1-4.1.d** "Additional waters may be nominated for inclusion in that category by any interested party or by the Board on its own initiative. To designate a nominated water as an outstanding national resource water, the Board shall follow the public notice and hearing provisions as provided in **46 C.S.R. 6**". (Underscore added.) Stated as such you have given broad powers to impact a property by persons not owning the property in question. Furthermore, there are no provisions for the landowner to be compensated for defense of property or loss of land.

It is needful for the Environmental Quality Board to be mindful of the basic rights of all property holders and correct this section to reflect that right before the Antidegradation Implementation Policy goes before the legislature.

Sincerely,

Gregory L. Schumacher PE



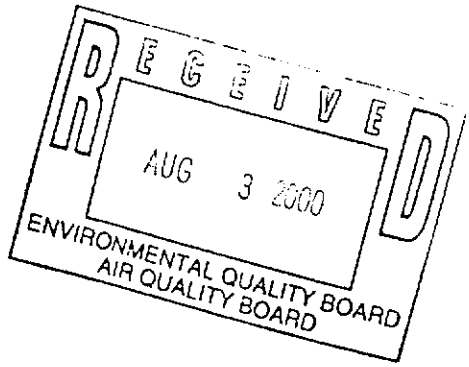
Subject: draft Anti-degradation Implementation Procedures
Date: Thu, 03 Aug 2000 20:12:52 +0000 (GMT)
From: Mary Wildfire <mwildfire@hotmail.com>
To: chatfe@wvnet.edu

Dear Doctor Snyder and Doctor Tarter,

I want to make one point about this proposed plan. The inclusion of grandfathering for dirty old plants is unacceptable and unjust. It's primarily unjust because it says that people affected by old pollution sources must accept being affected forever-- why? Is old, chronic pollution somehow harmless? Why shouldn't we finally catch up to the standards of thirty years ago?
Secondly, this grandfathering is unjust to business. Why should a potentially competing new business have to work to one set of standards while an existing business enjoys special exemptions? This is anti-competitive and I can see no justification for it.
Please remove these unreasonable provisions.
Thank you, Mary Wildfire, Rt 2 Box 66, Minnora WV 25268,
mwildfire@hotmail.com

Get Your Private, Free E-mail from MSN Hotmail at http://www.hotmail.com

July 27, 2000



To: Division of Environmental Protection
Charleston, WV

From: Clark Judy
Route 1
Burnsville, WV

Re: Comments on the antidegradation implementation procedures

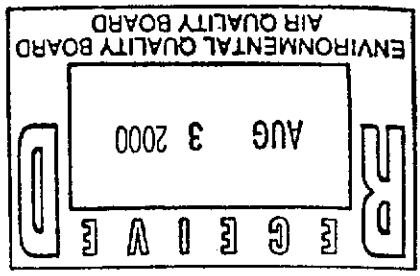
I understand that the proposed antidegradation implementation procedures are similar to those being implemented in other states, with the possible exception of the "trigger value" for Tier 2 analysis and review. As a result, I am going to focus my comments on a couple of components that are related to the practical implementation of the procedures:

1) The collection of water quality data, to EPA QA/QC standards, to properly document the existing and potentially impacted conditions, could be quite expensive.

2) It appears that the antidegradation issues will have to be tied to the TMDL issues. This seems to be a rather vague area technically, especially if one takes the position that water quality models serve better in comparative roles as opposed to predictive roles.

3) The question of how property development values (which may be impacted) will be handled does not seem to be fully addressed. Will there be funding for environmental easements and other "tools"?

Overall, the concept appears to have value, but I don't understand how West Virginia proposes to implement it, from a realistic viewpoint.



Subject: Comments on Proposed Antidegradation Implementation Policy
Date: Thu, 03 Aug 2000 09:53:09 -0400
From: Pam Kasey <buckwheat@imagixx.net>
To: chatfe@mail.wvnet.edu

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about several aspects of the proposed antidegradation implementation policy.

First, I do not believe that the term "antidegradation" allows for 5% degradation, nor that the Clean Water Act intended that allowance. Please remove this de minimus value from your policy.

Closely related is the absence of provision for cumulative impacts. How can a permitting authority make any judgment about a particular discharge without taking into account the pollutants from all sources, point and nonpoint? Cumulative impacts must be address in order for your policy to be effective.

Finally, the idea that existing industries should be grandfathered is shameful. Had they ever been subject to antidegradation review in the past, this might make sense, but exempting them from review retroactively and perpetually clearly goes against the sense of the Clean Water Act. The Environmental Quality Board must correct the state's past failure by subjecting all permits to antidegradation review.

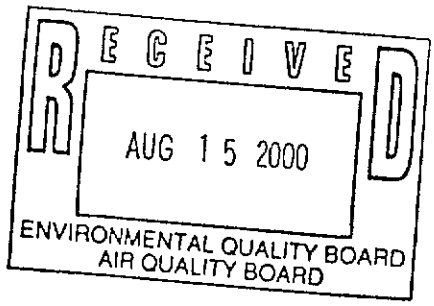
Thank you for your work in defense of our state's waters, and for considering my comments.

Best wishes,

Pam Kasey

Pam Kasey
2921 Halleck Road
Morgantown, WV 26508

voice: 304/291-8205
fax: 304/291-0979
buckwheat@imagixx.net



Subject: Proposed Antidegradation Implementation Policy
Date: Tue, 15 Aug 2000 10:57:27 -0400
From: Katherine Payne <k6545@access.mountain.net>
To: chatfe@mail.wvnet.edu

To Whom It May Concern:

Please know as a member of Friends of Decker's Creek and resident of South Park, I

very much wish to see clean water flowing through the area. There is a tremendous

effort and expense going into the restoration of clean water throughout the area of

headwaters of Decker's Creek. Please tighten up the restrictions in the policy

proposed in order to preserve these results. What good is a Clean Water Act

if there are loopholes a boulder could fall through????? The citizens want and

deserve clean water. Our grandchildren, too.

Thank you for your attention in this vital matter.

Sincerely,

Katherine Payne

Subject: Comments on Anti-Degradation
Date: Wed, 16 Aug 2000 12:48:21 -0400
From: paul burke <numbersinstitute@juno.com>
To: clerk@mail.wvnet.edu
CC: numbersinstitute@juno.com, dflatterell@earthlink.net, pmoe@neumedia.net

Honorable Members of the Environmental Quality Board:

I want to add my voice to the calls for strong rules against degrading our water quality.

I live on the Potomac River, outside Shepherdstown. There are 6,000 square miles of Potomac watershed upstream of me, much of it in West Virginia. Truly I live downstream, and you live upstream. Every degradation upstream affects the river here and below, on its way to the Chesapeake Bay. Degradation is cumulative.

Please do not allow ANY degradation, unless it is more than mitigated by improvements upstream of the point of degradation, so the rest of us downstream do not suffer.

Do not allow existing polluters free flow forever. Bring them steadily into compliance. Just coming into compliance is easier on river polluters than they would face on land: On land they would have to stop dumping and would eventually face the costs of cleaning up the old waste on their property! Stopping river polluters still leaves the river bottom polluted, and I will suffer from it for years.

Further downstream still, Maryland and Virginia are involved in lawsuits over Virginia's sewage in the Potomac. Maryland can sue us too. Don't set us up to waste our tax funds on legal defences against Maryland. Just keep the rivers clean in the first place.

Sincerely,

Paul Burke
Citizens for Jefferson's Future
PO Box 1320
Shepherdstown, WV 25443
304-876-2227

LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA
2023 Huber Road
Charleston, WV 25314
Phone 304-342-2706
FAX 304 342-1377

RECEIVED
JUL 27 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

July 25, 2000

West Virginia Environmental Quality Board
1615 Washington St. East, suite 301
Charleston, WV 25311-2126

The League of Women Voters of West Virginia wishes to comment on the proposed Anti-Degradation policy promulgated by the Environmental Quality Board.

46-1-4A-1

After the stakeholders' draft was issued, there were some criticisms which we believe could be ameliorated by making an addition to 46-1-4A-1.

The League suggests the addition of the following words after the first sentence. "The Director of the Division of Environmental Protection may determine that antidegradation implementation procedures apply to existing activities when the monitoring trend analysis so indicates."

Socio-economic review

The League favors Option 2 because an established panel made up of personnel from the concerned agencies to review the permit applications would develop the necessary expertise.

We all suggest that a limited review might be necessary for some of the general permits when these permits could cause the degradation of our waters.

4C.2.a.1.A

We are pleased that the EQB supports the 5% demininus for both ambient and assimilative waters. We hope by establishing the 5% for assimilative waters, it will prevent deleterius accumulation of pollutants.

Trading

We support the trading concept because we believe it has the potential for improving water quality especially when nonpoint pollution is causing harm: but we would like to have seen the prevention of "hot spots" and an improvement ratio. We want to be assured that "improvement in water quality" results in substantial reduction of pollution.

Nominating Procedures for Tier 2.5 and 3 Waters

We favor retaining the inclusion of "any interested party"'s right to nominate 2.5 and 3 waters.

Sincerely,

ES/HG

Helen Gibbins

Ellender Stanchina, President
2023 Huber Rd.
Charleston, WV 25314

Helen Gibbins, Natural Resources
6128 Gideon Rd.
Huntington, WV 25705

RECEIVED
AUG 2 2000
ENVIRONMENTAL QUALITY BOAF
AIR QUALITY BOARD

WEST VIRGINIA DIVISION

The Izaak Walton League of America
Incorporated

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter.

PRESIDENT
Don McClung
79 E. Main St.
Richwood, WV
26261

VICE PRESIDENT
Fred Ford
P.O. Box 921
Shepherdstown, WV
25443

SECRETARY
Marion Meade
P.O. Box 2600
Elkins, WV
26241

TREASURER
Gary R. Meade
P.O. Box 2600
Elkins, WV
26241

NATIONAL DIRECTORS
Marie Cyphert
Gary R. Meade

ENDOWMENT BOARD
Dr. Larry Smith

The members of my chapter of the Izaak Walton League would like to offer the following comments on your draft Anti-degradation Implementation Procedures. Our membership cares deeply about West Virginia's rivers and streams, and we believe this policy should protect our waterways to the full extent of federal law. With that position stated, our members would like to draw your attention to the following comments and requests concerning your policy statement.

*The document's grandfather clause should be removed, and ALL permits be subject to an anti-degradation review. We feel some of our worst polluters are older industries and facilities. Federal clean water laws require both new and existing permits be covered by this policy.

*Cumulative impacts which can be extremely harmful, and do as much, if not more, damage than single pollutes to rivers and streams, should be addressed in this document.

*De minimus value, the degree that waters can be maximally polluted, should not be part of this policy. Anti-degradation literally means "no degradation." Allowing the policy to state water can be polluted to an acceptable level before a review occurs, is contrary to the intent of the law and unacceptable to our membership.

*We ask that all exemptions be removed from the policy. The purpose of the policy is to review activities and allow a continuation if there is positive social benefits. Activities that seek exemptions claim to be beneficial. We believe you should allow the policy to run its course for this determination.

*We ask that an Intergovernmental Coordination Process that is adequate and functional be developed. Along with the listing of various departments and agencies in this policy, a determination of how they will interact and react to anti-degradation reviews needs to be included. The same is true for the State Continuing Planning Process. Both need to fully meet requirements to protect existing uses.

*Specific language needs to be added to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade, allowing the most miniscule improvement of water quality in one river or stream to possibly allow for significant pollution in other waterways.

*We request the removal of the 110% cost provision of the Reasonable Alternatives definition and "additional parameters of consideration" be added. Otherwise, the agency would not have authority to request the use of an exceptional alternative that costs 111% of the original proposal.

*The above suggestions are offered on issues of concern to our membership. We ask that you give consideration to incorporating these suggestions into the anti-degradation implementation policy. Our membership is confident the EQB will initiate rules and regulations for the protection of surface waters and ground waters of the State, along with strengthening the draft policy in accordance with federal requirements.

Sincerely,

Don McClung

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AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

P.O. Box 26
Cecilton, MD 21913
July 29, 2000

Environmental Quality Board
1615 Washington Street, Suite 301
Charleston, WV 25311-2126

I am writing pertaining to the proposed Antidegredation Implementation Policy as it could affect the agricultural business in West Virginia , and in particular, small farmers.

Although presently living outside the state, I own a home in Pendleton County and other property in Pendleton and Randolph counties. Since before the first generation of my family was scalped by the Indians in 1758, my family has tended the land in Pendleton but if some of the proposals which you now espouse are enacted, then not only my family but many others who for many years have been good stewards of the land will be driven from their long established homes.

Small farmers do not have the financial resources to combat the nit-picking tax-funded regulators whose restrictions regarding water quality are being proposed. These farmers are also apparently being considered throwaway citizens as there are no provisions to compensate them for their land loss if it is confiscated by the government. To intimate that private owners shall be deprived of their source of livelihood because of " purposes designated by the state" is suggestive of socialism and not that of a republic of free men.

In regard to western Pendleton and eastern Randolph counties, it is self-evident that this country is in good hands. Its owners have been guardians of the land for decades as evidenced by many pristine streams which traverse it. There are no paved roads which invite hoards of rampaging "sportsmen" to despoil the sometimes fragile environment.

To transform this most positive example of private ownership into part of another governmental bureauocracy which could easily become an eastern version of 'burning land to save it' (as in New Mexico) would be the height of folly.

If these lands had not been kept in an enviable condition, would the state then lust after them so hungrily?

It seems to me that you would be better served to protect the streams in southern West Virginia into which whole mountain tops are being dumped.

With exploding worldwide population growth, it is imperative that the farmers of this nation be encouraged to provide for those billions of people rather than be subjected to regulatory excesses.

Sincerely,

Jacqueline W. Upp

Jacqueline Wilkins Upp

8-1-00

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AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Here are my comments on your draft Antidegradation Implementation Procedures:

1. I object to the concept of a"de minimus" value that would allow clean streams to be polluted down to a certain level.

2. I object to the "grandfathering" clause that would exempt existing permits from review. All permits should be required to go through an antidegradation review, not just new and expanded ones. Some of the worst polluters are the older industries.

3. The policy should address the cumulative impacts of pollution sources to our rivers and streams. Language should be added to address cumulative impacts during the review process.

4. Activities that seek exemptions are claiming they are beneficial. Allow the antidegradation policy to run its course and determine this. Exemptions should be eliminated from the policy.

5. The policy contains no specific procedures for Intergovernmental Coordination and State Continuing Planning processes. Neither of these processes as currently proposed meets the requirement to fully protect existing uses.

6. The policy does not define "improved water quality" as a result of trading pollution credits. Any small improvement of water quality in one river or stream could allow significant pollution in another.

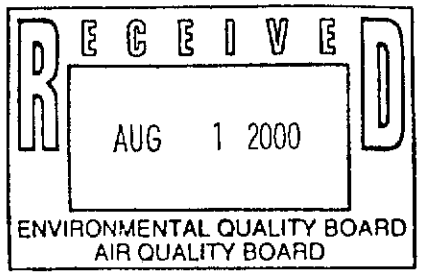
7.The policy contains a 110% cost provision in the Reasonable Alternatives definition. This should be removed. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Sincerely,

Julian Martin
1525 Hampton Road
Charleston, WV 25314

P.O. Box 395
Franklin, West Va. 26807
July 29, 2000

Environmental Quality Board
1615 Washington Street Suite 301
Charleston, West Va. 25311-2126



Gentlemen:

I am writing concerning the proposed regulations for the head waters of the Laurel Fork Wilderness area.

For many years my family has owned property that drains into the Laurel Fork. I was blessed to inherit some of the land.

We have always been good stewards of the property, as have our neighbors. We don't over-graze or spread chicken litter or other noxious materials. Our cattle are fed no hormone or other dangerous and controversial substances.

The Laurel Fork is probably the most remote and cleanest fork of the five forks of Cheat.

Farmers have had a difficult time making a living off the land in recent years. Please take this into consideration if you draw up any regulations. Do not make it more difficult for some of the most substantial citizens of the state, who love their land and take good care of it, as well as their streams.

Sincerely,
Mary Dyer Dalen

3311 W. Coquelin Terrace
Chevy Chase, MD 20815
July 27, 2000

Environmental Quality Board
1615 Washington Street, Suite 301
Charleston, WV 25311-2126

Re: West Virginia Antidegredation
Briefing Document

Gentlemen:

As a landowner in West Virginia I wish to make the following comments:

While the rivers and streams are trying to be protected, what protection is there to the animals and wild life!

Please consider these suggestions:

1. Allow the landowners to vote on any change regarding their property
or
2. Forget the whole proposal and let "Wild, Wonderful West Virginia" remain as it now exists.

Sincerely,

Rebecca Dyer Brawley

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JUL 31 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Walker

Cecil I. Walker Machinery Co.

Corporate Office
P. O. BOX 2427
CHARLESTON, WV 25329
(304) 949-6400
FAX (304) 949-7272

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JUL 31 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

July 28, 2000

Dr. Edward M. Snyder, Co-Chair
Dr. Donald Tarter, Co-Chair
West Virginia Environmental Quality Board
1615 Washington Street, East
Charleston, West Virginia 25311

Re: 46 CSR - I - Water Quality Standards
Antidegradation Implementation Procedures

Gentlemen:

I am Executive Vice-President for Cecil I. Walker Machinery Co. at its Belle, West Virginia, facility. I understand that the West Virginia Environmental Quality Board may adopt antidegradation implementation procedures which will greatly restrict the ability of businesses and industries to receive permits to discharge water to West Virginia's rivers and streams.

Over the past few years, Walker Machinery has experienced a serious decline in its workload and employment opportunities because of the loss of jobs due to environmental uncertainty in the mining and construction industries of West Virginia. Walker Machinery is a West Virginia-owned family business that has been in existence for over 50 years. Our employees earn excellent wages and benefits, and the majority of our production employees are represented by the International Union of Operating Engineers, Local 132. If the current trend of enacting unreasonable environmental regulations with little regard to the long-term economic ramifications continues, the viability of our business, along with many others, may be in jeopardy. This has the horrific potential of placing nearly 600 people out of work and eliminating a $25 million annual payroll from the state's economy.

I left West Virginia to find work due to the lack of employment opportunities in the early 1980's. Fortunately, I was one of the few able to return home to pursue a career. I have no desire to leave the state again, and hope that my daughter has the same opportunity as I to work in our family business some day.

I urge the Environmental Quality Board to consider the effects of its proposed antidegradation procedures not only on those businesses that have discharges to State waters, but also on facilities such as Walker Machinery that serve those businesses. Thank you for the opportunity to comment.

Sincerely,

Michael S. Walker
Executive Vice President

Branch Offices

4010 EMERSON AVENUE
PARKERSBURG, WV 26101
(304) 424-0200
FAX (304) 424-0208

P. O. BOX 981
1477 MAYHEW ROAD
JACKSON, OHIO 45640
(740) 286-7565
FAX (740) 286-6040

RT. 16 SOUTH
CRAB ORCHARD, WV 25801
(304) 253-2706
FAX (304) 253-0891
(304) 683-3222 Hydraulic Shop

815 MAIN STREET
P. O. DRAWER D
SUMMERSVILLE, WV 26651
(304) 872-4303
FAX (304) 872-4392

P. O. BOX 9189
837 ADAMS AVENUE
HUNTINGTON, WV 25704
(304) 526-4800
FAX (304) 526-4807

RT. 10
P. O. BOX 307
LYBURN (LOGAN), WV 25632
(304) 752-0300
FAX (304) 752-4019

#5 PARK ROAD
HUB INDUSTRIAL PARK
NITRO, WV 25143
(304) 759-0400
FAX (304) 759-7007

HOMESEEKERS
LLC
2955 Robert C. Byrd Drive Drawer 1818 Beckley, WV 25802-1818 (304) 252-7377

July 27, 2000

Edward M. Snyder Ph.D., Co-Chairman
Donald C. Tarter Ph.D., Co-Chairman
West Virginia Environmental Quality Board
1615 Washington Street East
Charleston, WV 25311

RECEIVED
JUL 28 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

RE: Proposed Amendments to 47 CSR 1

Dear Sirs:

The proposed changes to the above regulation include a new Appendix F that sets out the requirements of the state's antidegradation implementation policy. I am concerned that the proposed regulation will impose unnecessary and expensive requirements on small businesses and the towns and cities of the state. I understand that other states, when faced with the EPA requirement to have such a program, have generally chosen less impacting programs.

I can understand the desire to preserve the quality of West Virginia's streams. I fully support this goal. But I can not support a program that imposes unnecessary and overly restrictive requirements on the citizens of this state. I believe that other states are also interested in preserving their water quality and have yet to hear an explanation as to why our program imposes such higher costs and additional administrative burdens on those discharging such small amounts to so many streams.

I think it would be in the best interest of the state of West Virginia's antidegradation rule to be no more stringent than our surrounding states. I understand that both Indiana and Ohio set the trigger for requiring a full antidegradation review in High Quality water at a higher, but still quite protective level. I request that the Environmental Quality Board set the trigger level for West Virginia at a level that is no more restrictive than these neighboring states.

I also recommend that the Environmental Quality Board assign neither of the two highest classification schemes to any stream without full opportunity for public input on each individual stream. This would include any stream that could be considered to meet the definition of Tier 2.5 waters contained in the existing regulation.

I appreciate the opportunity to offer these comments and ask the Environmental Quality Board to accept and act upon these recommendations.

Sincerely,

James E. Songer, II

REALTOR®

The Senate of West Virginia
Charleston

EDWIN J. BOWMAN
129 West Circle Drive
Weirton 26062
(304) 723-1479
(304) 723-1473 Fax

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AUG 3 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

COMMITTEES:
Government Organization
(Chairperson)
Confirmations
Interstate Cooperations
Finance
Labor
Natural Resources
Small Business

August 3, 2000

Environmental Quality Board
1615 Washington Street East
Charleston, WV 25311

Dear Board Members:

As a member of the West Virginia Senate, I am concerned about the proposed anti-degradation regulation currently under review by the Environmental Quality Board. I understand that the Board has utilized a stakeholder process in the development of this rule, but that there are many provisions in the rule on which the stakeholders could not reach agreement. I congratulate the Board for its efforts to bring together diverse interests in the development of this rule. Based upon the comments I have received from my constituents, however, it appears that there is more work that must be done before the rule should be accepted by the Legislature.

I favor a rule which satisfies the requirements of the Clean Water Act and the West Virginia Water Pollution Control Act, but which does not put West Virginia businesses at an economic disadvantage relative to businesses in other states. If the Board is able to develop a rule which accomplish this end, I am prepared to lend my support to any necessary changes to the rule. This appears to be one of the most significant rules our Legislature will address in the 2001 Regular Session.

Thank you for your efforts and your service on the Board. My comments are offered with the hope that you will continue to work on this rule to develop an acceptable anti-degradation implementation procedure for West Virginia. Please enter my comments on the formal record established for this issue during the comment period which expires August 16, 2000.

Very Truly Yours,

Edwin J Bowman

Edwin J. Bowman
1st Senatorial District

Subject: anti-degradation - Clean Water Act
Date: Sat, 5 Aug 2000 20:05:52 -0400
From: "D. Greene" <wdg@inetone.net>
To: <chatfe@mail.wvnet.edu>

West Virginia has one good thing going for it - many of the streams and rivers are relatively clean. I'd like to keep it that way. Grandfathering and those numerous exemptions are a terrible idea. PLEASE, don't let the false promise of a few jobs and pressure from a few people mess up our rivers and streams. As a school teacher here in Greenbrier County, I'd like to leave something for our children I can be proud of - clean water.

Sincerely,
Dan Greene
35 Rowan Road
White Sulphur Springs, WV 24986

CHRISTINA M. LUNDBERG
765 GRADE ROAD
FALLING WATERS WV 25419

RECEIVED
AUG 4 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 1, 2000

Dr. Edward Snyder, Co-Chair
Dr. Donald Tarter, Co-Chair
West Virginia Environmental Quality Board
Suite 301
1615 Washington Street, East
Charleston WV 25311-2126

Dear Drs. Snyder and Tarter:

I care deeply about the rivers and streams in West Virginia and your draft Anti-degradation Implementation Procedures policy should be changed to protect them to the FULL extent of the federal law.

I suggest the following changes:

1) Remove the grandfather clause at the beginning of the document- all permits should be required to go through the anti-degradation review- federal clean water laws require both new and existing permits to be covered by this policy.
2) Add language about the cumulative impacts to our rivers and streams- there is not one word in your draft that addresses these impacts.
3) Do not allow for a de minimus value in the policy- anti-degradation literally means "no degradation"- allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.
4) Remove all exemptions from the policy- the purpose of this policy is to review activities and allow them to continue if they have positive social benefits.
5) Develop an Intergovernmental Coordinaton process that is adequate and functional- the current draft lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process.
6) Add specific language to the proposed Trading Assessment Procedure- this procedure does not define "improved water quality" as a result of trade.
7) Remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration.

As the EQB is to "promulgate rules and regulations..for the protection of surface waters and groundwaters of the State", I hope you will take these suggestions into consideration and you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Christina M. Lundberg

Cc: Delegate John Overington
Senator John Unger
Senator Herb Snyder

Opequon Public Service District

P.O. Box 737
Martinsburg, WV 25402-0737
Telephone: 304 / 267-4600
Facsimile: 304 / 267-0306
E-mail: opsd@access.mountain.net

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AUG 4 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 1, 2000

Edward M. Snyder, Ph.D., Co-Chairman
Donald C. Tarter, Ph.D., Co-Chairman
West Virginia Environmental Quality Board
1615 Washington Street
Charleston, WV 24311

Re: Proposed Antidegradation Implementation Rule 47CSR1

Gentlemen:

The Opequon Public Service District is greatly concerned about the subject Proposed Rule. This Proposed Rule now before your Board contains potentially serious issues that must be resolved before the Proposed Rule proceeds to the West Virginia Legislature.

Appendix F to this Proposed Rule sets forth the West Virginia Implementation Policy. We understand the Policy contained in Appendix F is more stringent than surrounding states. Further, there is no scientific evidence to justify criteria more stringent than federal requirements.

Adoption of the Proposed Rule could impose an unnecessary resource burden on smaller municipalities and public service districts. Is this utilization of excessive resources justified to have a more stringent policy than our surrounding states?

We believe that some of the language is very general and/or vague leaving the actual implementation to administrative staffs. If your Board does not stipulate a reasonable definition now, how will these same staffs formulate a reasonable, uniform implementation policy in the future?

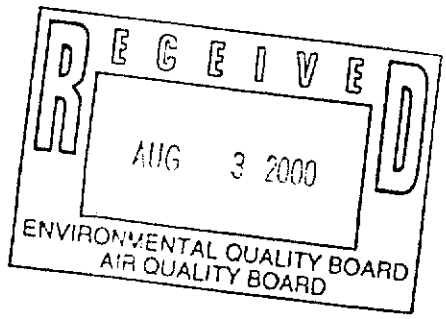
The need for the Antidegradation Implementation Rule is clear. Your Board should strive to be lucid in developing the definitions for the new rule and in setting forth the future policy. Let us not attempt to regulate something we can not reasonably and completely define. A lucid harsh requirement is easier to administer and to comply with than an ambiguous, partially defined one.

We appreciate your efforts in the promulgation of these rules and trust that you will consider the concerns presented in this letter.

Sincerely,

Richard G. Beegle, P. E.
General Manager

M. Hall
223 2nd St.
Elkins, WV 26241



Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

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P.S. This is, obviously, a form letter from the W.V. Rivers Coalition, but we fully support its content.

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Toni Nitzsmann
Box 715
Bellington WV 26250

421 Gideon Lane
Falling Waters WV 2541

Aug. 1, 2000

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G. Starzmann

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Bonni McKeown
P.O. Box M, Milk Rd.
Capon Springs, WV 26823

Aug 2 2000

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Sincerely,

Eddie Bilezikian
Rte 6 Box 12140
Berkeley Springs, WV 25411

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Sincerely, Robert A. Rose

911 Colman Ave
Elkins WV

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Warren G. Jones

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AUG 4 2000
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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
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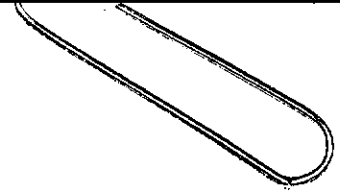

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Linda Scott 304-897-6048
HC 67-27 AA
MATHIAS, WV. 26812.

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August 2, 2000.

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Dark Hollow Road
Route 1 Box 351
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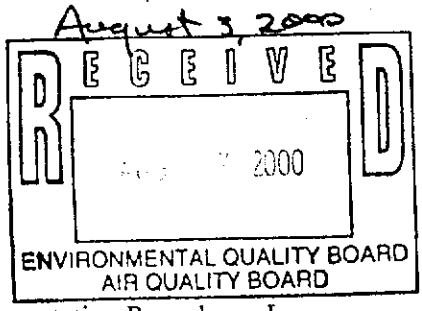
August 3, 2000



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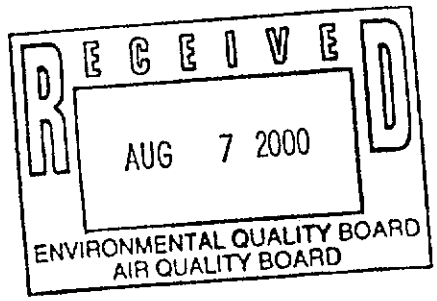

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Sincerely,

Ken Springer

Ken Springer
HC 76 Box 709
Mt Nebo, WV
26679

RECEIVED
AUG 9 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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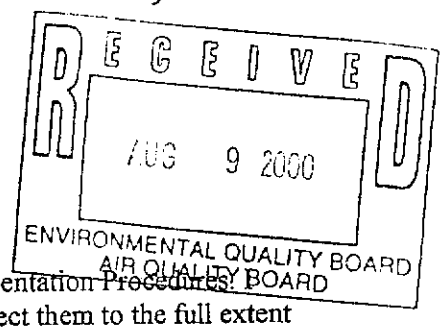
Sincerely, Marcia McDonough
Rt 1, Box 114
Mathias, WV 26812

Lowell Frantz
PO Box 54
Lansing WV 25862



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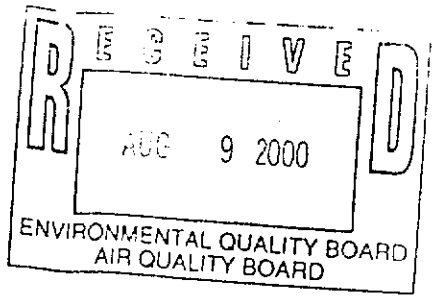

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Jim Scoggins

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Carol L. Ruether

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William H Reuther

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Sincerely, Richard Wright

Mr. Richard Wright
RR 2 Box 122
Adrian, WV 26210-9600

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Mr. & Mrs. James Hamilton

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Dianne Burnham, Pres, The Wheeling Environmental Club
35 Poplar Ave
Wheeling WV 26003

August 9, 2000

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Sincerely, Robert A. Hamburg

ROBERT A. HAMBURG
RT. 1, BOX 51
ORMA, WV 25268

RECEIVED
AUG 14 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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meg Connolly
125 Elm St.
Wheeling, W.V. 26003

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Charleston, WV 25311-2126

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Sincerely,

Thank You, Rusty Morris

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AUG 1 2000
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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Sincerely,

Jeff Simmons

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Franklin H. Smith, I

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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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C. Brent Thomas, P.E.

7/31/00

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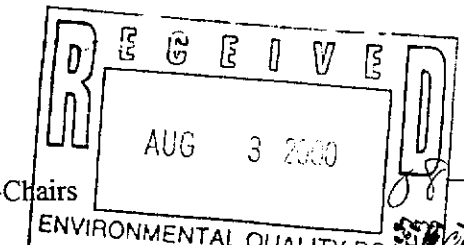
Michael Reese



08-01-00

E. S. Hanrahan
142 Woodland Dr.
Huntington, WV 25705-1346

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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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E S Hanrahan

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RT2 Box 329
Charleston WV 25314

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ENVIRONMENTAL QUALITY BOAF
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Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

July 29, 2000

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Jim Matheson

Mr. James Matheson
Chair, Cacapon River Committee
P.O. Box 69
Yellow Spring, WV 26865

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ENVIRONMENTAL QUALITY BOARD
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Sincerely,

Scott McElroy
141 W. Jackson St
Morgantown, WV

July 31, 2000

RECEIVED
AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Randall W. Reyer
1316 Fairfield Street
Morgantown, WV 26505-2107

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Sincerely,

Thomas A. Hamrum MD

Proud citizen of and clean water supporter for West Virginia. Address: 122 Canterbury Dr. Parkersburg, WV

RECEIVED
AUG 1 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

7-31-00

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John A. B. Holt, M.D.

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Sincerely,

Charles H. Merritt

Charles H. Merritt
Rt 1 Box 89 B
Kerens, WV 26276
304-478-4922

P.S. Water that is not clean is not just H_2O it is some other solution. Keep + strengthen the water quality regs. We want "CLEAN" water!

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Dr R Ramirez
36 Red Knob Rd RR
Buchhannon WV
26201

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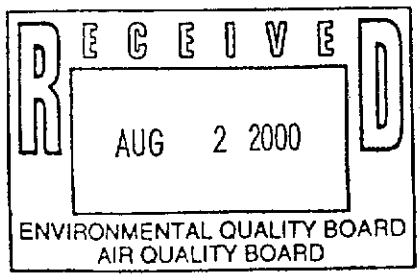

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Maggie McCarty

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AUG 28 2000
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AIR QUALITY BOARD

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Sincerely, Helen Lang

4009 Morningside Way
Morgantown WV 26505

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Sincerely,

Donna M. Weems

Jonathan R. Weems

Mr. Jonathan R. Weems
320 Dream Catcher Cir.
Morgantown, WV 26508-9473

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260 Eastland Ave
Morgantown, WV 26505

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Sincerely,

Donald R. and Elizabeth H. Chadwick

8-01-00

RECEIVED
AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Sincerely,

Sally M. Lemke
7 Pinecrest Ln.
Huntington, WV 25705

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Sincerely,

Billie J. Lovejoy
LCVRC member
(304) 683-4462

RECEIVED
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Sincerely, James L. Bacuk Rt. 3, Box 109, Weston, WV 26452 (304) 269-7146

PS. While this letter is not my own, these words reflect accurately the sentiments I have concerning pollution of water in our state. Please consider these my feelings on the Anti-degradation Implementation Policy.

JLB

RECEIVED
AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
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Sincerely,

Betty W. Hall

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Dr. Robert L. Bevan

Mrs. Amy Bevan

August 1, 2000

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C B Bergmark

TEACH TOLERANCE
C. Bergmark
RR 2 Box 329
Charleston, WV 25314

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Gary Lang
118 Grandview
Elkins

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Robert W Markle
8862 Divide Ridge
Kenna, WV 25248

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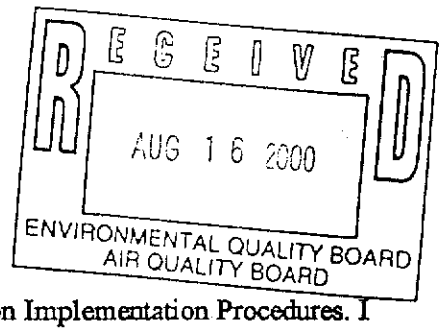
Melissa Ireland

P.O. Box 811
Philippi, WV 26416

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126



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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
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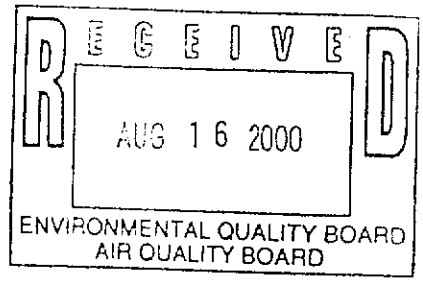

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Sincerely,
Marty Prichard, Recording Secretary
Lower Paint Creek Assn., Inc.
Paint Creek Recreational Org., Inc.
Upper Kanawha Valley Citizen Action Network, Inc. (UKV CAN!)

RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Crystal L. Brown

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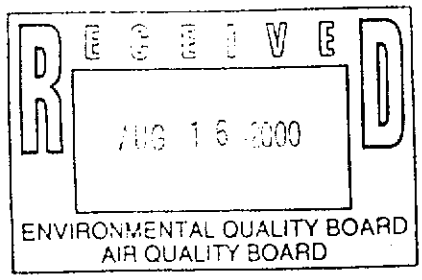

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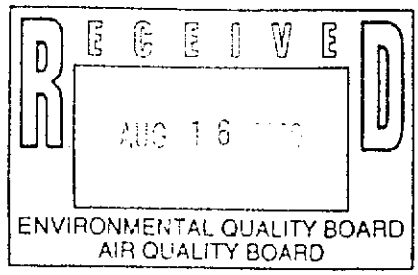

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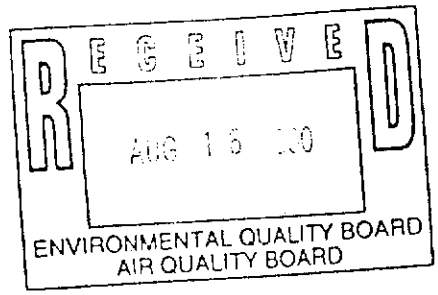

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Sincerely,

James Summers
WV Bass Federation
Conservation Director

THOMAS COMPANY
INCORPORATED 1917
ENGINEERS AND CONTRACTORS
412 SIXTH AVENUE
P O BOX 1773
HUNTINGTON W VA 25718

RECEIVED
AUG 16
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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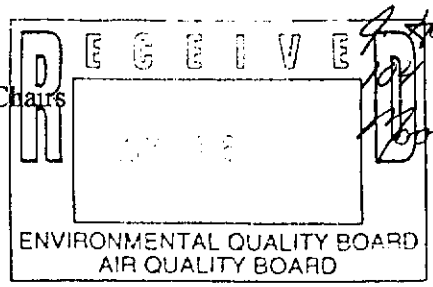
A. Brent Thomas, P.E.

7/31/00

J. Hawse
104 Burr St.
Bonfield, WV
26836



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Janice Hawse

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West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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AUG 16 2000
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Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Sincerely,

Allen Stone

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Charleston, WV 25311-2126

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C. Beth Hamilton

PO Box 51
Fayetteville WV 25840

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2263 Market St
Wheeling WV 26003 304 233 8363

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
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Sincerely,

Dion Bright
Cross County Bassmasters

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AUG - 1 2000
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Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

August 1, 2000

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Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations...for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

most Strongly and
Sincerely,

Deborah Heyman

RECEIVED
AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

8-1-00

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

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Sincerely,

Hunter M Smith
1104 Conway St
Charleston WV 25302

7/31/2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

RECEIVED
AUG 2 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

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Sincerely,

Charles E. Brabec
PO Box 273
Canvas, WV 26662-0273

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

John E. Ohl
Secretary

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 15, 2000

Dr. Ed Snyder, Chairperson
Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126

RE: Comments on 46 CSR 1, Requirements Governing Water Quality Standards in West Virginia

Dear Dr. Snyder:

Thank you for allowing the West Virginia Bureau for Public Health, Office of Environmental Health Services (OEHS) an opportunity to respond to your Memorandum dated July 3, 2000 concerning the proposed changes to the 46 CSR 1, Requirements Governing Water Quality Standards in West Virginia Relative to our role to assure that water is safe for human consumption the following comments are provided:

1. In Section 2.5 - The OEHS recommends that a distinction between surface water treatment and groundwater treatment for drinking water be present in the definition. All rules concerning the Safe Drinking Water Act are governed by the Bureau for Public Health.

2. Intergovernmental Coordination in Sections 4C.6 - 4C.8 - An outline of the process to assure adequate authority for the intergovernmental cooperation in the implementation of the antidegradation implementation policy is recommended.

3. Section 5.2.c. - It is not clearly indicated where the mixing zone exclusion for streams returning a 7Q10 value of 5 cfs or less is derived from? This number may be too low to exclude streams with drinking water intakes. For instance, the public water supply at Fayetteville uses a small impoundment on Wolf Creek. Wolf Creek may barely meet a 7Q10 of 5 cfs, yet still be considered adequately sized to receive a mixing zone.

4. Section 7.2.a.2 - The one-half (½) mile no mixing zone stipulations upstream of water intakes may provide insufficient protection from a public health standpoint. In previous years, the water quality standards stipulated a protected zone that extended five miles upstream of each intake. The Office of Environmental Health Services would support a change to the no mixing zone rule or support end of pipe only limits for a minimum of one mile upstream of each intake. With the variability of stream flow, volume and velocity, mixing zone methods for purposes of discharge compliance should not be permitted for any reach less than 1 mile above a drinking water intake and certainly not in areas less than one-half (½) mile above an intake at any time.

BUREAU FOR PUBLIC HEALTH
Office of Environmental Health Services
815 Quarrier Street, Suite 418
Charleston, West Virginia 25301-2616
Telephone: (304) 558-2981

5. Section 6.2 - Category A - Water Supply, Public - The language should be changed to surface waters (including reservoirs and impoundments) instead of streams. The term surface waters is more inclusive.

6. Section 6.2.d. - Where manganese human health limits are not required as stipulated (5 mile or more upstream of intakes), it is unclear what other in-stream standards apply. The Bureau for Public Health is currently updating the listing of the public drinking water supplies of Category A waters designated in Appendix B and will supply a copy to the Water Quality Board when completed.

7. Appendix E indicates levels for iron and manganese that are reasonable in-stream standards for those metals. However, if higher levels are permitted, public drinking water supply systems can incur great cost removing iron and manganese to meet secondary Maximum Contaminant Levels (MCL). Further, it is likely that the cost of increased treatment at drinking water utilities, due to less stringent industrial and/or municipal discharge requirements, will be passed on to the consumer. This would, in effect, cause an inappropriate shift in pollution control from the outfall to the drinking water intake. Increased metals may also result in interference with the disinfection process.

8. The protocol located in Appendix E, fish tissue body burden levels remains unclear. There appears to be no replacement language for these substances if the current language is struck. No supporting documentation for this decision is provided.

9. The proposal does not appear to provide requirements for re-designation of water bodies when new drinking water intakes are constructed on bodies of surface waters not designated to meet the Category A designation. Without a procedure in place to allow management of waters for drinking water use, after conventional treatment, economic expansion and development may be impacted. It is the practice of OEHS not to permit a new drinking water intake that is not located in a reach classified as a Category A water. Any future changes with regard to the application of Category A should be made only after a full evaluation of all factors, including protection of the public's health and the need to ensure clean, safe drinking water is available to all citizens.

The OEHS appreciates the opportunity to provide comment to this and other important issues affecting our state's waters.

Sincerely,

Barbara S. Taylor, Director
Office of Environmental Health Services

BT/cjj

pc: Henry G. Taylor, M.D. M.P.H., Commissioner

SHAVERS FORK COALITION

PO Box 2777
Elkins, WV 26241

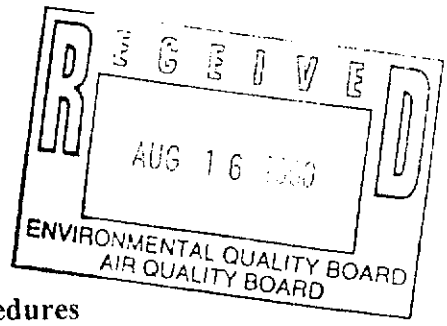
304.636-2455
304.636.2662

Board of Directors

Ruth Blackwell Rogers
Dave Snively
Harry Henderson
Zachary Henderson
Milford Jones
Al Krueger
Mark Tracy

The Shavers Fork Coalition ... We see the Shavers Fork watershed as a resource that, through its cultural heritage, natural appeal and ecological health, will sustain an outstanding quality of life and a diverse economic community for present and future generations.

Dr. Edward Snyder and Dr. Donald Tarter, Co-chairs
Environmental Quality Board
1615 Washington Street, Suite 301
Charleston WV 25311-2126



August 15, 2000

Re: draft Anti-degradation Implementation Procedures

Dear Dr. Snyder and Dr. Tarter,

The Shavers Fork Coalition is dedicated to the health and welfare of the Shavers Fork of the Cheat River, and the aquatic life, flora, fauna, and human residents in the watershed. Our board members hope you will consider our comments in finalizing your draft Anti-degradation Implementation Procedures. We appreciate your attention to and efforts in behalf of insuring clean water for all West Virginians.

We would ask that you remove the grandfather clause, as it would result in dangerously diluted standards.

We request that cumulative impacts be considered under each permit, and that the percentage of pollution allowed be zero. If one entity is allowed a 5% polluted discharge, and a second entity fifty yards downstream is also allowed a 5% polluted discharge, and another and another polluted discharge is allowed into a heavily used section of stream, the cumulative impacts quickly add up to a problem.

For example, Shavers Fork Coalition is concerned about one five-mile section of the Shavers Fork into which a wide range of discharges from multiple campgrounds, cabins, homes and businesses are making the quality of the water unsafe for swimming, and possibly unsuitable for fishing. Swimming and fishing still take place in season, because this is a prime recreational area, but at what cost?

Shavers Fork Coalition's water sampling during 1999 revealed extremely high fecal coliform content in this area, well above EPA limits for swimmable waters. That EPA limit is 200 coliform per 100 ml; water from the public swimming area tested at 4245 coliform per 100 ml in late summer.

Downstream near a municipal water intake, fecal coliform numbers were 3235 in late summer; EPA suggests that 1700 coliform per 100 ml is the safe limit for treating water for public water supplies.

How can a water anti-degradation law afford to be nearsighted, seeing only one discharge at a time, when cumulative impacts of multiple polluted discharges can potentially create serious health problems for our citizens and visitors? On the Shavers Fork last summer, in fact, news articles reported that health care practitioners in that downstream

municipality were very much concerned about the unusually large number of entire families seeking treatment for persistent GI tract problems during mid and late summer.

Finally, we request that you allow for no exemptions to the standards.

It is time to insure CLEAN WATER FOR ALL WEST VIRGINIANS, not just somewhat clean water in some places some of the time.

Thank you for giving us the opportunity to comment on the draft Anti-degredation Implementation Procedures.

Respectfully yours,

Ruth Blackwell Rogers

Ruth Blackwell Rogers, chair
Shavers Fork Coalition

FLEXSYS

August 15, 2000

Edward M. Snyder Ph.D., Co-Chairman
West Virginia Environmental Quality Board
1615 Washington Street East
Charleston, West Virginia 25311

Re: Proposed Amendments to 46 CSR 1
Flexsys Nitro Plant written comments

Dear Dr. Snyder:

Enclosed are Flexsys' written comments on the proposed changes to the above referenced regulation, which include comments on changes to the state's antidegradation policy and implementation plan.

The Flexsys Environmental Policy is based on the principle that excellence in environmental responsibility maximizes the long-term value that Flexsys brings to our communities and shareholders. We understand the desire to preserve the quality of West Virginia's rivers and support that goal. However, we cannot support a policy that imposes unnecessary and overly restrictive requirements on the industries in West Virginia.

We understand the West Virginia rule is the most stringent in the nation and is more stringent than the policies of the state's that surround us. Other states are also interested in preserving their water quality, and have policies in place to do so without imposing much higher costs and additional administrative burdens for discharges that have such a small impact. Let us also point out the clear intent of the West Virginia Legislature, that regulations and rules which are more stringent than federal requirements must be justified scientifically. Flexsys does not believe that the Board has met this intention.

Flexsys is currently studying bringing two new products to the Nitro Plant. Both products are considered to be environmentally friendly, with low amounts of discharges to the water. With the draft EQB version of this policy, implications are:

- it will take too long to react for one product decision, and
- it will make the other product too expensive to make in WV.

The impact is clear with either the current version of policy or the amended proposal from the EPA, Flexsys will not be able to compete for these two new products and the Nitro Plant will continue to decline in jobs.

We understand that Indiana, Ohio and Michigan have all set the trigger for requiring a full antidegradation review at 10% of the available assimilative capacity in high quality waters. West Virginia should have a level no more restrictive than these neighboring states. Our request is to establish the trigger at 10% of the assimilative capacity of the stream. This is the lowest trigger set for any state. In fact, Kentucky has set their trigger at 20% and Virginia at 25%.

Flexsys America L.P. Rubber Chemicals and Specialty Products 1 Monsanto Road Nitro, WV 25143 Phone: (304) 759-4400

Flexsys also requests that the EQB not assign either of the two highest classifications (Tier 2.5 and Tier 3) to any stream without full opportunity for public input on each individual stream. The stringent antidegradation requirements proposed for these stream Tiers would effectively stop any development activities along any stream with these designations. The description in 46CSR1 of what constitutes Tier 2.5 streams is overly broad and could result in streams being classified as Tier 2.5 inappropriately unless there is adequate public input. Further, we believe the default for streams in West Virginia should be set at Tier 1, requiring them to be fishable and swimmable, which follows the policies in other states.

We request you specify one body as having the review and approval authority for the socio-economic review. The current plans for the socio-economic review are costly and burdensome. The problems with the process include:

- difficulty in convening and educating a 19-member state and federal government agency committee,
- difficulty in then making a timely decision,
- lack of qualified staff to review the studies,
- cost in terms of additional dollars ($80,000 to $250,000), and
- time (minimum six months) for the socio-economic impact study and review.

A one-body review and approval authority would allow efficiency and reasonable timeliness of permit approval in this age of quick product changes.

We support the EQB version of the Antidegradation Policy that makes the policy applicable to "new and expanded" regulated activities, rather than the EPA version which has the potential to adversely affect or shutdown many current facilities.

Flexsys has reviewed the comments submitted to the EQB regarding the "Triennial Review of Water Quality Standards" prepared by the West Virginia Manufacturers Association. It is obvious they have conducted their review and prepared their comments with the assistance of some of the finest water quality and legal experts. Instead of repeating many of the comments they have made, we would like to go on record as fully supporting the comments they have provided to the Board.

Flexsys plant management is constantly trying to bring new products to the Nitro Plant, thereby providing new jobs for the community and protecting jobs that we currently have. This is a very difficult task. To add another obstacle where West Virginia is not competitive makes this near impossible.

We believe that by using sound science we can protect our environment and grow our economy. We are certain that our recommendations are in concert with those beliefs.

Sincerely,

Jon W. McKinney
Plant Manager

Berkeley County
Public Service Sewer District

e-mail: sebert@access.mountain.net

P.O. Box 944
Martinsburg, WV 25402

Phone (304) 263-8566
Fax (304) 267-7478

RECEIVED
AUG 4 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

July 31, 2000

Edward M. Snyder Ph.D., Co-Chairman
Donald C. Tarter Ph. D., Co-Chairman
West Virginia Environmental Quality Board
1615 Washington Street East
Charleston, West Virginia 25311

Re: Proposed Amendments to 47 CSR 1

Dear Sirs:

On behalf of Berkeley County Public Service Sewer District, I would like to offer comments on the draft Antidegradation Implementation Rule which is being considered by the Environmental Quality Board. We believe the Rule proposed by the Board has serious flaws that must be corrected before the Rule proceeds to the West Virginia Legislature.

The proposed changes to the above regulation include a new Appendix F that sets out the requirements of the state's antidegradation implementation policy. We are concerned that the proposed regulation will impose unnecessary and expensive requirements on small businesses and the towns and cities of the state. We understand this rule may be the most stringent in the nation and is more stringent than equivalent rules in surrounding states. We would also point out the clear intent of the West Virginia Legislature that regulations and rules which are more stringent than federal requirements must be justified scientifically. We do not believe that the Board has met this intention.

We appreciate and understand the desire to preserve the quality of West Virginia's streams. We support this goal, however, we cannot support a program that imposes unnecessary and overly restrictive requirements. We believe other states are also interested in preserving their water quality and have yet to hear an explanation as to why our program imposes much higher costs and additional administrative burdens on those discharging such small amounts to so many streams.

We feel it would be in the best interest of the state to set West Virginia's antidegradation rule to be no more stringent than our surrounding states. Indiana, Ohio and Michigan have all set the trigger for requiring a full antidegradation review at 10% of the available "assimilative capacity" in High Quality Waters. We feel strongly that this is sufficient to protect water quality. We request that the Environmental Quality Board set the trigger level for West Virginia at a level that is no more restrictive than these neighboring states.

We also recommend that the Environmental Quality Board not assign either of the two highest classifications (Tier 2.5 and Tier 3) to any stream without full opportunity for public input on each individual stream from concerned municipalities and property owners along such streams. The stringent antidegradation requirements proposed for these Tiers of streams would effectively stop any development activities along any stream designated as Tier 2.5 or Tier 3. We are also concerned that the description in 46CSR1 of what constitutes Tier 2.5 streams is overly broad and could result in streams being classified as Tier 2.5 inappropriately.

We appreciate the opportunity to offer these comments and ask the Environmental Quality Board to accept and act upon these recommendations.

Sincerely,

Walt Sebert
Executive Director

WS/klw

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AUG 7 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

STATEMENT OF DEAN M. HARRIS, MAYOR, CITY OF WEIRTON
BEFORE THE ENVIRONMENTAL QUALITY BOARD
AUGUST 3, 2000

MY NAME IS DEAN M. HARRIS, MAYOR OF THE CITY OF WEIRTON. I AM SPEAKING WITH REGARD TO THE ENVIRONMENTAL QUALITY BOARD'S ANTI-DEGRADATION RULE AND ITS POSSIBLE IMPACT ON ECONOMIC DEVELOPMENT IN OUR REGION OF THE STATE. LIVING AND WORKING IN THE NORTHERN PANHANDLE, I HAVE HEARD MANY OF MY CONSTITUENTS SAY THAT DECISIONS MADE IN CHARLESTON ARE MADE IN A VACUUM WITHOUT ANY INPUT FROM THE REAL PEOPLE WHOSE LIVES ARE AFFECTED BY STATE LEVEL GOVERNMENTAL DECISIONS. I AM HOWEVER RELIEVED THAT THE BOARD TOOK THE TIME TO GET INPUT FROM DIFFERENT SOURCES ABOUT THE PROPOSED ANTI-DEGRADATION RULE. YET, UNFORTUNATELY THE RESULT APPEARS TO BE A REGULATION THAT DOES NOT ACHIEVE A BALANCE BETWEEN ENVIRONMENTAL CONCERNS AND BUSINESS NEEDS IN THE NORTHERN PANHANDLE, AS WELL AS ACROSS THE STATE.

I THINK WHAT IS MISSING HERE IS A PR0PER BALANCING OF THE ENVIRONMENT AND ECONOMIC DEVELOPMENT. NO ONE WANTS A RULE WHICH SUPPORTS ONE OF THESE AND IGNORES THE OTHER. I UNDERSTAND THAT WE HAVE TO HAVE AN ANTI-DEGRADATION

IMPLEMENTATION POLICY IN WEST VIRGINIA. I ALSO UNDERSTAND THAT OTHER STATES HAVE FOUND A WAY TO MEET THE STATE AND FEDERAL LAW REQUIREMENTS FOR ANTI-DEGRADATION WITHOUT CHOOSING BETWEEN ENVIRONMENT AND ECONOMIC DEVELOPMENT. IT IS MY HOPE THAT THESE COMMENTS WILL BE OF USE TO THE ENVIRONMENTAL QUALITY BOARD IN FORMALIZING AN ANTI-DEGRADATION RULE WHICH IS RESPONSIVE TO THE NEEDS OF BUSINESS, AS WELL AS BEING ENVIRONMENTALLY RESPONSIBLE.

IF I OR ANY OF MY STAFF CAN PROVIDE ANY ASSISTANCE TO YOU IN THIS REGARD, PLEASE DO NOT HESITATE TO CONTACT ME AT ANY TIME.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THESE COMMENTS.

Subject: Comments on Proposed Antidegradation Implementation Policy
Date: Sun, 06 Aug 2000 10:42:02 -0400
From: Pam Kasey <buckwheat@imagixx.net>
To: chatfe@mail.wvnet.edu

Dear Dr. Snyder and Dr. Tarter,

I am writing for a second time as a member of the Friends of Deckers Creek to express concern about the proposed antidegradation implementation policy.

I first want to express my disappointment at being unable to comment at the public hearing on August 3. When my husband, young son, and I arrived from Morgantown at the meeting room around 6:00 pm, it seemed we had allowed plenty of time, because there were only three or four people sitting there; however, because they had also signed in for their friends, I ended up 19th on the list, and my husband 20th. If we'd been fifth or sixth or tenth, we would have been able to speak and get our son to our motel and in bed on time, but we had to leave around 8:00, probably a half hour before our turns to speak came up. It shouldn't be allowed that people whose time and expenses are paid for such meetings and who possibly even live and work in Charleston can make arrangements with their friends to help them comment early and go home, while those of us who have taken parts of two days off of work, put 300 miles on our own cars, and paid for a motel and several meals out of our own pockets do not get to speak our turn.

Since driving back from Charleston I have read the proposed procedures more carefully, and have sharpened my thinking on the 5% de minimus provision, and I now want to add to my previous comment.

Deckers Creek was nearly killed by acid mine drainage. The Friends of Deckers Creek holds trash pick-ups in the watershed several times a year, and there is often an old timer who shows up and tells one of us that he learned to swim in Deckers Creek but now wouldn't let his grandchildren near it, or that he used to catch trout in the creek but hasn't seen one there since he was a kid. Our organization has made a good name for itself with long-time residents as well as with WVU students and faculty in its six years through solid waste clean-ups, educational campaigns, festivals, and other community events, while working to draw resources to the watershed for creek restoration.

Now, our hard work is paying off. Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in the watershed, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. My son will be able to swim and fish in Deckers Creek.

Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trails along the Monongahela River and Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

If the EQB's proposed antidegradation implementation policy is adopted, any gain in water quality our group achieves over the standards for category B and C streams could be squandered, 5% at a time. I heard complaints from various industry representatives in the first hour of the public hearing, saying that the surrounding states have less stringent triggers for antidegradation review. However, it is my understanding that there is no state in our region that has an antidegradation implementation policy that

has been approved by the EPA, and I believe that these industry complaints are groundless rhetoric. I urge you to adopt a 0% de minimus trigger for antidegradation review in order to honor the volunteer efforts of watershed groups like ours. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

In addition, I prefer Option 2 for sections 4C.6-4C.8 of the proposed policy. I believe that an intergovernmental panel that is required to make recommendations, and to do it early in the drafting process, will be more effective than the same bodies would be if simply invited to participate in the comment period, as in Option 1. In 4C.7.a, the rule should specify that the Intergovernmental Coordination Panel must include a representative from each agency listed in Appendix F1. And, based on my knowledge about group processes, I also would like to see this rule include under 4C.7.b specific language about the nature of the panel's determinations: that each point must be determined by consensus, or the dissenting opinions must be documented for the Director's consideration.

While maximum pollutant levels are necessary measures for cleaning up polluted streams, the Clean Water Act's system of tiered protections and its antidegradation provision were meant to prevent a situation where all pollutants in all waters slide eventually to the maximum levels. These provisions were included to empower bodies like yours to resist polluter pressure. Make use of them!

Thank you for your work,

Pam Kasey

PS I include as evidence of the excitement that Deckers Creek is being cleaned up this comment I received on email just a few minutes ago, from a watershed resident and new contributor to FODC.

>Guys:
> This time is for sure. There are fish in Deckers Creek. Some neighbor
>boys came here to my house, wanting help with their fishing equipment. They
>said the saw fish at the bridge on McKinney Cave Road. I went back with them
>and saw for myself. The were at least 5 or 6 bluegills, 2 to 5 inches long
>and 2 small bass. I also saw a crawfish. This is the same place I saw a big
>snapping turtle, that I told you about ... I dont know how they got there
>or where they came from, but they are there. Water must be getting better.

Pam Kasey
2921 Halleck Road
Morgantown, WV 26508
voice: 304/291-8205
fax: 304/291-0979
buckwheat@imagixx.net

3580 Benedict
Culloden, WVa 25510
8/2/00

RECEIVED
AUG 7 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

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Sincerely,

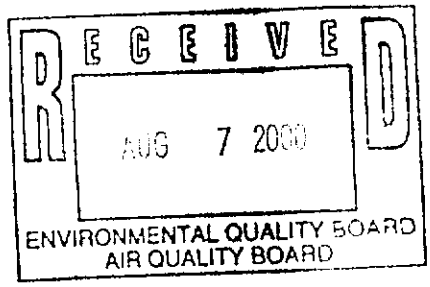
William Dawson

William Dawson

Regina Hendrix

1637 Quarrier Street
Apartment #3
Charleston, WV 25311

August 01, 2000



Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

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I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

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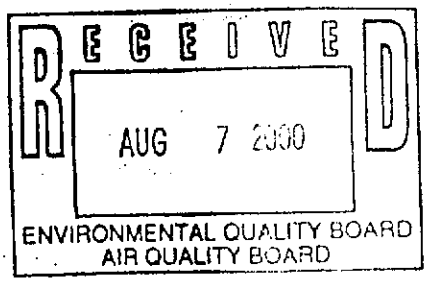
Sincerely,

Regina M Hendrix

Regina M. Hendrix

Bonnie G. Mallott *4106 Stella Street, Parkersburg, WV 26104*



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Bonnie G. Mallott *4106 Stella Street, Parkersburg, WV 26104*

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Sincerely,

Bonnie Mallott

Bonnie Mallott

RECEIVED
AUG 7 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

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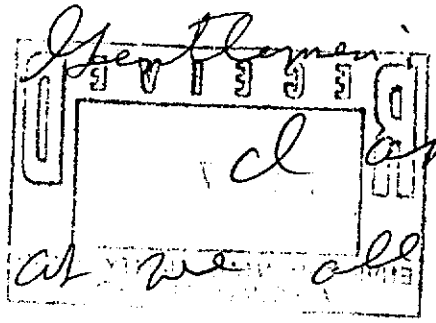
Sincerely,

Walt R Shupe

(over)

Gentlemen:



I am vitally interested - as we all should be in protecting this valuable & essential resource.

Please do all in your power to prevent any pollution of streams & waterways.

Thank you

Walt R Hughes
Rt 1 Box 153
Horner, W Va
26372

RECEIVED
AUG 4 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
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Sincerely,

James B Morgan

As a direct descendant of West Virginia's first settler, Morgan Morgan, it has always been my policy to support policies that I believe are in the best interests of my state.

I believe the attached recommendations meet this criteria. Sincerely,

J. R. Morgan

Dear Environmental Quality Board Members

I live in Randolph County. I have lived here all of my life and know a good deal about the area. I understand that the West Virginia Quality Board is now in the process of drafting new water quality standards. These new standards will affect farming, timbering and any other activities on private land. I'm opposed to this plan because it will further regulate land that is already well regulated.

Randolph County already has pretty streams and magnificent land. The people that live here and own the land take good care of it. If activities such as farming are ceased, this land will grow up into brush and there will be no more pretty fields. The State tax base will decrease as this land is devalued because of the new, highly restrictive regulations. The state will have to hire many additional enforcement officers to enforce the new restrictions. This will cost the taxpayers greatly.

We already live in poverty in West Virginia. These higher water standard regulations will further our poverty by shutting down industries that we work at. Some of us will

over please

be forced to leave the state in search of work while the people who remain here will find an increased tax burden. I feel that these regulations gives the state too much power as private property rights diminish. I studied the tier categories and disagree with the restrictions in them.

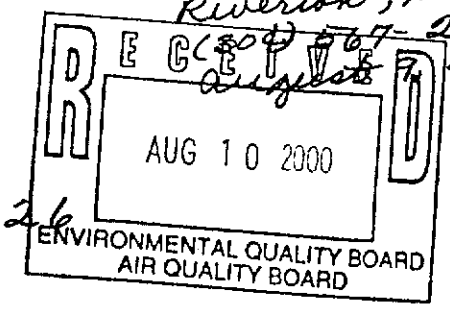
I do agree that some up to issues need to be discussed. Where I live there are towns that unload untreated sewage into the streams. I am for stopping these practices. I believe that you people should start with the untreated sewage problem because this is the only contamination that our streams are currently receiving.

Sincerely,

Marcus Bonner

HC 77 Box 32
Riverton, WV 26814
(304) 567-2889

August 7, 2000



22B
1615 Washington Street
Suite 301
Charleston, WV 25311-2126

Dear Sirs:

In the late '40's and early '50's when I was in school we were taught that the definition of conservation is "the wise and careful use of natural resources." The emphasis was on use, stewardship, and respect for natural resources.

Our Bible tells us that God told Adam and Eve to "... Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the foul of the air, and over every living thing that moveth upon the earth." (Gen 1:27 KJV)

Now, the so-called environmentalists are counterfeiting the idea of caring for our land by trying to return it to a wild, unproductive, useless state. The extreme overabundance of deer which destroy the seedlings in our forests, our farm crops, our automobiles, orchards, and gardens (and even human life) are an example of what happens when "environmentalists" "manage" the

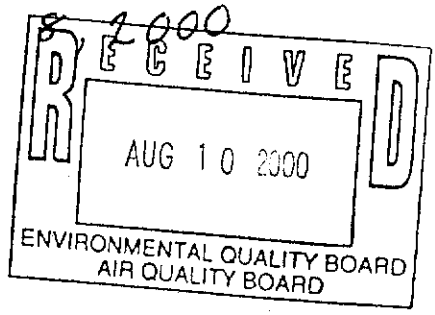
natural resources. The predators which are now being introduced are causing additional problems.

It is impossible to turn the clock back to the days of virgin timber and Indians. To try to do so will result in trash trees, thorns, and unbalanced animal populations. It has taken generations to get our farms and forests to the condition that now makes them so attractive to those who would keep them "natural."

Our land is beautiful and productive. The owners are wise and careful stewards. Please do not let this committee become a tool to those who would trample America's property rights and free enterprise system by empowering government agencies to "regulate" the land out of production.

Yours truly,
Jane Fisher Wilkins

96 C 77 Box 32
Riverton WV 26814
304 567 2889
August 8 2000



EQB
1615 Washington St.
Suite 301
Charleston, WV 25311-2126

Dear Sirs:

We are farmers who go out in the heat, cold, rain, wind, and snow to care for our crops and livestock. We can not afford air-conditioning for our pickups, trucks or tractors. We live close to nature, respect nature, and enjoy nature. Our families have worked the land since the 1700's and have been good stewards.

Now we have a whole host of bureaucrats with ties to environmentalists leaving their climate-controlled homes and offices and driving to our farms in air-conditioned cars trying to tell us how to care for our farms and streams. We would have a lot more respect for those who want us to "return to nature" if they lived closer to nature themselves. Nature is not an air-conditioned car.

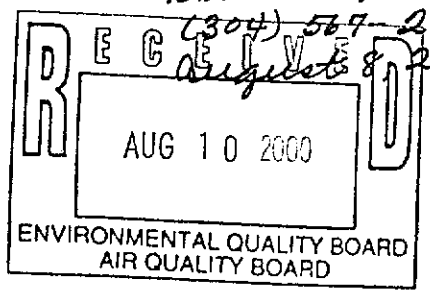
This comittee must choose between the vocal, land-grabbing environmentalists who live and work in a protected environment

and protecting the constitutional rights of hard-working, dedicated private stewards of the land - our individuals and businesses making the land of our state productive and beautiful. Please do not make it possible for our livelihoods and property to be "regulated" away from us.

Yours truly,

James D. Wilkins

Hc 77 Box 32
Riverton, WV 26814
(304) 567-2889
August 8, 2000



EQB
1615 Washington Street
Suite 301
Charleston, WV 25311-2126

Dear Sirs:

The Laural Fork drainage area has been marked for Tier 3 regulations. We feel this is a land-grab because the waters in this area are some of the cleanest in the state.

We know there is a plan to introduce elk into West Virginia. We fear that our land has been targeted to fulfill this ambition because elk need large areas of grassland, as well as forest land.

However, this grassland has been managed for grass by husbandmen who understand the area and its best management for pasture. Untended, it quickly reverts to brush and thorns. The Cunningham Knob area is an example of what happens to good grassland when it passes from private hands to government hands.

Generations of cattlemen have kept the grass in this area productive.

to regulate it so much that it would not be feasible to graze cattle would result in some of the best grass east of the Mississippi being lost to future generations. Neither man nor elk would benefit.

This committee is setting the stage for a land grab (without compensation) that would take the lands of our state away from prudent, dedicated land owners and give it to unregulated environmental groups for experimentation. Please do not let this happen.

Yours truly,

Joseph F. Wilkins

WestVirginiaUniversity
Extension Service

August 8, 2000

West Virginia Environmental Quality Board
1615 Washington Street, East
Room 301
Charleston, WV 25311-2126

Dear Sir or Madam:

I attended the meeting held in Charleston on August 3 at 7 p.m. where the Environmental Quality Board patiently listened to comments from a wide variety of interests regarding the proposed antidegredation implementation procedures. Quite frankly, I don't know what to think about the proposal, but I would like you to consider how it could influence the development of aquaculture in this state.

The most commercially viable type of aquaculture for West Virginia is the production of trout in flowing water systems. Both commercial and public producers rely on this proven technology which relies on a relatively large volume of water (300 gallons/minute or more). Sources of water include streams, springs, and ground water flowing or pumped from coal mines. Water is diverted from its source through concrete raceways or tanks and back into the stream. As you would expect, water leaving the tanks carries fish waste with it. Therefore water quality changes as it passes through what is essentially an aquatic feedlot. It is not uncommon for trout production facilities to locate on small streams with water of high quality and for the entire volume to be diverted through the facility during periods of low flow.

Practical treatment of effluent from trout production facilities utilizing the flow through design focuses on removal of solids. Prior to discharge, water flows through a pond or settling chamber where solids settle out. Other methods such as constructed wetlands, concentrating and dewatering fish manure, aquaponics, and so forth are the focus of various research and demonstration projects around the country. I will be working to provide the best information available for effluent treatment to our aquaculture producers. Despite this effort, the quality of water entering and leaving the production facility will be measurably different.

It would be wonderful if recirculating systems were a viable option for production of trout in West Virginia. Recirculating or reusing water would minimize effluent volume and potential impact on receiving streams. Significant research is being conducted at the Freshwater Institute in Shepherdstown and around the country, but recirculating systems cannot replace flow through systems when one considers reliability and economy.

Cooperative Extension Service

The West Virginia University Cooperative Extension Service, U. S. Department of Agriculture, West Virginia County Boards of Education and County Commissions Cooperating

Phone: 304 293-6131
Fax: 304 293-6954
www.wvu.edu/~exten/

Center for Agricultural and Natural Resources Development

Agricultural Sciences Building
PO Box 6108
Morgantown WV 26506-6108

ksemmens@wvu.edu
(304) 293-6131 ext 4211 office
www.wvu.edu/~agexten/aquaculture/aquacult.htm
Equal Opportunity/Affirmative Action Institution

Existing and prospective aquaculture producers in West Virginia will face a variety of water quality issues during the next few years. Efforts are underway to reclassify effluent concentrate so fish manure can be land applied. The West Virginia Department of Environmental Protection will likely develop a general permit and focus enforcement efforts to obtain full compliance. At this time, aquaculture is so small that it has not been the focus of enforcement efforts (less than 400,000 lbs of live product per year according to the latest aquaculture census). This will be done as the TMDL approach is being applied in West Virginia. Aquaculture industry representatives in Idaho have indicated that a TMDL approach to phosphorus regulation will effectively eliminate aquaculture development. On a national level, EPA is working to develop a national policy regarding aquaculture effluent criteria. Potential impacts on aquaculture development are unknown. As you can see regulatory concerns are already formidable.

Aquaculture is a good thing. Wild fish stocks are over-fished and the nation needs aquaculture to fill the gap. We are working with the West Virginia Department of Agriculture to develop aquaculture in mine waters of Mc Dowell and Wyoming counties. Commercial scale aquaculture is new to these economically depressed areas and is at a delicate stage. The result will not be a corporate dominated entity, but a set of small businesses operated by local residents. It meshes well with tourism and sustainable agriculture. Estimates of potential for trout production in West Virginia range from 3 to 5 million pounds annually given present technology and resource base.

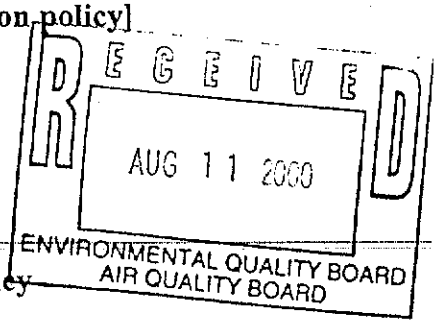
I do not understand the implications of the 5% rule or even a 10% rule. My reference is Appendix F, Antidegredation Implementation Procedures. As regards trout production facilities, I do not understand what the parameters of concern are and how one determines the assimilative capacity. Will this policy preclude development of new flowing water system for production of trout ? Will implementation make sense, or will it be a bureaucratic nightmare ? Please consider these issues as you develop antidegradation policies. I also request that you provide a means by which aquaculturists might clearly understand your proposal and develop respect for the logic behind these policies.

Sincerely,

Kenneth J. Semmens

Kenneth J. Semmens, Ph. D.
Extension Specialist, Aquaculture

Subject: [Fwd: Comments on proposed antideg implementation policy]
Date: Mon, 14 Aug 2000 09:23:44 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>



one of several

Subject: Comments on proposed antideg implementation policy
Date: Fri, 11 Aug 2000 21:09:17 -0400
From: Evan Hansen <ehansen@downstreamstrategies.com>
To: chatfe@mail.wvnet.edu

2921 Halleck Road
Morgantown, WV 26508

August 11, 2000

SENT BY E-MAIL TO chatfe@mail.wvnet.edu

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street East, Suite 301
Charleston, WV 25311-2126

RE: Comments on proposed antidegradation implementation policy

Dear Dr. Snyder and Dr. Tarter:

Please accept the following comments as you finalize the development of an antidegradation implementation policy for our waters.

My first comment relates to the process used at the August 3, 2000 public meeting. I arrived one hour early to sign up, and although there were only four other people in the room, 18 industry representatives had already signed up. Later, I spoke with an industry representative who confirmed that he had not signed himself up; instead, he and other industry representatives were signed up before they arrived at the meeting.

This is blatantly unfair to those of us who traveled long distances at our own expense unlike industry representatives who are paid to attend such meetings to speak at a public meeting. I traveled from Morgantown but had to leave before being called to speak, in order to put my baby to sleep. This process does not help to establish the Board's credibility as an impartial body that is truly interested in hearing comments from all viewpoints.

As a representative on the Division of Environmental Protection's (DEP's) Total Maximum Daily Load (TMDL) Stakeholder Committee, I have been participating in meetings over the last year to develop recommendations for the DEP director on implementing a state TMDL program. To a large extent, the need for a TMDL program is linked to the lack of an antidegradation implementation policy. As excessive degradation has been allowed and water quality has approached and fallen below standards, waters have been listed as impaired and TMDLs have been developed.

TMDLs are expensive in many ways. They drain time and resources from EPA, DEP, EQB (through hearing appeals), other agencies, and local stakeholders who may be affected by pollution reductions. They sometimes lead to expensive and protracted court cases. Clearly there is a strong economic incentive for approving a solid antidegradation implementation process: resources spent up front to avoid degradation are saved many times over, as

waters remain clean and TMDLs are avoided.

Specific comments on the draft antidegradation implementation process are as follows:

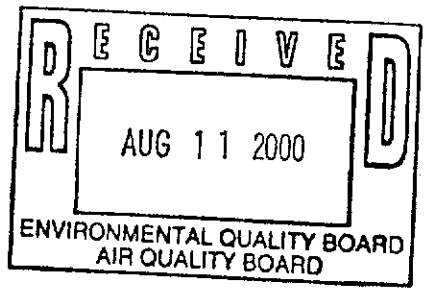
1. Grandfathering of existing sources should not be allowed. According to federal regulations, "the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources." The phrase "new and existing" should be substituted for the draft language "new and expanded."

2. The draft procedure provides that there will not be any Tier 2 review unless proposed activities degrade the ambient concentration by more than 5% or reduce the assimilative capacity by more than 5%. This 5% cutoff is not science-based, and does not address cumulative impacts. The antidegradation implementation policy should address all proposed activities that degrade water quality in Tier 2 waters, not only those that degrade water quality by more than an arbitrary 5%.

Thank you for the opportunity to comment on this important issue.

Sincerely,
Evan Hansen

...
ehansen@downstreamstrategies.com
...
On the web at www.downstreamstrategies.com
...
Phone: 304/291-8205
Fax: 304/291-0979
...
Downstream Strategies
2921 Halleck Road
Morgantown, WV 26508
...



Subject: Anti-degradation implementation procedures
Date: Fri, 11 Aug 2000 12:11:25 -0400
From: Sue Boling <siboling@saturn.vcu.edu>
To: chatfe@mail.wvnet.edu

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. I use the rivers for white water kayaking and would hate to see them deteriorate. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters. I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

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I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses. I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and

regulations…for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Susan Ivie Boling

Effective 3/15/99 my contact information is:

Susan Ivie Boling, Director
Recreational Sports
Virginia Commonwealth University
PO Box 842029
1200 W. Broad Street
Richmond, VA 23284-2029
Phone: (804)827-0323
FAX: (804) 828-6031
E-mail: siboling@vcu.edu
Web site: http://www.students.vcu.edu/recsports

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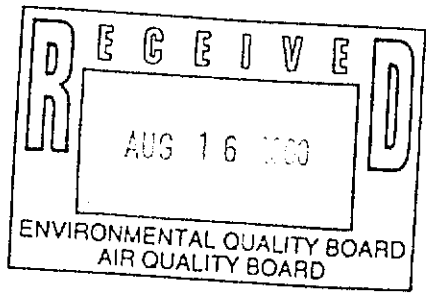

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs

West Virginia Environmental Quality Board

1615 Washington Street, East, Suite 301

Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable

Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation Implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations...for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Dianne Burnham
35 Poplar Ave
Wheeling WV 26003

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701

RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

REPLY TO
ATTENTION OF:

August 16, 2000

Engineering and Construction Division
Construction Management & Field Support Branch

Subject: Comments on Proposed Amendment to Legislative Rule 46 CSR 1, Requirements Governing Water Quality Standards.

Edward Snyder, Ph.D. and
Donald Tarter, Ph.D., Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126

Dear Dr. Snyder and Dr. Tarter:

The United States Army Corps of Engineers, Huntington District, has reviewed the above referenced document and is submitting the following comments.

1. Appendix F, 46-1-4A, Applicability, 4.A.1. The antidegradation implementation procedures should apply to all activities that have the potential to affect water quality, rather than only to "new and expanded regulated activities..."

2. Appendix F, 46-1-4A, Applicability. The references in this section and other sections to "reasonable" best management practices, alternatives, etc. should be qualified to define the criteria for what is considered "reasonable". Cost should not be the major determining factor.

3. Appendix F, 46-1-4B-Tier 1 Protection, Section 4.B.4; 46-1-4C-Tier 2 Protection, Section 4.C.2.a.2.N; 46-1-4D-Tier 2.5 Protection, Section 4.D.4. Re: Trading. Additional consideration should be given to the issue of trading within a watershed. A trade between more than one stream within a watershed may not be as restrictive as necessary for protection of the streams.

4. Appendix F, 46-1-4C, Tier 2 Protection, Section 4.C.2.a.2, The exclusions proposed in this section could lead to significant degradation of water quality. New or expanded activity with associated discharges related to the parameters of temperature, fecal coliform, pH, and dissolved oxygen, or the re-issuance of NPDES permits with increased permitted levels, or new or expanded discharge from sanitary wastewater treatment plants, etc. should not be excluded from further Tier 2 review requirements.

5. Appendix F, 46-1-4C, Tier 2 Protection, Section 4.C.6.b, Option 1 (page 70) and Option 2 (page 72). The terminology should be changed from "may" to "shall". Present terminology is indication that socio-economic issues may take precedence over antidegradation issues.

If you have any questions, please contact Janet Wolfe at the above address, or call at (304) 529-5327.

Sincerely,

Alfred L. Branch, Jr.
Chief, Engineering and Construction Division

Polymer Alliance Zone
104 Miller Drive
Ripley, WV 25271

Telephone: 304-372-1143
Fax: 304-372-1167
Toll Free: 1-888-711-1143
E-mail: paz@pazwv.com
www.pazwv.com

Polymer Alliance Zone of West Virginia™

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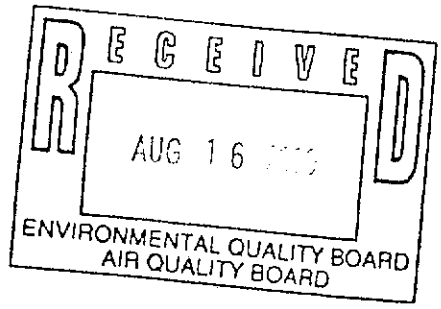


August 15, 2000

Dr. Edward Snyder, Co-Chair
Environmental Quality Board
1615 Washington Street, East
Charleston, WV 25311-2126

Re: Proposed Antidegradation Implementation Procedures

Dear Dr. Snyder:

On behalf of the Executive Committee of the Polymer Alliance Zone, we are submitting these comments on the proposed antidegradation implementation procedures (Appendix F of 46 CSR 1) that have been proposed for public comment by the Environmental Quality Board. The Polymer Alliance Zone ("PAZ") is organized as a public-private partnership among the plastics industry, education, and government, with the mission of promoting the Polymer Alliance Zone as the best business environment for the polymers industry in the world. PAZ seeks to expand the industrial base in Jackson, Mason and Wood Counties by adding multiple value to polymer businesses and related service companies that will provide increased quality job opportunities for West Virginia. There are currently 47 members in the Polymer Alliance Zone. The area of West Virginia encompassed by PAZ has the highest concentration of production of high technology, specialty and engineering polymers in the world. It is from its perspective of a public-private business development partnership that PAZ offers these comments on the implementation procedures proposed by the Environmental Quality Board.

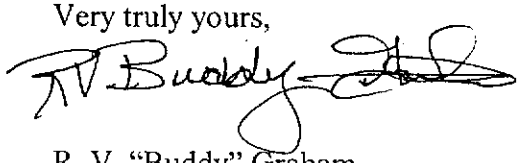
As PAZ seeks to attract polymers businesses and service-related companies to West Virginia, we have learned that the cost of doing business in this state is an important element in business relocation decisions. We are concerned, therefore, that the fiscal note that was filed with the proposed antidegradation rule indicates that the economic impacts related to the proposed rule cannot be quantified at this time. Because of the potential significance of such costs to our ability to attract new businesses to West Virginia, we urge the Board to withhold finalizing this rule until further investigation can be made of the economic impact of its provisions and a proper evaluation of these impacts is made.

We also request that the Board give further consideration to the trigger level that has been chosen for antidegradation review. We understand that the provision (§ 4C.2.a.1.A), designating five percent of ambient concentrations (at critical flow conditions) or five percent of the assimilative capacity of a stream results in an antidegradation review that is more stringent than that of any other state. We have real concerns that such an extreme provision will be spotlighted by potential new businesses as a reason for not locating an operation in West Virginia. We ask the Board to reconsider this provision and adopt instead a trigger level which serves the goal of adopting a reasonable antidegradation policy without creating barriers to new businesses.

Finally, we ask the Board to reconsider the coverage provided for Tier 2.5 streams, i.e. waters of special concern. Although the language of proposed § 4.1.c of 46 CSR 1 may be appropriate for describing the types of waters that should be considered for assignment to Tier 2.5, we urge the Board to adopt a procedure so that no specific stream is categorized in Tier 2.5 unless and until there has been provided an opportunity for public review and comment related to this proposal. The Board has a long history of supporting public involvement and aggressively seeking public input on matters affecting water quality in West Virginia. We believe that this same practice should be followed with respect to Tier 2.5 stream classifications.

We greatly appreciate the opportunity to provide these comments and recommendations to the Board in this very important rulemaking.

Very truly yours,



R. V. "Buddy" Graham
Executive Director
On behalf of the Executive Committee
of the Polymer Alliance Zone

Bryan K. Moore
Mountaineer Chapter of Trout Unlimited
787 Twin Oaks Dr.
Bridgeport, WV 26330-1645
(304) 842-2779

RECEIVED
AUG 16
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder, Chair
West Virginia Environmental Quality Board
1615 Washington St., East, Suite 301
Charleston, WV 25311-2126

August 14, 2000

Dear Dr. Snyder,

Please accept the following comments regarding the draft Anti-degradation Implementation Procedures. I am submitting these comments on behalf of the Mountaineer Chapter of Trout Unlimited (MCTU). MCTU represents approximately 250 members who care very deeply about the waters of West Virginia. The members of MCTU are confident that the EQB will submit a final rule that will insure the highest level of protection for our rivers and streams. I would like to point out that the EQB is the only forum provided where the average citizen can hope to have a voice in the protection of our water resources. Please bear in mind that we do not have powerful lobbyists, expensive lawyers, nor staffs of experts to represent our best interests, and we rely almost exclusively on the EQB to make sure that our interests are properly represented. That being said, there are some areas in the draft procedures that we are seriously concerned about.

We request the removal of the grandfathering clause in the first portion of the document. The concept of grandfathering facilities does not place everyone on a level playing field. It would provide an unequal advantage to a select group of businesses that borders on protectionism. We believe that this clause would create an unfair advantage and establish a blockade to new businesses desiring to enter the state. It would be difficult, if not impossible, to attract a new business that would be required to operate under more stringent standards than existing facilities. The grandfather clause would cost the state jobs, economic improvement and cleaner industries. It would be a detriment to existing industries considering technological upgrades and expansion due to the risk of being placed under new standards. One only needs to look at the huge problems created by this loophole in the Clean Air Act to know that grandfathering is not a viable concept. The grandfather clause would not be in the best interest of the citizens of West Virginia.

We request the addition of language specifically addressing the issue of cumulative impacts from pollution in our rivers and streams. We feel it is necessary to look at the compounded effects of all pollutants entering a water system, rather than considering each discharge as a solitary source. Cumulative impact is critical to properly addressing the impacts of non-point source when combined with point source. Disregarding the large picture of cumulative impact could also unfairly bring the pressure to bear on a single source who may otherwise be meeting all the regulatory requirements. The failure to include and address cumulative impacts would not be in the best interest of the citizens of West Virginia.

We request the removal of the de minimus value in the policy. Anti-degradation means no degradation below the accepted standard. We cannot understand the concept of allowing a water to be polluted to any degree below that standard before a review would occur. The cumulative impact of a de minimus value has a great potential to be disastrous to many of our rivers and streams before any action would be taken. We believe that a de minimus value would be contrary to the intent and purpose of the law. The inclusion of a de minimus value would not be in the best interest of the citizens of West Virginia.

We request the removal of any and all exemptions from the policy. The anti-degradation policy is a tool to review activities influencing a water, and to determine if the continuation of those activities would have positive social benefits. An exemption would allow selective bypassing of this policy and render the issue of social benefits meaningless. Without the review, the average citizen would never know if the degradation of water quality was actually a benefit to society. Exemptions would create an unequal and selective interpretation of regulatory policy and would not be in the best interest of the citizens of West Virginia.

We request the addition of specific language to the proposed Trading Assessment Procedure. This procedure, as it is presently written, does not define improved water quality as the required result of a trade. It also fails to address the need for long-term monitoring to insure acceptable results, or a properly defined minimum trading ratio. Monitoring is absolutely necessary to prove the anticipated benefits of a trade. We believe that trading should require a minimum ratio of 2:1 between point sources, and a minimum ratio of 4:1 between point and non-point sources to insure the measurable improvement of water quality. Trading should only be permitted within the same watershed, and should not provide for the trading of toxic pollutants. Trading should only be available to participants with a good compliance history. In our opinion, trading translates to a quasi-exemption, and should only be permitted under the most strictly defined requirements. Trading that is not clearly defined and not measured for benefits would fail to be in the best interest of the citizens of West Virginia.

We request the removal of the 110% cost provision in the Reasonable Alternatives definition and the addition of broader parameters of consideration. A 1% cost overrun could prevent the implementation of a superior alternative to a proposal. A specific limit to the application of the best available technology to protect water quality would not be in the best interest of the citizens of West Virginia.

In closing, we would like to thank you for your time and consideration regarding our concerns and comments. We are confident that the EQB will produce a final anti-degradation implementation policy that will protect the water quality in West Virginia to the greatest extent possible, and that you will provide the necessary oversight to protect the average citizen who has no other voice but the EQB.

Sincerely,

Bryan K. Moore

Bryan K. Moore
Secretary/Citizen

THE WILDERNESS SOCIETY

RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

The Wilderness Society has a strong interest in the protection of our nation's forests, parks, rivers, and streams. As a member of the West Virginians for Clean Water Campaign and a partner group with many conservation organizations in the state, we strongly support the development and enforcement of legally and ecologically sound policies to protect West Virginia's rivers and streams. Please accept the following as comments on the draft Anti-degradation Implementation Procedures. Thank you in advance for your attention to our comments and concerns.

EPA's anti-degradation policy is specifically designed to protect existing uses and preserve the present condition of waters. 40 CFR §§131.10-12 (1996). The U.S. Supreme Court upheld EPA's explanation that under its anti-degradation regulation, "no activity is allowable... which could partially or completely eliminate any existing use." PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, 511 U.S. 700 (1994). Given this mandate, it is incongruous that West Virginia's implementation procedures allow, for example, exemptions for existing permits, or otherwise allow any actions that might permit a lessening of existing water quality. We strongly encourage you to strengthen the draft policy in accordance with federal requirements.

1. We urge you to remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of the state's worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

2. We believe that it is extremely important that you add language addressing the issue of cumulative impacts to the procedures document. If we are to protect water quality in West Virginia, we must appropriately address not only the pollution caused by individual polluters, but also the cumulative effect of all polluters. Currently the document fails to address this important consideration. Experience teaches us that cumulative impacts can be extremely significant and harmful, and must not be ignored.

3. We strongly urge you not to allow for the diminishment of existing water quality levels by allowing for a *de minimus* pollution value in the policy. A *de minimus* is the

degree that waters can be maximally polluted. Anti-degradation literally means "no degradation." Allowing the policy to state that water can be polluted to an "acceptable" level before a review occurs is contrary to the intent of the law.

4. We believe it is highly inadvisable to allow for exemptions from this anti-degradation policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

5. No policy can be effective unless it is properly implemented. We request that you develop an Intergovernmental Coordination process that is adequate and functional. We question the efficacy of the process as described, as this policy only lists various departments and agencies, and fails to determine a method for how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

6. We request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could be used to allow significant pollution in some other river or stream.

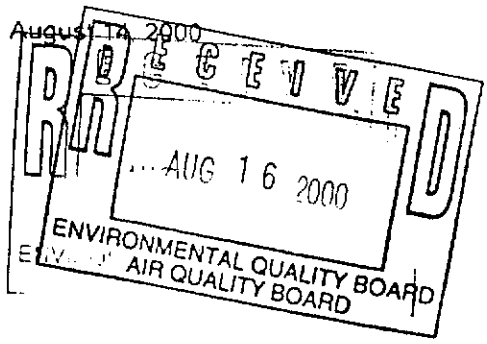
7. Finally, we request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters for consideration. While we do not necessarily oppose any consideration of the costs of alternatives, it seems unwise to set such an arbitrary cost cut-off.

Thank you for your attention to our concerns, and for incorporating them into an anti-degradation implementation policy that will comply with federal requirements and keep West Virginia's clean waters clean.

Sincerely,

Frances A. Hunt
Director
Chesapeake Bay Program

August 14, 2000



Environmental Quality Board
1655 Washington Street
Charleston, WV 25311

Re: Comments on Antidegradation Rules and Implementation Procedures

The International Chemical Workers Union Council (Local 698) welcomes this opportunity to comment on the recently proposed revisions to Title 46, Series 1 (Requirements Governing Water Quality Standards) Legislative Rules of the Environmental Quality Board. Our comments echo those of Crompton Corporation's Sistersville plant.

Crompton Corporation's Sistersville plant employs over 600 persons in Tyler County, West Virginia. The plant's union employees are interested in the protection of the environment not only for the health and well-being of current residents of the State, but for future generations as well. Likewise, the plant's unionized employees are interested in ensuring good jobs and a sound and growing State economy for the future. We believe that both of these interests can be achieved through sound decision-making on the State's environmental protection regulations, including those affecting water quality of the State's streams.

We are concerned that the proposed antidegradation rules do not adequately balance both the environmental and economic interests of the State. Specifically, we are concerned that the classification system for State waterways is flawed and that the stringency of the antidegradation rules will drive businesses to neighboring states where, in some cases, they can discharge to the same waters to which discharges would be forbidden in West Virginia. As written, we do not believe the rules are consistent with the scope of Title 46, Series 1, which says in part that "It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with 1) public health and public enjoyment thereof,....3) **the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development** (emphasis added).

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A strict, literal interpretation of the classification system could result in the Ohio River being categorized as a Tier 2.5 stream (due to the river flowing through or near State and National Forests and Recreation Areas). This, in turn, would mean that no reduction of ambient water quality would be permitted. This would have the impact of severely restricting, if not eliminating, the potential for future growth of the Sistersville plant (should, for example, a new pollutant be discharged even in extremely low levels, or any other change be made that would be regarded as a new regulated activity). The impact would be the same for other industry developing in our area if that industry needed to discharge to the Ohio River. To add insult to injury, the same change in activity could occur on the Ohio shoreline of the river, without the activity being regulated in the same manner. More thought needs to be put into the proper means of classification of waters of the State.

Even if the Ohio River is categorized as Tier 2.0 (and as a result new activities at the Sistersville plant are subject to the 5% antidegradation "trigger") it is our understanding that surrounding states have higher thresholds for triggering evaluations of water quality impacts. The Sistersville plant is in competition with other plants within the Corporation for location of new projects. The imposition of costly unit modifications to avoid antidegradation triggers, or costly socioeconomic reviews and the resulting delays in project approvals by the State will be negative factors for the plant versus locations in other states.

To maintain competitiveness, West Virginia's regulations should be comparable, at least, with surrounding states and to the same degree of stringency required by Federal regulations. West Virginia should re-examine its antidegradation triggers, and provide a more workable and timely process for review of socio-economic impact should a new activity trigger implementation of the antidegradation guidelines.

Your consideration of our comments is greatly appreciated.

Sincerely yours,

James Burke

James Burke
President
ICWUC Local 698

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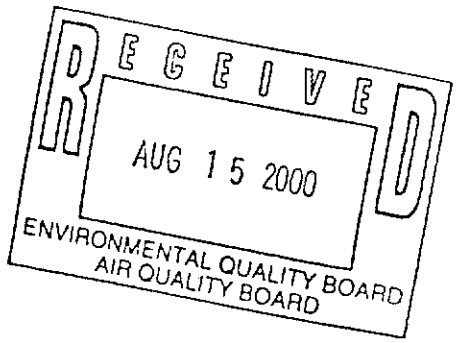

Subject: Anti-degradation Implementation Procedures
Date: Tue, 15 Aug 2000 10:54:27 -0400
From: "Karr, Jonathan" <JKarr@lhup.edu>
To: "'chatfe@mail.wvnet.edu'" <chatfe@mail.wvnet.edu>

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I have been following this issue via EPA websites and the WVRC (WV Rivers Coalition) newsletter and listserver. I am disturbed that the state of WV, of which I am a native, has apparently avoided its responsibilities under federal water quality requirements for so long. It would seem that the economic benefits alone of clean water (tourism industry) would have remedied this situation, but apparently not. The comments below are paraphrased from a WVRC emailing, as I concur with the requests that the WVRC is making in this matter.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

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I request that you develop an Intergovernmental Coordination process that is adequate and functional.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

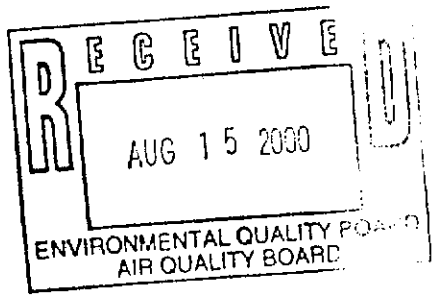
Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and

regulations...for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Dr. Jonathan D. Karr
Assistant Professor of Geology
Lock Haven University Department of Geology and Physics
Ulmer Hall
Lock Haven, PA 17745
570-893-2075
jkarr@eagle.lhup.edu

August 1, 2000



Environmental Quality Board
1615 Washington Street
Suite 301
Charleston, WV 25311-2126

Dear Sir or Madam:

This letter is in regard to the Clean Water Act dealing with the Laurel Fork area. It is our understanding that if this Act passes through the legislature that it could mean major changes to the future operation of farming practices. My family and I own and operate for beef cattle grazing production approximately 50 acres of farm land above Laurel Fork. We also lease for the same purpose approximately 15-20 acres of Forest Service Property adjacent to the acres we own. Our family has been in this production for three generations and always aimed to keep the farm running in an efficient manner by maintaining the fences, water supply, liming, fertilizing, etc., which results in the production of healthy premium beef.

It now appears that under the Clean Water Act with any adjustments to the property either Tier 2, 2.5 and 3 could result in changing, altering or deleting this operation. It also appears that according to this Act any future changes we make to our property such as fertilizing, adding additional cattle could be prohibited, as well as, any future desire for timbering or just about anything we wanted or needed to do to our property. If these functions were not prohibited then we would probably have to go through a lengthy process of obtaining a permit to do any upgrades, etc., to our property which may or may not ever be granted. It appears that land upstream of Wilderness areas are automatically designated as Tier 3, which is the Outstanding National Resource Water category which evidently restricts most all operations. All of this would greatly depreciate our land and our farming operation.

We would like to ask you to please reconsider this bill and not allow it to be passed through our State Legislature at all, or to reconstruct the bill

as to allow the land owners and farmers in this area to continue to operate their land to its fullest potential and to maintain its value. Under all circumstances we ask that our state of West Virginia be equal to our surrounding states and not be more restricted in this Act. Please do not allow the economic condition or development of our state deteriorate or be destroyed by these hard restrictions put on it by this Act, Tier 2, 2.5 or 3. Also would you please insert into these antidegradation regulations the need to provide compensation to owners of land taken for Wilderness as well as loss of use of land in this area. We believe that the Tier 2.5 and 3 are going way to far.

Please help us keep the small farming operations active and as uncomplicated as possible. Also, please allow us the opportunity of keeping our land and it's value at it highest potential.

Sincerely,

Marvin R. Hershey

Patsy J. Hershey

Sallie B. Tingler

LAND OWNERS-as mentioned:
Marvin R. & Patsy J. Hershey
Sallie B. Tingler(Patsy's mother)

Rt. 1, Box 17-B
Montrose, WV 26283
(304) 636-9281

West Virginia Economic Development Council

2001 Quarrier Street
Charleston, West Virginia 25311
Phone (304) 342-2123 • Fax (304) 342-4552
http://wvweb.com/www/wvedc

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Mallie J. Combs, President
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Denver Barnett, Secretary-Treasurer

DIRECTORS
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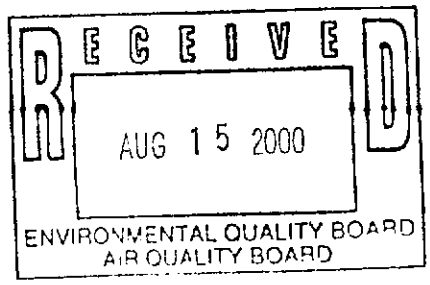
Robert T. Crawford
Charles H. Friddle III
William Goode
John J. Smolak

EX-OFFICIO DIRECTOR
John Snider

August 10, 2000



West Virginia Environmental Quality Board
1615 Washington Street, East
Charleston, West Virginia 25311

RE: Title 46, Series 1, Water Quality Standards

Ladies and Gentlemen:

The West Virginia Economic Development Council voted at their August 3, 2000 meeting to request that the water quality standards for West Virginia be no more stringent than any other States. The proposed water quality standards will negatively impact West Virginia economically. These proposed water quality standards for West Virginia will negatively impact existing industries, discourage any new business developments within the state, result in some businesses moving out of West Virginia, and other businesses will NOT consider West Virginia for an expansion project due to the unnecessary costs to doing business in this state.

The proposed water quality standards for West Virginia will increase the cost of doing business in West Virginia and require standards of water purity more stringent than surrounding states and areas. West Virginia lags behind in business growth and developments at the present time. These proposed water quality standards will result only in further business losses and overall negatively impacting West Virginia economically.

It is requested that water quality standards be reasonably developed in West Virginia and that such regulations be NO MORE STRINGENT than other surrounding states and areas.

Thank you for this opportunity to comment regarding the proposed water quality standards. This decision WILL impact the future of West Virginia and local residents – without jobs none of us will be able to remain within the State that we all love and support.

Very truly yours,

WEST VIRGINIA ECONOMIC DEVELOPMENT COUNCIL

Mallie J. Combs
President

c.c. The Honorable Cecil H. Underwood
The Honorable Mike Ross
The Honorable Mark A. Hunt
Mr. Michael Castle

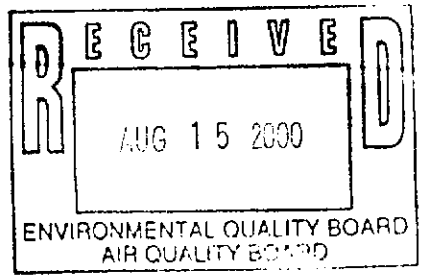
HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE

BUILDING 1, ROOM M-212
1900 KANAWHA BLVD., EAST
CHARLESTON, WV 25305-0470
PHONE (304) 340-3200

ROY GIVENS, Chair
COMMITTEE ON VETERANS' AFFAIRS
251 HILLCREST DRIVE
WELLSBURG, WV 26070
PHONE: (304) 737-3635
E-MAIL: rgivens@mail.wvnet.edu

August 10, 2000

Committees:
Judiciary
Constitutional Revision
Political Subdivisions
Rules



Environmental Quality Board
1655 Washington Street
Charleston, WV 25311

Gentlemen:

I am sorry I was not able to attend the Public Hearing on Proposed Antidegradation Regulations which was held before your board on August 3, 2000.

I am sure you are aware of efforts by most industries to comply with antidegradation rules that are in effect. As I review the proposed rules that you will be submitting to the Legislative Rule Making Review Committee, they go far beyond what is presently required and will stymie any growth in most industries in West Virginia.

As I review the requirements of the surrounding states, West Virginia industries will be at a distinct competitive disadvantage because of the more stringent proposal you will be submitting. This is especially true in the steel making industry, which is located in my District.

Weirton Steel is constantly assessing new and innovative projects for improving production efficiency and generating products that are responsive to customer needs and market demands. I believe the Environmental Quality Board should be promoting these types of changes and improvements, however, I also believe the proposed antidegradation rules that you are submitting actually does the opposite.

prefers interim mail, April through December, at home address

I would like to suggest that you file a modified rule with the Legislative Rule Making Review Committee that would be more realistic, less stringent, and one that industry, municipalities and other entities can comply with and still protect the environment.

If the present rule is submitted, I must tell you that in its present form, I will be opposing it. The industries in my area provide many jobs for West Virginians and with this rule those jobs will be lost. I think you should be looking at this very carefully and submit rules that will preserve these jobs.

Very truly yours,

Roy E. Givens
Delegate, Second District

City of St. Albans

MAYOR
Jack Gessel
1499 MacCorkle Avenue
St. Albans, WV 25177

P.O. BOX 1488 - ST. ALBANS, WEST VIRGINIA 25177

Telephone Numbers:
Mayor's Office . . (304) 727-2971
City Hall 722-3391
Police & Fire Depts. . . 727-2251
Building Department. . 727-2962
Parks & Recreation . . 722-4625
Public Works 722-4259

July 31, 2000

Edward M. Snyder Ph.D., Co-Chair
Donald C. Tarter Ph.D., Co-Chair
West Virginia Bureau of Environment
Environmental Quality Board
1615 Washington Street East
Charleston, West Virginia 25311

RECEIVED
AUG 3 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Re: Proposed Antidegradation Policy Amendments to 47 CSR 1

Dear Dr. Snyder and Dr. Tarter:

On behalf of the City of St. Albans, I am submitting the following comments concerning the above referenced amendments to the antidegradation implementation policy as set aside in the new Appendix F. I believe the Rule proposed by the Board has significant deficiencies that will enact unreasonable and costly requirements on towns and cities throughout the State.

The residents of St. Albans want to protect our environment and ensure that our waterways provide a safe aquatic habitat for generations to come. The citizens of St. Albans also want to provide for safe and affordable housing, retain good jobs and continue to grow the economy of our City and State. Without a doubt, I believe the proposed Rule cannot achieve these objectives. The objective of the policy should be to prevent degradation of the State waters, not to prevent growth and development of our communities. I assert that we can protect our environment and grow the economy by using a balanced and reasonable approach in the development of the antidegradation policy.

I am concerned that the proposed Rule will place unnecessary economic burdens on West Virginia towns and cities. It is unthinkable that the Fiscal Notes associated with this Rule are categorized as unknown. The socio-economic study that will be required could easily impact each community from $60,000.00 to $250,000.00 each, not to mention significant capital costs. I also believe that communities such as *St. Albans will no longer seek to provide sanitary sewer service to outlying areas that are unserved or underserved* because of the stringent standards for stream classification and trigger levels proposed for review. From this perspective, the Rule will contribute to the degradation of our waterways, because existing facilities will no longer venture into the practice of providing line extensions.

In summation, I request that the Environmental Quality Board set the trigger for requiring

a full antidegradation review at a level that is no more stringent than the standards set by our neighboring states. I believe these states are as concerned about water quality as West Virginia. I also am requesting that the Environmental Quality Board reassess the method used for ranking the classification of streams in West Virginia, particularly the Tier 2.5 and Tier 3.0 classification. I advocate that a practical and defendable Nomination Procedure be implemented when assigning any stream to these broad categories.

I urge the Environmental Quality Board to adopt an antidegradation implementation rule consistent with the rules of our neighboring states. To do otherwise will seriously impact the ability of our communities and state to enjoy the ability to provide safe and adequate housing and will place us at a competitive disadvantage for attracting and keeping jobs in West Virginia.

I appreciate the opportunity to express my comments to the Environmental Quality Board and ask that my recommendations be accepted.

Sincerely,

L.O. Gessel Jr.

L.O. Gessel, Jr.
Mayor

RECEIVED
AUG 3 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

LOGAN COUNTY
PUBLIC SERVICE DISTRICT

Suite 507, White & Browning Building
Logan, West Virginia 25601
(304) 752-1139 (TDD)
Fax (304) 752-0804
E-mail: scc01823@mail.wvnet.edu

August 2, 2000

BOARD MEMBERS:
James R. Jeffrey, Chair
Ben F. Lowe, Jr.
Mike Stone
MANAGING ENGINEER:
Rick Roberts, P.E.

Dr. Edwin Snyder, Co-Chair
Dr. Donald Tarter, Co-Chair
The Environmental Quality Board
1625 Washington Street, East
Charleston, WV 25311

Re: Antidegradation Implementation Policy

Dear Drs. Synder and Tarter:

Logan County Public Service District would like to offer comments regarding the draft Antidegradation Implementation Rule being considered by the Environmental Quality Board. The District is of the opinion that the proposed Rule has serious flaws that must be corrected before the Rule is forwarded to the West Virginia Legislature.

We are concerned that the proposed Rule will result in unnecessary and expensive requirements being placed on small publically owned utilities such as Logan County PSD. We understand that the Rule is more stringent than equivalent rules in surrounding states. It is our understanding that it is the intent of West Virginia Legislature that rules and regulations which are more stringent than federal requirements must be justified scientifically. It is the District's opinion that the intent of the Legislature in this regard has not been met.

It is the District's opinion that the proposed rule will result in excessive expense to utilities and others without significant benefits. In the Fiscal Note attached to the proposed rule, the Board admits that it does not know the costs associated with implementing the rule. We believe the proposed rule will financially impact state and local governments as well as publicly and privately owned businesses. As examples, we offer the following:

1) Individual permit holders, including counties, municipalities, Public Service Districts, manufacturing facilities and even individual citizens will be required to prepare complex analyses of the environmental conditions at their facilities as well as other upstream facilities. These could include modeling studies and socioeconomic analysis. Complex studies and analyses such as these are beyond the expertise of most small utilities and businesses. In some cases, expensive (both capital and operating) treatment processes and techniques will be required without a clear, demonstratible benefit.

2) The West Virginia Division of Environmental Protection will incur significant expense if the proposed rule is implemented. Additional staff which are experienced in socioeconomic analysis will need to be hired to review permit applications. Appropriate funding to cover this added expense has not been addressed.

3) The impact on economic development in West Virginia could potentially be enormous. Since the proposed rule is more stringent than those in neighboring states, West Virginia would be at a hugh disadvantage when competing with other states for new or expanding businesses.

Another issue of concern to the District is the classification of streams into Tiers. In particular, because the Tier 2.5 criteria is so strict. We believe that the definition of Tier 2.5 needs to be clarified to prevent improperly classifying streams as such. It is our opinion that classification of a stream as Tier 2.5 or 3 will effectively make the discharge of any waste financially unfeasible. In the case of existing publicly owned treatment works, upon application for permit renewal or expansion, significantly more stringent discharge requirements could be required. This could result in plant upgrades being required which could severly impact the cost of providing service to the residents of the area served. For this reason, we request that the Board extend the exclusions available for Tier 2.0 streams to Tier 2.5 waters as well.

We understand that the water quality in streams in West Virginia needs to be improved. However, this improvement needs to be weighed carefully with cost. It is our request that a detailed cost/benefit analysis be performed and included with the submittal of the proposed Antidegradation Implementation rule to the Legislature. Only then will our elected officials be able to make an informed decision as to what is best for the environment and the residents of the state of West Virginia

If you have any questions, please let us know.

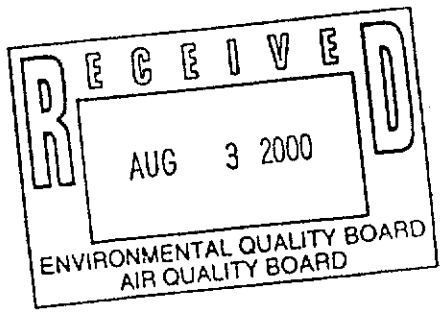
Sincerely,

Rick Roberts, P.E.
Managing Engineer

LOGAN COUNTY PSD

C:\OFFICE\WPWIN\WPDOCS\LCPSD\ANTIDGDL.WPD

RR 3 Box 2BB
Ravenswood, WV 26164



Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter:

I live along the Ohio River on 8 acres north of Ravenswood. The quality of those waters directly affects me, both recreationally and domestically. I have a drilled well and am concerned about river pollution seeping into the aquifer. I no longer swim in the river. It is too nasty. We no longer eat the fish from the river. While we wouldn't eat enough probably to harm us, it plain doesn't taste good.

I am writing to express my great concerns about your draft Anti-degradation Implementation Procedures. I feel strongly that as they are, they do little to protect the Ohio or any other river in West Virginia. Please consider the following recommendations.

I recommend that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I recommend that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I recommend that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I recommend that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to

run its course and determine this.

I recommend that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I recommend that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I recommend that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

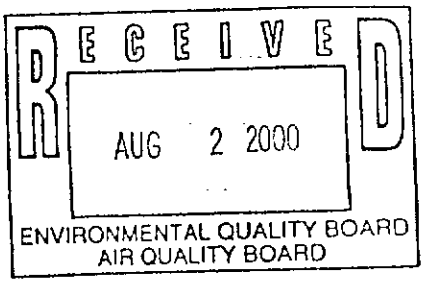
Thank you for your attention to my concerns. I hope you will incorporate them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations for the protection of surface waters and ground waters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Sarah H. Naas

Dr. Edward Snyder &
Dr. Donald Tarter, Co-Chairs
W. V. Env. Quality Board
1615 Wash. St., East, Suite 301
Charleston, WV 25311-2126

1 August 2000



Dear Dr. Snyder & Dr. Tarter!

The following is my input for the Anti-degradation Implementation Procedures, I will appreciate your consideration of them.

Grandfather clause - Existing situation may need Special consideration in order to reasonably move toward and reach the standards but they should not be given long term exemptions. They go through the review and then develop a compliance schedule.

Cumulative impacts need to be included.

Please be careful with de minimus value. It can lead to unacceptable degradation.

Exemptions for the public good are a bit of an oxymoron. Quality water is for the public good. Community degradation activities need Stringent Corrective Schedules. Degradation is degradation, the effects will be the same regardless of the

Source. Social need should mean that corrective action should follow a reasonable time table, not be exempt.

The process to enforce these procedures needs to be clear and effective. If not, writing the procedure may be a waste of your time.

It sounds like the trading assessment procedure needs some clarification and measurable factors.

I also recommend that you re-visit the 110% cost provision. You should consider some opportunity for increased latitude.

Thanks for listening! Good luck with this difficult and valuable task.

Sincerely

Morse Reese

Reese
116 Mackle Ln
Lewisburg, WV 24901-1220

BRADLEY PUBLIC SERVICE DISTRICT

P.O. BOX 290
BRADLEY, WEST VIRGINIA 25818-0290

304 / 877-5202

RECEIVED
AUG 1 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

July 28, 2000

Edward M. Snyder Ph.D., Co-Chairman
Donald C. Tarter Ph.D., Co-Chairman
West Virginia Environmental Quality Board
1615 Washington Street, East
Charleston, West Virginia 25311
Re: Proposed Amendments to 47 CSR 1

Dear Sirs:

On behalf of Bradley Public Service District, I would like to offer comments on the draft Antidegradation Implementation Rule which is being considered by the Environmental Quality Board. We believe the Rule proposed by the Board has serious flaws that must be corrected before the Rule proceeds to the West Virginia Legislature.

The proposed changes to the above regulation include a new Appendix F that sets out the requirements of the state's antidegradation implementation policy. We are concerned that the proposed regulation will impose unnecessary and expensive requirements on small businesses and the towns and cities of the state. We understand this rule may be the most stringent in the nation and is more stringent than equivalent rules in surrounding states. We would also point out he clear intent of the West Virginia Legislature that regulations and rules which are more stringent than federal requirements must be justified scientifically. We do not believe that the Board has met this intention.

We appreciate and understand the desire to preserve the quality of West Virginia streams. We support this goal, however, we cannot support a program that imposes unnecessary and overly restrictive requirements. We believe other states are also interested in preserving their water quality and have yet to hear an explanation as to why our program imposes much higher costs and additional administrative burdens on those discharging such small amounts to so many streams.

We feel it would be in the best interest of the state to set West Virginia's antidegradation rule to be more more stringent than our surrounding states. Indiana, Ohio and Michigan have all set the trigger for requiring a full antidegradation review at 10% of the available "assimilative capacity" in High Quality Waters. We feel strongly that this is sufficient to protect water quality. We request that the Environmental Quality Board set the trigger level that is no more restrictive than these neighboring states.

We also recommend that the Environmental Quality Board not assign either of the two highest classifications (Tier 2.5 and Tier 3) to any stream without full opportunity for

public input on each individual stream from concerned municipalities and property owners along such streams. The stringent antidegradation requirements proposed for these Tiers of streams would effectively stop any development activities along any stream designated as Tier 2.5 or Tier 3. We are also concerned that the description in 46CSRl of what constitutes Tier 2.5 streams is overly broad and could result in streams being classified as Tier 2.5 inappropriately.

We appreciate the opportunity to offer these comments and ask the Environmental Quality Board to accept and act upon these recommendations.

Sincerely,

Dwight W. Reggi

Dwight W. Reggi,
General Manager
Bradley Public Service District

Subject: [Fwd: Fwd: Clean Water Action Alert]
Date: Wed, 02 Aug 2000 08:43:12 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>

Here's one for you. LC

Subject: Fwd: Clean Water Action Alert
Date: Wed, 2 Aug 2000 06:24:49 EDT
From: BurnhamD@cs.com
To: chatfe@mail.wvnet.edu
CC: vivian@wvadventures.net

8/2/00

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs

West Virginia Environmental Quality Board

1615 Washington Street, East, Suite 301

Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginiaâ€™s rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment

Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginiaâ€™s clean waters clean. As the EQB is to "promulgate rules and regulationsâ€¦for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Dianne Burnham
35 Poplar Ave
Wheeling, WV 26003-5764

RECEIVED
AUG 1 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

July 31, 2000

1334 Goshen Road
Morgantown, WV 26508
304-291-8435

Dr. Edward Snyder & Dr. Donald Tarter,
Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder & Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures.

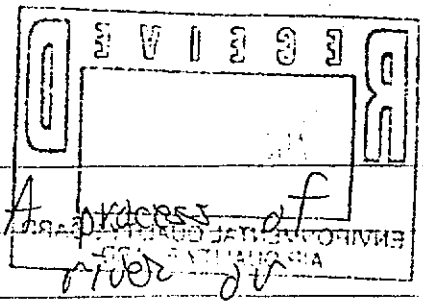
① I request that you remove all exemptions from this policy.

② I request the addition of language about the cumulative impacts to W.V. rivers & streams. Currently there is no language that addresses cumulative impacts in this document. These impacts can be much more damaging than single polluters.

③ I request that the grandfather clause at the beginning of the document be removed.

④ I request that language be added to the Trading Assessment Procedure. This procedure does not define "improved water quality"

(OVER)



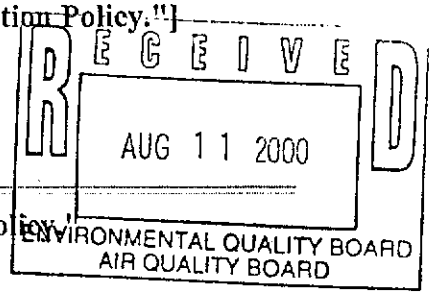
as a result of a trade. A process of trading improvement in one river or stream for pollution in some other river or stream should not be allowed.

Thank you for accepting my comments and hope you will strengthen the draft policy.

Sincerely,

DAVID DYMM

Subject: [Fwd: "Comments on Proposed Anti-degradation Implementation Policy."]
Date: Mon, 14 Aug 2000 09:24:54 -0400
From: Libby Chatfield <chatfe@mail.wvnet.edu>
To: Melissa Carte <clerk@mail.wvnet.edu>



Subject: "Comments on Proposed Anti-degradation Implementation Policy."
Date: Sun, 13 Aug 2000 20:39:49 -0400
From: Don Sauter <dsauter@wvu.edu>
To: chatfe@mail.wvnet.edu
CC: <buckwheat@imagixx.net>

Dear Dr. Snyder and Dr. Tarter,

I am writing as a member of the Friends of Deckers Creek to express concern about the proposed anti-degradation implementation policy. It is incomprehensible in this day and age that we could be considering rules and regulations which would allow maximized water pollution.

Nearly ten million dollars in state and federal funds is being spent to clean up acid mine drainage in Deckers Creek and its tributaries, and a new sewage treatment plant is planned for Masontown, the biggest town along the creek after Morgantown. When these projects are finished, Deckers Creek is going to be pretty clean, and with this kind of success behind us, we will continue to work to make it cleaner still. Our children will be able to swim and to fish in the creek.

Deckers Creek is spectacular, particularly in its middle section where it cuts a steep and rocky gorge through Chestnut Ridge. With all this money being spent on cleanup, and with the new and very popular rail trail along Deckers Creek, it's reasonable to expect and to hope that there will be new tourism and new development; these will most likely lead to new discharge permits and new construction and sedimentation of the creek.

If the EQB's proposed anti-degradation implementation policy is adopted, any gain in water quality over the standards for category B and C streams could be squandered, 5% at a time. Please adopt a 0% de minimus trigger for anti-egradation review. If you adopt the 5% rule, please include a specific and effective measure that severely limits the cumulative effects of successive 5% degradations.

Further, I believe that the grandfathering provision may put beyond the law any previously issued permits that do not meet anti degradation standards. Please require all existing permits that exceed the de minimus anti degradation trigger that you establish to undergo anti-degradation review at the time of their next renewal. A review does not have to put anyone out of business, but should require them to consider alternate business practices as outlined in your proposed document. This will ensure us the best chance of making Deckers Creek its cleanest.

It is crystal clear that the voters in the Deckers Creek watershed are voting daily with their feet and their bicycles their appreciation of the rail trail and the ever cleaner stream beside it. As we try to attract tourists, as well as hire and RETAIN the best workers for jobs here in West Virginia, we must remain mindful of the importance of streams such as Deckers Creek.

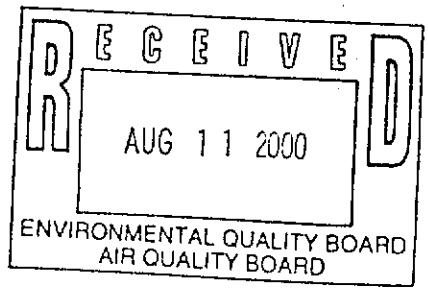
Thank you for your work.

Pam Kasey
2921 Halleck Road
voice: 304/291-8205
fax: 304/291-0979

Morgantown, WV 26508

buckwheat@imagixx.net

Don and Susan Sauter
Rt 4 Box 43
Bruceton Mills, WV 26525



Subject: Anti-degradation Implementation Procedures
Date: Fri, 11 Aug 2000 12:45:44 -0400
From: sgoetz@geog.umd.edu
To: chatfe@mail.wvnet.edu

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginiaís rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means ìno degradationî. Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define ìimproved water qualityî as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West

Virginiaís clean waters clean. As the EQB is to ìpromulgate rules and regulationsÖfor the protection of surface waters and groundwaters of the State, I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Scott Goetz
--

Scott Goetz, Ph.D.
Associate Research Professor
Mid-Atlantic Regional Earth Science Applications Center
Department of Geography, University of Maryland
College Park MD 20742-8225
phone (301) 405-1297, fax 314-9299
http://www.geog.umd.edu/resac/

FAX TRANSMISSION

To: Libby Chatfield **Date:** August 16, 2000

Fax #: 304-558-4116 **Pages:** 30, including this cover sheet.

From: Mary Kuo

Subject: written comments to proposed rulemaking regulations

COMMENTS:

Hi Libby,

Please include the following as part of the public comment submissions.
Would you also mind calling me to confirm that you have received it?

Thanks, Mary

Celebrating 25 Years of Environmental Progress

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 16 2000

Edward Snyder, Ph.D. and
Donald Tarter, Ph.D., Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126

Dear Dr. Snyder and Dr. Tarter:

Please accept this letter as the Environmental Protection Agency's (EPA) written response to the recently proposed revisions to 46 CSR 1, entitled "Requirements Governing Water Quality Standards." We understand that the proposed rule was approved by the Environmental Quality Board (EQB) on June 6, 2000 and filed with the Secretary of State on July 3, 2000. We would first like to applaud the Board on what seems to be a prioritization of water quality standard issues of particular concern to EPA. Specifically, the Board is addressing items which we recently and previously disapproved, and more importantly, the Board is adopting implementation procedures to support West Virginia's Antidegradation Policy. We are aware of the amount of time and effort set forth in this accomplishment, by both the EQB and the antidegradation stakeholder group, and we commend all those that were involved.

In terms of our past disapprovals, we are very pleased that a large majority of those identified in our letters of June 8 and 22, 1999 are being adequately addressed. We hope to see these revisions modified to incorporate our comments (contained in Enclosure 2) so they may be consistent with Federal regulation and guidance, and then successfully adopted by the West Virginia Legislature. That being done, however, two disapproved items will continue to remain unchanged in the water quality standards, these being human health and chronic criteria for iron. We urge the Board to address these deficiencies as well, as they were disapproved well over six years ago, on January 10, 1994. Other interests may request that the Board remove iron criteria entirely, but without a supporting rationale, EPA would likely find this unacceptable.

As for antidegradation implementation procedures, we are providing a set of recommendations to further refine the document developed by the stakeholder group. You will find that these suggestions (contained in Enclosure 1) closely resemble those outlined in our letter of June 29, 2000. During that time, we had identified three categories of which our major recommendations pertain to. To reiterate, these are:

- "Grandfathering" of existing sources from antidegradation review;
- Exemptions to Tier 2 antidegradation review where there are possible sources of stream degradation; and

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- Lack of procedures for assuring that there is achieved the "highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control."

Regarding Tier 1 waters and existing uses, EPA Region III believes that the concept of "grandfathering" is inconsistent with the concept underlying both West Virginia and Federal antidegradation policy of **maintaining** and **protecting** water quality. By "grandfathering," we refer to the opening statement of Appendix F that the procedures apply to only "new and expanded discharges." This interpretation leads us to believe that the procedures would exempt existing discharges from an antidegradation review. Tier 1 of the policy establishes a baseline of protection that existing uses and the level of water quality to protect those uses must be maintained and protected. Tier 1 protection applies to all waters regardless of the source of discharge, including existing discharges.

West Virginia's proposed regulations currently mandate Tier 2 reviews for new facilities and all facilities expanding their discharges. The proposed regulations also establish Director discretion to require Tier 2 review for currently permitted discharges. We applaud West Virginia for recognizing that Tier 2 reviews are appropriate for existing dischargers in certain circumstances, but we believe that the regulations should very clearly specify the circumstances in which Tier 2 reviews will occur. Specifically, EPA Region III believes that the regulations should clearly mandate Tier 2 review, or require the Director to exercise his discretion to require Tier 2 review, for all currently permitted discharges, unless the applicant, at the time of renewal, demonstrates substantial progress in reducing permit limits or pollutant loadings. The Director could retain flexibility and discretion in applying this standard, which might be met by substantial reductions in one or more permit parameters, or incremental reductions in a range of permit parameters.

In light of the delays in implementation of the antidegradation program in West Virginia, this change is particularly important for ensuring continued protection of water quality in Tier 2 waters in West Virginia, creating a margin of safety in protecting water quality and providing assurance that current dischargers will not completely foreclose the possibility of permitting new activities on Tier 2 waters. Furthermore, this approach will remove uncertainty for the regulated community as to when Tier 2 review will occur, while properly rewarding regulated parties who demonstrate continuing progress in reducing discharges to Tier 2 waters.

As stated before, Region III is concerned with the numerous waivers and conditions that provide dischargers an exemption from Tier 2 review. Given such exemptions, certain parameters of pollutants would not receive adequate consideration to the water quality degradation they might pose. We have also expressed our interest in the administrative procedures through which West Virginia would ensure the achievement of the "highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control." EPA would find this type of description to be beneficial for all interested parties which include dischargers, permit writers, and the public. With West Virginia's explanation of this aspect of antidegradation

implementation, reviews would be conducted consistently because there is less room for interpretation.

Given that the this is the third time the Board is initiating steps towards an adoption of implementation procedures for the state's antidegradation policy, EPA will be closely monitoring the adoption process, and taking measures to ensure that the adoption process is not interrupted. EPA is available to assist the Board in this regard.

If you should have any questions, please feel free to contact me or have your staff contact Mr. Robert Koroncai at (215) 814-5730.

Sincerely,

Bradley M. Campbell
Regional Administrator

Enclosures (2)

cc: Mike Castle, WVDEP

Enclosure 1

EPA'S DETAILED RECOMMENDATIONS ON APPENDIX F ANTIDEGRADATION IMPLEMENTATION PROCEDURES

(Strike-outs and underlined, highlighted edits
indicate EPA's suggested language, and
Italicized, highlighted language indicate EPA's comments)

Note: new definitions are included at the end of Appendix F.

APPENDIX F

ANTIDEGRADATION IMPLEMENTATION PROCEDURES

46-1-4A. Applicability

4A.1.The antidegradation implementation procedures herein are intended to apply to all ~~new and expanded regulated activities that have the potential to affect existing water quality.~~ *EPA Region III has concerns with the applicability of these procedures to only new and expanded activities. Pursuant to Federal regulations at 40 CFR §131.12 and West Virginia's Antidegradation Policy at §46-1-4, the waters of the state shall be maintained and protected. Since Tier 1 represents the "floor" of water quality protection afforded to all waters of the U.S., at a minimum, a Tier 1 review would be required for all discharges–both existing and newly expanded. Additionally, the Region believes that the Director should exercise his discretion to require Tier 2 reviews for currently permitted discharges under the provisions provided under Section 4C.2.a.2.E. of the proposed procedures. As such, all currently permitted dischargers that do not demonstrate substantial progress in reducing permit limits or pollutant loadings, would undergo a Tier 2 review.*

The specifics of the review called for in the regulation will depend upon the existing and designated uses of the waters or segments of waters that would be affected, the level of protection (tier) assigned to the applicable waters or segment of water, and the extent to which water quality would be degraded.

4A.2. Nonpoint source activities will be deemed to be in compliance with antidegradation requirements with the achievement of cost effective and reasonable best management practices in accordance with 46 CSR 1-4.1.b, herein.

4A.3. The following procedures shall be performed by the Director when reviewing all activities subject to this rule; *In terms of format, this should be moved from 4B.1., so that the Director is identified as reviewing the activities required for all Tiers, and not just Tier 1.*

46-1-4B. Tier 1 Protection Review Procedures. Tier 1 protection requires that existing uses and the level of water quality to protect those uses be maintained and protected. Tier 1 protection applies to all waters of the state.

~~4B.1. The following procedures shall be performed by the Director when reviewing all activities subject to this rule.~~ *See comment for 4A.3.*

4B.1.a. Determine the existing uses of the water. Determine whether the water currently supports, or has supported since November 28, 1975, an existing use other than the designated uses in section §46-1-6, or that the water quality is suitable to allow the use to be attained unless there are physical problems, such as substrate or flow that prevent the use from being attained. *Moved up from 4B.1.c., the added language should be a subset of determining the existing use.*

4B.1.b. Identify the designated uses in §46-1-6 herein which apply to the water in question.

4B.1.c. Determine whether the water currently supports, or has supported since November 28, 1975, an existing use other than the designated uses in section §46-1-6, or that the water quality is suitable to allow the use to be attained ~~unless there are physical problems, such as substrate or flow that prevent the use from being attained.~~ *This statement is unnecessary; if there is a physical problem, it stands to reason it is factored into the existing use. See comments for 4B.1.a.*

4B.1.d. Before any final action is taken, provide public notice through the appropriate Class I or Class II legal advertisement in a qualified newspaper with the largest circulation for the county where the activity will occur. The notice will identify the action being considered, list all existing uses identified of the water, and call for comments from the public regarding other known existing uses. The cost of such publication will be borne by the applicant.

4B.2. The Director shall ensure maintenance and protection of water quality necessary to protect existing uses.

4B.2.a. Where designated uses or existing uses of the waterbody are impaired there shall be no degradation of water quality with respect to the parameters of concern that are causing the impairment. ~~To ensure the standard is met,~~ To ensure that designated uses and existing uses are maintained and protected, the Director shall not allow lowering of water quality of a parameter of concern that interferes with ~~prevents~~ the attainment of the designated or existing use ~~or of the applicable water quality criterion.~~ *The underlying intent of an antidegradation policy is to protect and maintain existing uses and existing water quality, not water quality standards. The uses are achieved through the attainment of standards, thus meeting the applicable water quality criterion is already implied in the first half of this section.*

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The language should be revised throughout the entire document to be consistent with these goals. If our interpretation of this section is incorrect, we ask that West Virginia provide an explanation of what was intended as part of the administrative records.

4B.2.b. Where ~~water~~ uses are not impaired and a determination is made that the designated uses appropriately ~~reflect~~ protect the existing uses of the water, controls shall be applied as necessary to ensure that existing uses are protected and maintained ~~that the appropriate numeric and narrative criteria established in this rule will be met.~~ If a use is impaired the activity shall conform with the requirements of 4B.2.a. *Same comment as above.*

4B.2.c. Where the Director determines that the designated uses do not appropriately ~~reflect~~ protect the existing uses of the water the Director ~~shall determine whether numeric criteria for a related designated use would maintain water quality sufficient to protect the existing use.~~ shall propose that appropriate revisions to the designated uses be adopted into the water quality standards. However, no delay in Tier 1 water protection shall occur pending the reclassification action. *Again, the language here speaks more to water quality criteria and not the uses. Under 40 CFR 131.10(i), the designated use of a waterbody should be revised to protect the existing use.*

~~4B.2.c.1. Where it is necessary to establish new criteria to protect an existing use, a proposal that appropriate revisions to the designated uses be adopted into the water quality standards shall be made to the Board at the earliest opportunity. However, no delay in Tier 1 water protection shall occur pending the reclassification action.~~ *Water quality standards must include adequate criteria to protect the designated uses, regardless.*

4B.3. The Director shall document all antidegradation review findings regarding uses of waters and protection of those uses.

4B.4. Trading. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 1 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters. The basis of the trade will be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into account the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream segment within an 8-digit Hydrologic Unit Code ~~within a~~ watershed where removing a discharge in one stream segment directly results in improved water quality in another stream segment, provided that no degradation results to any stream segment within the 8-digit Hydrologic Unit Code watershed. In addition, (1) The effluent trade must be for the same form of the parameter; (2) Where uncertainty exists regarding the effluent trade, at least a 2:1 offset ratio will be required; (3) Dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded

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discharge; and (4) Offsets must be enforceable.
The size of the watershed should be specified so to avoid potential situations where trading occurs across the state. The concept of an offset should provide for some level of a margin of safety. Also, the Region suggests that the above caveats be made to ensure that the concept of trading is used appropriately. An effluent trade may only be made for the same parameter in the same form (e.g., total recoverable metals reductions cannot be traded for increased dissolved metals). In cases of trading between nonpoint sources, an offset factor of at least 2:1 could be used to compensate for the associated uncertainties. Lastly, through documentation in the NPDES permit, the regulated facility that is seeking to finance controls from another facility must be held accountable for the load reductions of the trading partner.

46-1-4C. Tier 2 Protection Review Procedures (High Quality Waters) See section 46-1-4.1.b for a description of high quality waters.

4C.1. Determine whether a water is a Tier 2, high quality water.

4C.1.a. All waters not included in Tiers 2.5 and 3 will be considered high quality waters unless it can be demonstrated that the water quality is not equal to or better than necessary to attain both fishable (Category B) and swimmable (Category C) uses and are therefore more appropriately categorized as Tier 1. If either the fishable or swimmable use is attained, the water is a high quality water. *Language added to provide clarification; otherwise, it could be interpreted that Tier 2 is the floor and Tier 1 does not exist.*

4C.2. Determine whether the proposed activity will result in significant degradation of water quality.

4C.2.a. Significant degradation will be determined for any parameter of concern ~~to be~~ affected by the proposed activity on a parameter by parameter basis . The proposed activities will be considered to result in ~~significant~~ degradation and be subject to further Tier 2 requirements where significant degradation is projected for one or more parameters.

4C.2.a.1. For chemical condition evaluations:

4C.2.a.1.A. Any proposed activity that would degrade the ambient concentration of any parameter of concern by more than 5% at critical flow conditions or reduce the assimilative capacity by more than 5% will be presumed to pose significant degradation. critical flow conditions are further defined as follows:

4C.2.a.1.A.1. For non-precipitation induced discharges the maximum permitted flow or maximum flow specified in the application for industrial activities and average design flow for municipal activities combined with the 7Q10 flow of the receiving stream.

4C.2.a.2. The following circumstances, under a parameter by parameter

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basis, shall not be subject to further Tier 2 review requirements: *As clarification, the continuation of a parameter by parameter approach should be explicitly stated, as well as how that information will be available to the permit writer and the public.*

~~4C.2.a.2.A. Temperature: any new or expanded activity resulting in a thermal discharge where the temperature of the discharge will not cause a violation of the applicable temperature criteria in section 46-1-8.28 through 46-1-8.28.4 (Appendix E of this rule) or where the discharge is otherwise consistent with section 316(a) of the federal Clean Water Act.~~ *A thermal discharge different from that of the receiving stream could cause degradation and be subject to a Tier 2 review. Thus, absent an acceptable 316(a) demonstration, the Region does not agree with this exemption.*

~~4C.2.a.2.B. Fecal coliform – any new or expanded activity resulting in a discharge provided that the fecal coliform concentrations are established as 200/100 ml monthly average and 400/100 ml daily maximum.~~ *A fecal coliform discharge meeting this concentration could cause degradation and be subject to a Tier 2 review. Thus, the Region does not agree with this exemption.*

~~4C.2.a.2.C. pH – Any new or expanded activity resulting in a discharge where the pH of the discharge is in the range of 6.0 to 9.0 standard units. In addition, any pH permitted at greater than 9.0 standard units will not be considered significant degradation if the sole purpose of the discharge is to improve the quality of the receiving stream, and the discharger demonstrates and the Director finds that such improvement would occur.~~ *Although this would only exempt dischargers within a more neutral pH range, any pH discharge different from that of the receiving stream could cause degradation and be subject to a Tier 2 review, thus the Region does not agree with this exemption.*

~~4C.2.a.2.D. Dissolved Oxygen (DO) – any new or expanded activity resulting in a discharge where any reduction of water quality of less than 0.4 ppm at maximum DO sag based upon an appropriate wasteload allocation model, unless the reduction is projected to cause a violation of 46 CSR 1-8.11 through 8.11.3 (Appendix E of this rule).~~ *The rationale for this exemption is not clear. Without a better explanation of the basis for this exemption, the Region does not agree with this exemption.*

4C.2.a.2.E. Reissuance of an individual NPDES permit where no new increase in permitted levels will occur. Provided that the Director may require antidegradation review procedures be applied where individual circumstances warrant. *The Region feels that West Virginia should fully exercise the authority provided under the discretionary clause in the second sentence. Of particular concern would be those dischargers whose permits are up for reissuance and may be posing cumulative degradation to water quality, either spatially or temporally. Thus, West Virginia could consider the collective degradation resulting from multiple discharges within a similar geographic area, or the degradation resulting from a single discharge over time. The concept of cumulative impacts becomes especially important where there are existing point or nonpoint control compliance problems.*

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Where such compliance problems exist, it would be inconsistent with the philosophy of the antidegradation policy to authorize the discharge of additional pollutants in the absence of adequate assurance that any existing compliance problems will be resolved. However, without any consideration to cumulative impacts, or procedures for tracking allowed reductions in water quality, it would be difficult to provide this type of assurance.

~~4C.2.a.2.F. Addition of chemicals used for the treatment of drinking water or sanitary wastewater that do not otherwise violate water quality standards. This exemption shall be limited to public drinking water and municipal waste water systems. This exemption shall not apply to parameters of concern.~~ *The addition of chemicals could cause a degradation of instream water quality, and therefore should not be exempted from a Tier 2 review.*

~~4C.2.a.2.G. A new or increased discharge of a substance used to treat zebra mussels or asiatic clams in an intake water pipe or structure if the new or increased discharge will not cause adverse effects on human health and aquatic life outside any applicable mixing zone except in areas where federally threatened and endangered species are known to occur.~~ *The new or increased discharge of such a substance could cause a degradation of instream water quality, and therefore should not be exempted from a Tier 2 review.*

~~4C.2.a.2.H. A new or increased discharge of by-products from the treatment of ammonia if the new or increased discharge is necessary to accomplish a reduction in the discharge of ammonia and the Director determines that the action will result in a net improvement of water quality in the waterbody, if the following requirements are met: (a) the Director determines that the new or increased by-products cause less degradation than the release of ammonia to be treated and (b) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge will be used.~~ *We are assuming that the treatment of ammonia would primarily involve the conversion of ammonia to nitrate. The new or increased discharge of such a parameter could cause a degradation of instream water quality, and therefore should not be exempted from a Tier 2 review.*

~~4C.2.a.2.I. Those activities that qualify for coverage under a Nationwide Corps of Engineers Permit, or any subsequent reissuance of the same Nationwide Permit (or subsequent Nationwide Permit that regulates those activities) for which state water quality certification has been granted or conditionally approved. Provided that Nationwide Permit # 21 (Surface Coal Mining Activities) and Nationwide Permit #26 (Headwaters and Isolated Waters Discharges) or any subsequent reissuance of those permits (or subsequent Nationwide Permits that regulate those activities) shall not be exempted from Tier 2 Review requirements.~~ *Permits issued by the U.S. Army Corps of Engineers, like other activities that result in the discharge of pollutants to waters of the United States and the State, must comply with the antidegradation policy. The Region interprets 40 CFR 131.12(a)(1) to be satisfied with regard to fills in wetlands if the discharge did not result in "significant degradation" to the aquatic ecosystem as defined under 230.10(c) of the 404(b)(1) Guidelines. These guidelines list some effects that could contribute to significant degradation. The Board should consider*

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procedures for ensuring that the individual and cumulative impacts of discharges approved for coverage under U.S. Army Corps of Engineers Nationwide permits will not result in degradation.

4C.2.a.2.J. Any application approved for coverage under an applicable WV/NPDES General Permit or any subsequent coverage under those permits.

4C.2.a.2.K. Waiver granted by the Director allowing the permitting authority to approve activities that lower water quality whenever the Director determines than an emergency exists requiring immediate action to protect public health and welfare. This exemption shall no longer apply once ~~When~~ the Director determines that the emergency is over, or after one month, whichever comes first. ~~this exemption shall no longer apply.~~ *Please explain how this is anticipated to work, and provide assurance that economic emergencies would not be included. Though such an explanation does not need to be contained in the implementation procedures, as a matter of documentation, we would want it as part of the administrative records. Further, "emergency" should be quantified as a specific length of time so the burden is not placed on the Director to lift the waiver.*

4C.2.a.2.L. A proposed new or expanded discharge from a sanitary wastewater treatment plant constructed or operated to alleviate a public health concern associated with failing septic systems or untreated or inadequately treated sewage. This exemption would include Combined Sewer Overflow elimination or reduction projects affecting one or more waterbodies and shall apply only where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters. *This seems unnecessary, considering that the justification behind this exemption closely resembles that of a socioeconomic analysis. Also, please provide clarification on the intended purpose of this exemption, as the wording is confusing.*

4C.2.a.2.M. Groundwater remediation efforts proposed for existing contaminated sites which do not constitute a new point source where there are or may be ongoing surface water impacts from contaminated groundwater not associated with point sources. Provided that the tier 2 review process will be required for groundwater remediation efforts where there is a potential for new or increased surface water or groundwater impacts from activities associated with the treatment of contaminated groundwater.

4C.2.a.2.N. Trading. The Director may determine that an activity proposed in a Tier 2 water will not pose significant degradation where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity. The basis for the trade shall be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into account the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream within a watershed, where removing a discharge in one stream directly results in

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improved water quality in another stream, provided that no degradation results to any stream within the watershed. *See comments for 4B.4.*

4C.3. If the proposed activity is determined not to result in significant degradation to the water, that finding will be documented and no further antidegradation review is necessary.

4C.4. If a determination is made that significant degradation will occur, the applicant must evaluate less degrading or non-degrading alternatives ~~determine whether reasonable less-degrading or non-degrading alternatives to the proposed activity exist~~. *The inclusion of the term "reasonable" implies that there are socioeconomic considerations, in which case would lead us to question the relationship between this exclusion and a socioeconomic analysis.*

4C.4.a. An applicant requesting a permit for any new or expanded activity that would significantly degrade water quality in a high quality water is required to prepare an evaluation of alternatives to the proposed activity. The evaluation is required at a minimum, to provide substantive information pertaining to the cost and environmental impacts associated with the following alternatives:

4C.4.a.1. pollution prevention measures (e.g., substitution of less toxic substances);

4C.4.a.2. reduction in scale of project;

4C.4.a.3. water recycle or reuse;

4C.4.a.4. process changes;

4C.4.a.5. innovative treatment technology;

4C.4.a.6. advanced treatment technology;

4C.4.a.7. seasonal or controlled discharge options to avoid critical water quality periods;

4C.4.a.8. improved operation and maintenance of existing treatment systems, and

4C.4.a.9. alternative discharge locations.

4C.5. After a determination that alternatives to allowing degradation have been adequately evaluated, a preliminary determination shall be made regarding whether reasonable less-degrading or non-degrading alternatives to the proposed activity shall be required.

4C.5.a. If it is determined that reasonable less-degrading or non-degrading alternatives to the proposed activity do exist, coordination with the project applicant may occur

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to revise the project design. In general, if reasonable alternative(s) exist, the alternative or combination of alternatives that provide the least amount of degradation shall be implemented up to the ~~reasonable~~ threshold. *(Again, we question the inclusion of the term "reasonable" and whether such a threshold has socioeconomic implications)* If the project applicant does not agree to adopt such reasonable alternatives, the alternatives analysis findings will be documented and the activity will not be allowed. *Does finding a less or non-degrading alternative complete the review or does the alternative itself need to be addressed by a separate antidegradation review? Please specify the decision criteria which will lead to choosing one alternative over another. Though such an explanation does not need to be contained in the implementation procedures, as a matter of documentation, we would want it as part of the administrative records.*

4C.5.b. If no reasonable less-degrading or non-degrading alternatives to the proposed activity are determined to exist, the Tier 2 review shall continue and the substance and basis for the preliminary determination shall be documented.

NOTE: The following sections 4C.6 - 4C.8 outline the process of evaluating whether a proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located (See section 4.1.b of the Antidegradation Policy in this rule). Two alternative approaches are being considered by the Board for this provision. They are included in this document as Option 1 and Option 2, in italics. Option 1 provides for the determination to be made by the Division of Environmental Protection, with input from a list of intergovernmental coordination agencies during the comment period on the draft permit. Option 2 establishes an intergovernmental coordination panel, which would provide recommendations to the DEP Director regarding this issue prior to the draft permit stage. The Board encourages commenters to provide comments on these two options.

OPTION 1

4C.6. Determine whether the proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located.

4C.6.a. The applicant shall provide documentation of the social and economic importance of the proposed activity. The factors to be addressed in such documentation ~~may~~ shall include, but are not necessarily limited to, the following: The use of the term "may" gives the impression that this information may not be required of all applicants. The information listed should be required of all applicants. Also, please specify at which the point during the review, the applicant would be required to submit the information.

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4C.6.a.1 employment (e.g., increasing, maintaining or avoiding a reduction in employment);

4C.6.a.2 increased production;

4C.6.a.3. improved community tax base;

4C.6.a.4. housing; and

4C.6.a.5. correction of an environmental or public health problem.

4C.6.b. In addition to the above, an applicant ~~may~~ shall be required to submit the following: (a) information pertaining to current aquatic life, recreational, or other water uses, (b) information necessary to determine the environmental impacts, including water quality impacts from the proposed activity in the affected stream segment, that may result from the proposed activity; (This type of information could be used to gain a comprehensive understanding of the cumulative impacts.) (c) facts pertaining to the current state of economic development in the area (e.g., population, area employment, area income, major employers, types of businesses, (d) government fiscal base, and (e) land use in the areas surrounding the proposed activity. The use of the term "may" gives the impression that this information may not be required of all applicants. The information listed should be required of all applicants. Also, please specify at which the point during the review, the applicant would be required to submit the information.

4C.6.c. Once the available information pertaining to the socio-economic importance of the proposed activity has been reviewed, a preliminary determination regarding importance shall be made. In evaluating the applicant's demonstration of socio-economic importance, the agency may use EPA's Interim Economic Guidance for Water Quality Standards Workbook (EPA 823-B-95-002, March, 1995). If the proposed activity is determined to have social or economic importance in the area in which the affected waters are located, the substance and basis for that preliminary determination shall be documented and the Tier 2 review shall continue.

Where there is a request for a variance from groundwater standards pursuant to Title 47, Series 57 for existing sites where activities on those sites have the potential to impact surface water from contaminated groundwater, the socio-economic justification process required under §47-57.6.2.i will satisfy the requirements of sections 4C.6.a-c, herein.

4C.6.d. If a preliminary determination that the proposed activity does not have social or economic importance in the area in which the affected waters are located is made, that antidegradation review finding shall be documented. ~~and the proposed activity shall not be allowed.~~ In no case shall the Director deny an activity based solely on its socio-economic importance without first proceeding to the intergovernmental coordination and public participation phase of the antidegradation review process. ***(GENERAL AGREEMENT ON***

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11/04/00, 1 member absent. REVISITED ON 3/27/00 - NO CONSENSUS REACHED)

4C.7. Intergovernmental coordination and public notice requirements.

4C.8.a. The intergovernmental coordination requirements in section 46-1-4.1.b will be accomplished by providing notice to the agencies listed in Appendix F1. Such coordination will be accomplished by the agency performing the antidegradation review by notifying the appropriate agencies outlined in Appendix F1 of the results of any antidegradation review and requesting comments from them regarding that review. Another alternative to consider is the use of the existing West Virginia Watershed Management Framework partners, which consists of numerous state and Federal agencies, committed to cooperatively address water pollution issues. Additionally, the Continuing Planning Process (CPP) of West Virginia, intended describe how the state protects its waters, could be updated to include an Intergovernmental Coordination aspect and serve as a reference for these implementation procedures. In addition, please specify the duration of the public comment period and the manner in which the public comment and findings are documented or cross-reference to the applicable portions of the CSR governing public comment procedures.

4C.8.b. Based upon comments and information received during the public comment period, the preliminary determinations made as a result of the antidegradation review may be reversed.

4C.8.c. The public notice of the activity prepared by the agency shall include:

4C.8.c.1. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4C.8.c.2. Notice of the availability of a antidegradation review sheet, which may include:

4C.8.c.2.A. A determination of existing uses and their protection ~~level~~; Again, the intent of antidegradation is to protect and maintain the uses.

4C.8.c.2.B. A determination of the impact of the activity to ambient water quality;

4C.8.c.2.C. The results of the socio-economic evaluation of the activity;

4C.8.c.2.D. A determination regarding existence of non-degrading or less degrading alternatives; and

4C.8.c.2.E. A description of the water which is subject to the antidegradation review.

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OPTION 2

4C.6. Upon completion of the less-degrading, non-degrading alternatives analysis, the Director shall conduct the following review to determine whether the proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located. If such an alternatives analysis is required, the decision criteria which will lead to choosing one alternative over another should be specified. Though such an explanation does not need to be contained in the implementation procedures, as a matter of documentation, we would want it as part of the administrative records.

4C.6.a. The Director shall request that the applicant provide documentation of the social and economic importance of the proposed activity. The factors to be addressed in such documentation ~~may~~ shall include, but are not necessarily limited to, the following: The use of the term "may" gives the impression that this information may not be required of all applicants. The information listed should be required of all applicants. Also, please specify at which the point during the review, the applicant would be required to submit the information.

4C.6.a.1. employment (e.g., increasing, maintaining or avoiding a reduction in employment);

4C.6.a.2. increased production;

4C.6.a.3. improved community tax base;

4C.6.a.4. housing; and

4C.6.a.5. correction of an environmental or public health problem.

4C.6.b. An applicant ~~may~~ shall also be required to submit the following: The use of the term "may" gives the impression that this information may not be required of all applicants. The information listed should be required of all applicants. Also, please specify at which the point during the review, the applicant would be required to submit the information.

4C.6.b.1. information pertaining to current aquatic life, recreational, or other water uses;

4C.6.b.2. information necessary to determine the environmental impacts, including water quality impacts from the proposed activity in the affected stream segment, that may result from the proposed activity; This type of information could be used to gain a comprehensive understanding of the cumulative impacts.

4C.6.b.3. facts pertaining to the current state of economic development in the area (e.g., population, area employment, area income, major employers, types of businesses;

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4C.6.b.4. government fiscal base; and

4C.6.b.5. land use in the areas surrounding the proposed activity.

Where there is a request for a variance from groundwater standards pursuant to Title 47, Series 57 for existing sites where activities on those sites have the potential to impact surface water from contaminated groundwater, the socio-economic justification process required under §47-57.6.2.i will satisfy the requirements of sections 4C.6.a-c, herein.

4C.6.c. Once the available information pertaining to the socio-economic importance of the proposed activity has been received, the intergovernmental coordination and public notice requirements in section 4C.7 shall be completed. In no case shall the Director deny an activity based solely on its socio-economic importance without first proceeding to the intergovernmental coordination and public participation phase of the antidegradation review process. (NO CONSENSUS REACHED)

4C.7. Intergovernmental coordination and public notice requirements.

4C.7.a. The Director shall establish an Intergovernmental Coordination panel consisting of agencies listed in Appendix F. Please clarify whether the Director is to establish such a panel for each review. If this is not the case, the panel could be established and identified in the implementation procedures, which may be subject to change. Another alternative to consider is the use of the existing West Virginia Watershed Management Framework partners, which consists of numerous state and Federal agencies, committed to cooperatively address water pollution issues. Additionally, the Continuing Planning Process (CPP) of West Virginia, intended describe how the state protects its waters, could be updated to include an Intergovernmental Coordination aspect and serve as a reference for these implementation procedures. In addition, please specify the duration of the public comment period and the manner in which the public comment and findings are documented or cross-reference to the applicable portions of the CSR governing public comment procedures.

4C.7.b. The intergovernmental coordination requirements in section 46-1-4.1.b shall be accomplished by submitting the socio-economic information gathered according to sections 4C.6.a and 4C.6.b to the Intergovernmental Coordination panel. That submission shall be accompanied by a request that the information be reviewed and a determination of the socio-economic importance of the proposed activity be made by the reviewing agency. The submission to the Intergovernmental Coordination panel shall also include a schedule for providing responses and determinations to the Director.

4C.7.c. The Director shall make a preliminary decision regarding the socio-economic importance of the proposed activity based on the determinations submitted by the Intergovernmental Coordination panel. If the proposed activity is determined to have social or economic importance in the area in which the affected waters are located, the substance and basis for that preliminary determination shall be documented and the Director shall proceed to public notice.

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4C.7.d. The public notice of the activity prepared by the agency shall include:

4C.7.d.1. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4C.7.d.2. Notice of the availability of a antidegradation review sheet, which shall include:

4C.7.d.2.A. A determination of existing uses and their protection ~~level~~; Again, the intent of antidegradation is to protect and maintain the uses.

4C.7.d.2.B. A determination of the impact of the activity to ambient water quality;

4C.7.d.2.C. A determination regarding existence of non-degrading or less degrading alternatives;

4C.7.d.2.D. The results of the socio-economic evaluation of the activity; and

4C.8.c.2.E. A description of the water which is subject to the antidegradation review.

4C.(?). Prior to authorizing any proposed activity that would significantly degrade a Tier 2 water, existing uses of the water shall be fully protected consistent with Tier 1 implementation procedures.

4C.(?). Prior to authorizing any proposed activity that would degrade a Tier 2 water, there shall be assurance that the highest statutory and regulatory requirements shall be achieved by point sources and all cost-effective and appropriate best management practices shall be achieved by nonpoint sources. *The Tier 2 protection review procedures fail to mention a compliance with such statutory and regulatory controls. See 40 CFR §131.12(a)(2). Some level of intergovernmental coordination would seem necessary in this effort.*

46-1-4D. Tier 2.5 Protection Review Procedures: Waters of Special Concern See section 46-1-4.1.c and 46-1-2.20 for a description of waters of special concern. See section #### for a list of waters nominated as Tier 2.5. *Please specify where a list of Tier 2.5 waters will reside.*

4D.1. The Director shall determine whether the water is a water of special concern.

4D.2. The Director shall determine or, when appropriate, require a discharger to determine on a parameter-by-parameter basis whether the activity will degrade ambient water quality conditions. This determination shall be made at or directly upstream of the point of the

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proposed discharge for point source discharges and at or directly upstream of the location of the activity for nonpoint source discharges.

4D.2.a. If a determination is made that the activity will result in degradation of ambient water quality conditions, the activity shall not be allowed.

4D.2.b. If the activity is determined not to result in the degradation of ambient water quality conditions, the activity may be allowed. In such case the antidegradation review findings will be documented in writing and public notice activities will be initiated.

4D.2.b.1. The public notice of the activity shall include:

4D.2.b.1.a. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4D.2.b.1.b. Notice of the availability of a antidegradation review sheet, which shall include:

4D.2.b.1.b.1. A determination of existing uses and their protection ~~level~~;

4D.2.b.1.b.2. A determination that the activity will not result in the reduction of ambient water quality and the basis for that determination.

4D.3 Discharges from activities in waters upstream of a water of special concern shall not result in the degradation of ambient water quality conditions within the Tier 2.5 water.

4D.4 Trading. A proposed activity that will result in a new or expanded discharge in a Tier 2.5 water may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity. Where such trading occurs on or upstream of a Tier 2.5 segment or water, Tier 2.5 requirements may be considered satisfied where the applicant shows that water quality at all points within the Tier 2.5 waters will be improved. The basis for trade will be documented through a Trading Assessment Procedure. Such documentation shall include an appropriate margin of safety, which, after taking into the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources, shall ensure that improvement in water quality occurs as a result of the trade. A trade may be made between more than one stream within a watershed, where removing a discharge in one stream directly results in improved water quality in another stream, provided that no degradation results to any stream within the watershed. *See comments for 4B.4.*

4D.5. Determine whether the proposed activity is short term in nature and the resulting changes in water quality will be temporary and have limited effects. Activities which result in less than a 5% change may be deemed to have limited effects. Determinations

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will be made on a case-by-case basis and shall be made after consideration of the following factors:

4D.5.a. the length of time during which the water quality will be lowered,

4D.5.b. the percent change in ambient concentrations;

4D.5.c. the paramcters affected;

4D.5.d. the likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

4D.5.e. the degree to which achieving applicable water quality standards during the proposed activity may be at risk; and

4D.5.f. the potential for any residual long-term influences on existing uses.

4D.6. Tier 2.5 Nomination Procedures. Any interested party or the Board may nominate a water as a Water of Special Concern. After reviewing the nomination the Board shall consider thc qualification criteria and may designate the nominated water as a Tier 2.5 water in accordance with the notice and comment provisions of 46 CSR 6 - Procedural Rules Governing Site Specific Revisions to Water Quality Standards. The address for filing such petitions is:

West Virginia Environmental Quality Board
1615 Washington Street, East
Room 301
Charleston, West Virginia 25311-2126

The Region feels that West Virginia, particularly the West Virginia Division of Environmental Protection and the Division of Natural Resources, should be more active in nominating candidate waters for Tier 2.5 classification. We suspect that many waters of the state are of special value or importance and should be afforded the special protection provided under Tier 2.5.

4D.6.a. Upon receiving a nomination of a water or segment of a water for designation as a Tier 2.5 water pursuant to the Board's antidegradation policy, the Board shall notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. The written notice shall include, at a minimum:

4D.6.a.1. A description of the location of the waters or segment;

4D.6.a.2. The procedures and criteria for designation as well as the impact of the designation;

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4D.6.a.3. The name of the person(s) making the nomination; and

4D.6.a.4. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the waters or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

4D.6.b. Qualification Criteria. Factors to be considered in determining whether to assign an ONRW designation to a water from another category shall include the following:

4D.6.b.1. Impact on private property owners;

4D.6.b.2. Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

4D.6.b.3. The location of the water;

4D.6.b.4 Any previous special designations;

4D.6.b.5. Existing water quality;

4D.6.b.6. Ecological value;

4D.6.b.7. Recreational or aesthetic value;

4D.6.b.8. Other factors that indicate outstanding ecological or recreational resource value; and

4D.6.b.9. Other factors determined by the Director, when applicable.

4D.6.c. Reclassification of a Designated Water of Special Concern. The Board may on its own, or at the request of an interested party, consider reclassification a Water of Special Concern to another antidegradation tier. In considering a reclassification, the Board shall review the criteria outlined in section (Add Tier 2.5 sections 1-9) above as well as the provisions in sections 4C.1.a, 4E.6, herein. After such consideration, the Board may reclassify a Tier 2.5 water in accordance with the notice and comment provisions of 46 CSR 6 - Procedural Rules Governing Site Specific Revisions to Water Quality Standards.

46-1-4E. Tier 3 Protection Review Procedures: Outstanding National Resource Waters. See§46-1- 4.1.d and 46-1-2.11 for a description of Outstanding National Resource Waters (ONRW). See section #### for a list of waters nominated as Tier 3. *Please specify where a list of Tier 3 waters will reside.* Waters designated as Tier 3 may include any exceptional water of the state and are not limited to waters on federal property. Any proposed activity that would

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result in ~~a permanent new or expanded point or nonpoint discharge of pollutants to any waterbody segment that has been~~ a lowering of the water quality in a waterbody, except those that result in short term or temporary lowering water quality ~~designated as an Outstanding National Resource Water~~ is prohibited.

4E.1. The Director shall use the following antidegradation implementation proccdures when reviewing proposed activities within an ONRW that would result in short-term and temporary changes in the water quality of that ONRW.

4E.1.a. Determine whether the proposed activity is short term in nature and the resulting changes in water quality will be temporary. Activities with durations of less than one month and which result in less than a 5% change in ambient concentration may be deemed to have temporary and limited effects. Such determination will be made on a case-by-case basis and shall be made after consideration of the following factors:

4E.1.a.1. The length of time during which the water quality will be lowered;

4E.1.a.2. The percent change in ambient concentrations;

4E.1.a.3. The parameters affected;

4E.1.a.4. The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

4E.1.a.5. The degree to which achieving applicable water quality standards during the proposed activity may be at risk; and

4E.1.a.6. The potential for any residual long-term influences on existing uses.

4E.2. If after review of the factors in 4E.1.a.1-6, the agency determines that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, the proposed activity may be authorized. In such case the antidegradation review findings shall be documented and public notice activities shall be initiated. If after review of the factors in 4E.1.a.1-6 the agency determines that the proposed activity will not be short term in nature or that changes in water quality will not be temporary and limited, the proposed activity shall be denied.

4E.3. Sources upstream from an ONRW. Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source would not degrade the existing water quality of the downstream ONRW segment.

4E.3.a. To determine whether the proposed activity will ~~degrade the~~ result in the

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lowering of water quality in the downstream ONRW segment, the following factors, when applicable, shall be considered:

4E.3.a.1. change in ambient concentrations predicted at the appropriate critical condition(s);

4E.3.a.2. change in loadings (ie., the new or expanded loadings compared to total existing loadings to the segment);

4E.3.a.3. reduction in available assimilative capacity;

4E.3.a.4. nature, persistence and potential effects of the parameter;

4E.3.a.5. potential for cumulative effects;

4E.3.a.6. degree of confidence in the various components of any modeling technique utilized (e.g., degree of confidence associated with the predicted effluent variability); and

4E.3.a.7. other factors determined by the Director, when appropriate.

4E.3.b. If a preliminary determination is made that the applicable criteria in 4E.3.a.1-7 will be met, the antidegradation review findings shall be documented and the applicable public notice activities shall be initiated. If after review of the factors in 4E.3.a.1-7, the Director determines that the proposed activity will result in the lowering of water quality in the downstream ~~in the degradation of water quality within the~~ ONRW stream segment, the proposed activity shall be denied.

4E.4. The public notice of the activities authorized in section 4E.1.a.1-6 and 4E.3.a.1-7 shall include:

4E.4.a. Notice that the proposed activity has been determined to comply with the antidegradation rule; and

4E.4.b. Notice of the availability of an antidegradation review sheet, which ~~may~~ shall include: *The use of the term "may" gives the impression that this information may not be required in all situations. Review sheets should be consistent with one another, meaning that they should contain the same type of information.*

4E.4.b.1. A determination of existing uses and their protection level; and

4E.4.b.2. A determination that the activity will be short-term in nature and the resulting changes in water quality will be temporary. This determination shall be based on the factors listed in section 4E.1.a. 1-6 above.

4E.5. For ONRWs in areas designated as federal Wilderness, nothing in this rule

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is intended to authorize activities not authorized by the Wilderness Act.

4E.6. Tier 3 Nomination Procedures. Any interested party or the Board may nominate a water as an ONRW. After reviewing the nomination the Board shall consider the qualification criteria and may ~~designate~~ classify the nominated water as a Tier 3 water in accordance with the notice and comment provisions of 46 CSR 6 - Procedural Rules Governing Site Specific Revisions to Water Quality Standards. The address for filing such petitions is:

West Virginia Environmental Quality Board
1615 Washington Street, East
Room 301
Charleston, West Virginia 25311-2126

4E.6.a. Upon receiving a nomination of a water or segment of a water for designation as a Tier 3 water pursuant to the Board's antidegradation policy, the Board shall notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. The written notice shall include, at a minimum:

4E.6.a.1. A description of the location of the waters or segment;

4E.6.a.2. The procedures and criteria for designation as well as the impact of the designation;

4E.6.a.3. The name of the person(s) making the nomination; and

4E.6.a.4. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the waters or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

4E.6.b. Qualification Criteria. Factors to be considered in determining whether to assign an ONRW designation to a water from another category shall include the following:

4E.6.b.1. Impact on private property owners;

4E.6.b.2. Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

4E.6.b.3. The location of the water;

4E.6.b.4. Any previous special designations;

4E.6.b.5. Existing water quality;

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4E.6.b.6. Ecological value;

4E.6.b.7. Recreational or aesthetic value;

4E.6.b.8. Other factors that indicate outstanding ecological or recreational resource value; and

4E.6.b.9. Other factors determined by the Director, when applicable.

Definitions:

Ambient concentration: that measured value or level of water quality upstream of the proposed activity (discharge point for point source, discharge area for nonpoint source) for any parameter of concern determined through EPA-approved collection and analytical methods in 40 CSR 136. In the absence of a suitable upstream location, the ambient concentration will be measured at a point closest to the discharge or activity during precipitation events and at a point immediately downstream of the discharge or activity during non-precipitation events where adequate stream flow is available.

Ambient Water Quality Conditions (AWQC) are those physical, chemical, biological and radiological conditions of the receiving waters of the state existing at the time of review of a regulated activity.

Parameter of concern: means any parameter for which numeric water quality criteria have been adopted in 46 CSR 1 and any other parameter for which numeric criteria are not established but where the discharge of such parameter has a reasonable potential to either cause or contribute to a violation of the narrative criteria outlined under 46 CSR 1, Section 3.

Reasonable less-degrading or non-degrading alternatives: shall be identified based on case specific information (as outlined in section 4C.4.a). ~~Generally speaking, less-degrading or non-degrading pollution control alternatives shall be considered reasonable where the costs of such alternatives are less than 110% of the costs of the pollution control measures associated with the proposed activity.~~ *The Region feels that the concept of "reasonable" alternatives based strictly on cost considerations is too limiting. While cost may be one factor in determining whether an alternative is "reasonable," whether an alternative is reasonable would seem to include assessing the cost against the degree of improvement along with other factors.*

Regulated Activity includes 1) any activity that requires a permit or a water quality certification pursuant to state or federal law (e.g., CWA §402 NPDES permits, CWA §404 dredge and fill permits, or any activity requiring a CWA §401 certification), 2) any activity subject to nonpoint source control requirements or regulations, and 3) any activity which is otherwise subject to state requirements and regulations developed to protect water quality. For the purposes of this implementation procedure, the term "proposed activity" means a proposed activity that is also a regulated activity.

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Trading Assessment Procedure: Methodologies to be used by the Director to document the basis for any trade allowed in sections (46-1-4B, 46-1-4C and 46-1-4D) are EPAs Total Maximum Daily Load Procedures (40 CFR 130.2(i)), wasteload allocation procedures outlined in EPAs Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991), wasteload allocation methodologies outlined in EPAs Draft Framework for Watershed-Based Trading (EPA/800-R-96-001, May 1996) or other EPA approved wasteload allocation methodologies as long as these methodologies are consistent with the trading provisions of this rule.

Trading: means establishing upstream controls for a parameter of concern to compensate for new or increased downstream sources for the same parameter resulting in improved water quality for the parameter traded. More than one parameter of concern may be traded on a given stream. Trading may involve point sources, nonpoint sources or a combination of point and nonpoint sources. Unused permitting capacity cannot be traded.

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APPENDIX F-1

ANTIDEGRADATION IMPLEMENTATION PROCEDURES

INTERGOVERNMENTAL COORDINATION AGENCIES

STATE AGENCIES

Bureau of Commerce

Division of Natural Resources

Division of Forestry

Development Office

Department of Health and Human Resources

Bureau for Public Health

Bureau of the Environment

Division of Environmental Protection - all offices

Department of Education and the Arts

Division of Culture and History

Department of Agriculture

Soil Conservation Agency

Public Service Commission

FEDERAL AGENCIES

US Environmental Protection Agency, Region III

US Fish and Wildlife Service

US Army Corps of Engineers

National Park Service

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Enclosure 2

SPECIFIC COMMENTS ON 46 CSR 1
REQUIREMENTS GOVERNING WATER QUALITY STANDARDS

46-1-2. Definitions.

2.20. Reasonable less-degrading or non-degrading alternatives. See comments in Enclosure 1.

46-1-7. West Virginia Waters.

7.2.d.16.2. Socio-economic variance at Harmon Creek. Generally, a variance should be used where a state believes the standard can ultimately be attained. This would imply that, during the period of time allotted under a variance, further progress should be made in improving water quality and attaining the standard. Because Weirton Steel has been granted a socio-economic variance once before, EPA hopes that reasonable progress is being made toward meeting the standards under the proposed revision.

Appendix E

8.1. Aluminum. West Virginia is proposing to express the nationally-recommended aluminum criterion as a dissolved form with an acute and chronic conversion factor of 1.000. Although EPA does not disagree with this concept, "total recoverable [may be] a more appropriate measurement than dissolved" in the case of aluminum, as noted in a Federal Register of December 10, 1998. If, however, the Board chooses to maintain an aluminum criterion expressed as dissolved, EPA would expect that the formal submission of this revision would be accompanied by supporting rationale.

8.2.1. Ammonia. We are pleased to see that the ammonia criterion is being revised to conform to the most recent update in nationally-recommended values. As stated in footnote "d" of Appendix E, West Virginia will be defaulting to the "early life stages are present" equation, unless the applicant demonstrates otherwise. While this footnote may be applicable when calculating the chronic criterion, the presence or absence of early life stages is not a consideration when calculating the acute criterion. Rather, the acute criterion is based on the presence of salmonid fish, in addition to pH. As such, another footnote could be added to clarify which equation shall be used to derive an acute criterion, but the existing footnote should be revised to apply only the chronic criterion.

8.24 Phenolic Materials. Though we are pleased to see that West Virginia is adopting the nationally-recommended criteria for each phenolic material, criteria for 2-Methyl-4,6-Dinitrophenol seems to have been left out. Therefore, we ask the Board to adopt human health criteria for this 304(a) pollutant.

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8.24.2-7. EPA finds West Virginia's use designation of Category C equivalent to our "human health for consumption of organism only" designation, and Category A equivalent to our "human health for consumption of water and organism" designation. For this reason, if the Board's intention is to adopt values consistent with nationally-recommended criteria, then the criteria proposed for these phenolic parameters should be switched to correspond to the appropriate use designation.

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ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Comments of the
WEST VIRGINIA MANUFACTURERS ASSOCIATION
regarding the
TRIENNIAL REVIEW OF WATER QUALITY STANDARDS
46 C.S.R. 1

I. Introduction

The West Virginia Manufacturers Association (WVMA) is an organization devoted to the advancement of manufacturing interests and related businesses in West Virginia. The WVMA frequently offers comments on rules and regulations that are of interest to its members. The 2000 triennial review of water quality standards by the Environmental Quality Board (Board), especially the antidegradation implementation policy, will have a significant effect on its members, and warrants the following comments.

II. Comments

A. The Board Must Analyze the Economic Effect of its Rules

1. The Board has a statutory duty to weigh the economic effects of its rules.

There are two independent requirements for evaluation of the economic cost of the Board's rules. First, all legislative rules must include a fiscal note. See *W.Va. Code* §29A-3-9, incorporating *W.Va. Code* §29A-3-4. The Board's fiscal note is discussed more fully in the next section. The second requirement arises as a result of the Board's duty to set water quality standards that take into account "the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development" as mandated by *W.Va. Code* §§22-11-2 and 22B-3-4(b).

The need to consider economic development and expansion are conditions precedent to the Board's development of water quality standards. As such, those findings should be made with some specificity, so that interested parties can comment. See *W. Va. Code* 29A-3-5. Failure to conduct a rigorous analysis of the cost of the Board's rule constitutes a violation

of the West Virginia Administrative Procedures Act, and exposes the rule to challenge. We suggest that the Board withdraw the proposed rule, conduct the necessary analysis, and repropose the rule with the analysis available for review by all parties.

2. The Board's fiscal note is inadequate.

The fiscal note adopted by the Board failed to properly analyze the costs to the Office of Water Resources (OWR) of implementing the rule, the cost to industry and municipalities in performing socio-economic reviews, and the effect on the citizenry of the state. The water quality standards are one of the most important rules adopted in the State, and some thought should be given to the cost of changes to the rule. These costs predominantly, but not exclusively, arise from the new antidegradation implementation policy.

The Board reports that "conducting antidegradation reviews of NPDES permit applications will increase the workload of offices within the WVDEP" but adds that it cannot estimate the cost of this increased workload. We believe an estimate of the effect of the rule on state government is possible and should have included, at a minimum, the cost of doing the socio-economic reviews by the Office of Water Resources for each new or expanded activity. The OWR could have provided the Board with the average number of permits for new or expanded facilities that were issued each of the last three years, along with an estimate of the staff time needed to review antidegradation information and provide public notice. The cost of training engineers to review social and economic data, something they do not ordinarily do, should be factored in as well. These costs can and should have been estimated in order to give some indication of the economic impact of the rule, which we believe will be significant.

The Board cannot claim that the cost of performing the socio-economic reviews will be offset by the effects of having fewer total maximum daily loads developed as a result of antidegradation review. Antidegradation reviews are done primarily for point (permitted) sources, and unpermitted and nonpoint sources are the subject of most TMDLs. In addition,

even without antidegradation review, the DEP could not issue a permit that would result in a violation of water quality standards. In fact, most of the costs associated with antidegradation review will result from complying with the demonstration requirements and restrictions for Tiers 2, 2.5 and 3. The waterbodies protected by these Tiers possess quality better than the applicable water quality standards, and thus would not even be candidates for the 303(d) list or for development of TMDLs. Furthermore, the DEP is not developing TMDLs, so it is not avoiding that expense by means of conducting a more thorough antidegradation review through its NPDES permitting. Nor will the OWR avoid the expense of monitoring streams, as it must carry out that function regardless of whether a stream is listed or not listed on the 303(d) list, or a TMDL is prepared, or antidegradation review is performed. The only possible expense avoided by the agency is the actual listing of a stream on the 303(d) list, which is negligible.

The fiscal note reports that it is impossible to characterize the impact of the antidegradation implementation policy on political subdivisions and industry. The requirements of the rule include detailed information on alternative treatment options, and data on the tax base, income levels and other facts about the affected community. Industry has estimated that the cost of each socio-economic review will begin at $80,000.00 and will likely exceed $250,000.00. That assumes that no investment is lost (e.g., manufacturing plants are not sited, or new processes are not sent to existing plants) as a result of the rule; if investment is lost, the cost of the rule would be even greater. The total annual cost could easily exceed a million dollars.

Contrary to the Board's belief, trading provisions in the antidegradation implementation policy will not result in appreciably decreased costs. Arranging for upstream reductions , and carrying out the trades, will likely be as costly as conducting a socio-economic review.

The antidegradation implementation policy also imposes costs on the state's citizens. The Board's fiscal analysis should recognize that, to the extent antidegradation review results in a denial of permits, there is a loss of jobs and tax revenue in the state.

B. Antidegradation

As a participant in the stakeholder process, the WVMA acknowledges and appreciates the time and effort put forth in preparing the proposed antidegradation implementation procedures. The WVMA did not agree with all of the provisions for which its stakeholder representative voted toward consensus. Yet, for the sake of compromise, the WVMA supported these votes to move forward a document which would be workable, although imperfect.

On provisions where consensus was not reached, the Board has been placed in the difficult position of deciding these issues without the advantage of being present for the days of discussions held on these topics by the stakeholders. As a result, the Board's decisions on several of these provisions are technically inaccurate and will be crippling to industry in the State. These provisions are of critical importance to the WVMA and are addressed in detail below.

The WVMA is also concerned with several other provisions where consensus could not be reached. The WVMA comments on these issues are set forth in sequential order according to the proposed rule, along with the WVMA comments on issues where consensus was reached, but only at the sacrifice of the WVMA position on the issues. The consensus issues are addressed for several reasons. First, as the Board is likely aware, citizen groups have filed a Notice of Intent to Sue (NOI) the United States Environmental Protection Agency (EPA) with regard to the Board's proposed antidegradation provisions. The WVMA has not seen this NOI; it is possible that the NOI addresses provisions where consensus was reached. In addition, the oral comments of some citizen groups at the public hearing implied

that they intended to address consensus issues in their written comments. Finally, the ultimate outcome of the proposed rule in the West Virginia Legislature is uncertain. The WVMA will stand behind its consensus votes if all other stakeholders do so as well. However, if changes are made to any of the consensus issues, then all consensus issues are open for reconsideration. The WVMA believes it important to set forth its position on these issues both for the record and for the Board's consideration, if appropriate. Comments which pertain to consensus items are identified for the Board's convenience.

Antidegradation implementation procedures should be objective, based on sound science, and efficient to administer. Antidegradation review should focus on addressing true impacts to water quality, recognizing that certain projects, including those with limited impacts or of great environmental or social importance, do not warrant extensive review. In contrast, the proposed rules impose far more restrictions than necessary to adequately protect water quality. They also greatly exceed Federal requirements for antidegradation review, and go far beyond what almost all other States require. Many dischargers to high quality waters will be required to comply with onerous antidegradation demonstration requirements for discharges that should not be defined as significant. For waterbodies designated as Waters of Special Concern or Outstanding National Resource Waters, the impacts will be even more severe. The proposed rules amount to an absolute prohibition on new and increased discharges. These restrictions will significantly impede West Virginia's economic competitiveness. Furthermore, the subjective and nonscientific criteria and process for special designations will likely result in many more waterbodies becoming Waters of Special Concern or Outstanding National Resource Waters. As a result, the proposed rules would have substantial adverse social and economic impacts, and put the DEP in the position of making land use decisions of serious consequence to future economic sustainability, for which the agency is ill-equipped.

The WVMA stands ready to work cooperatively with the DEP, the Board, and other stakeholders to develop an antidegradation program for West Virginia that protects high quality and outstanding waters in an efficient, effective, and cost-effective manner. We believe an effective program requires implementation of the following changes.

1. Issues of critical importance.

The stakeholders were unable to reach consensus on the following provisions, or these issues were beyond the consideration of the stakeholder group. It is critical that these issues be addressed before the rules are adopted by the Board. Otherwise, the result of the rulemaking will be a set of requirements that brings about severe social and economic impacts with little countervailing environmental benefit.

a. The policy should apply only to new and expanded regulated activities.

We support the application of antidegradation implementation procedures to new and expanded regulated activities, and oppose the efforts by some to include existing activities. It would be counterproductive to apply antidegradation implementation procedures to an existing source, which is already in place and in no position to consider alternatives to present operations. One can consider alternative waste treatment options before a facility is constructed, but not after a capital investment is made in pollution treatment technology. The Office of Water Resources will have enough problems implementing the antidegradation policies for new and expanded activities, without looking at all existing sites as well.

Because the antidegradation implementation procedures should apply only to situations where water quality is decreased, the word "affect" in Section 4A.1 should be changed to "degrade". Changes that improve water quality are not subject to antidegradation implementation procedures; only those that add additional pollutants or change water quality for the worse should be considered.

b. Significant degradation should be based upon 10 percent of available assimilative capacity.

Section 4C.2. sets forth a process for determining whether an activity will result in significant degradation of a waterbody. In particular, § 4C.2.a.1.A. provides that any activity that would degrade the ambient concentration of any pollutant by more than 5 percent at critical flow conditions or that would reduce the assimilative capacity by more than 5 percent constitutes significant degradation warranting antidegradation review.

We strongly support the inclusion of significance levels for antidegradation review. It is critical that the antidegradation review process focus on major increases in discharges that could truly have significant environmental impact. There is no point to spending the resources of the DEP and other parties to review minor changes that have little or no environmental impact. Moreover, a broad process would have a chilling effect on economic growth; it would both slow down the business plans of existing facilities and discourage new facilities from locating in the area.

Regarding the technical concerns, the definition of "ambient concentration" is flawed because it focuses on changes in water quality upstream of the proposed new or increased discharge. However, unless the receiving waterbody is subject to flow reversals, it makes no sense to evaluate the upstream concentration, because it will not be impacted by the proposed discharge. Furthermore, even if the definition of "ambient concentration" is revised to evaluate changes in water quality downstream of a proposed discharge, the concept of evaluating ambient concentrations only considers changes in current water quality, and does not adequately account for the total capacity of a waterbody to tolerate new discharges.

Based on the technical difficulties concerning use of ambient concentration, we recommend that this provision be deleted, and that the proposed rules instead rely on assimilative capacity alone. As a point of clarification, assimilative capacity should be based on unused loading capacity. Furthermore, the trigger needs to be increased from 5 percent

to at least 10 percent, to ensure that antidegradation review focuses on significant activities worthy of the time and effort that will be required for making and reviewing demonstrations of technical and social or economic necessity. Our review of the 5 percent trigger revealed that most increased discharges would trigger antidegradation review, even those that are not biologically significant or analytically detectable.

An example involving an increased discharge of zinc to the Monongahela River is provided below. This example shows that a 5 percent trigger would require antidegradation review for an increase of 0.01 milligrams per liter of zinc, which is not analytically detectable. In contrast, a 10 percent trigger appropriately captures an insignificant increase of 0.07 milligrams per liter, which should not warrant extensive antidegradation review. A 15 percent trigger allows increases of up to 0.13 milligrams per liter, which begins to look more significant. A trigger of 10 percent is reasonable in light of the triggers recommended by EPA (10 percent) and used by other states, including Indiana (10 percent), Kentucky (20 percent), and Wisconsin (33 percent). A 10 percent trigger will also help protect DEP with becoming unduly burdened with reviewing antidegradation demonstrations for every small increase that a discharger wants to make.

Assessment of Increased Discharge of Zinc to the Monongahela River1

Parameter	Permitted Effluent Concentration (mg/l)	Allowable New Activity (% of Assimilative Capacity)	Allowable New Activity + Permitted Effluent Concentration (mg/l)
Zinc	0.50	5.0%	0.51
Zinc	0.50	10.0%	0.57
Zinc	0.50	15.0%	0.63

We consider the failure to adopt a reasonable significance level of 10% of available assimilative capacity to be the most significant error in the proposed policy.

c. The process for identification and listing of Tier 2.5 streams must be clarified.

The WVMA has opposed Tier 2.5 in the form adopted by the Board. We have urged its elimination, and incorporation of Tier 2.5 streams into Tier 2. If that is not done, the process for designating Tier 2.5 streams must be clarified.

The Board has not adequately explained how one identifies a Tier 2.5 water. In Section 4D.1 the Board provides that the Director will determine whether a water is a water of special concern. In Section 4.1.c of the regulations, waters of special concern are identified in a generic sense. In Section 4D.6 there is a means proposed for nominating a water as a water of special concern. Such a nomination system is redundant if all streams which are described in Section 4.1.c of the rule are automatically Tier 2.5 waters. Therefore, the WVMA interprets the policy as providing that no stream is a Tier 2.5 water unless it falls into one of the categories in Section 4.1.c **and** successfully completes the nomination procedures required in Section 4D.6.

The need for clarification of the issue was apparent from the draft list of Tier 2.5 streams prepared by the DEP. This draft list included virtually all of the streams in the State, including the Kanawha and Ohio Rivers. Certainly, this category was not intended to be all-encompassing, in effect negating the need for any other categories. The WVMA suggests that the language in Section 4.1.c. be revised as follows:

> 4.1.c. In waters which constitute a water of special concern no activities which result in the reduction of ambient water quality shall be allowed. Waters of special concern shall be identified and listed according to the provisions in Appendix F herein. Waters of special concern may be nominated from the following categories of waterbodies:

This language will clarify that the categories of streams listed in 4.1.c. are examples of streams which may be Tier 2.5 streams, but the ultimate decision of whether to list a stream shall be made only after a review to establish the stream's special importance. Comments on the language in Section 4D.6. are set forth in a later section.

2. Other issues of concern.

In this section, the WVMA sets forth its comments on all other provisions of the antidegradation procedures sequentially as they appear in the proposed rule. These provisions warrant further discussion for one of the following reasons: (1) the Board's decision on issues where consensus could not be reached is contrary to the WVMA position; (2) the consensus decision was contrary to the WVMA position, which was compromised to allow the stakeholder process to move forward; or (2) the full implications of some provisions were beyond the stakeholders' scope of review.

a. Definition of nonpoint source *(consensus).*

In West Virginia's water quality standards, point sources are defined as they are under the Clean Water Act, 33 USC 1362 (14), and nonpoint sources are everything that is not a point source. See 46 CSR 1-2.16 and 2.19. As a general rule, point sources are required to obtain NPDES permits, and would be subject to antidegradation implementation requirements. However, because of the way that the regulations interpreting the Clean Water Act have been drafted, there are discharges that fit the definition of point source discharges that are still not required to obtain NPDES permits, and should not be required to undergo antidegradation review. For example, silviculture is not excluded from the definition of point source in section 2.19 of West Virginia's water quality standards, but logging and other forest activities are still exempt from permitting, and are considered nonpoint sources. See 40 C.F.R. §122.3.

The Board's failure to mesh its definition of nonpoint source with the interpretation by the permitting agencies will cause problems for those implementing the antidegradation policy. The proposed antidegradation implementation policy applies to all "regulated activities," a term that includes almost all discharges, including nonpoint source discharges. The Board then, in Section 4A.2, excludes from the implementation procedures those

nonpoint sources that are subject to best management practices (BMPs). Unfortunately, this exclusion, given the definition of "nonpoint source" in 46 C.S.R. 1-2.19, would arguably leave within the scope of "regulated activities" some activities, such as logging, that are clearly nonpoint sources. The effect of this is to include as point sources some discharges that are generally treated as nonpoint sources for purposes of the NPDES program.

This distinction between permitted and nonpermitted activities is important, because the implementation plan should apply only to those activities that are subject to review by the DEP. As explained by EPA in the Water Quality Standards Handbook - Second Edition, implementation of antidegradation review is only allowed in those circumstances in which the DEP is authorized to compel compliance with water quality standards. See EPA-823-B-94-005a, p. 4-9 and 4-10. To the extent that WVDEP has authority to impose water quality standards requirements on nonpoint sources or other activities outside of the purview of § 401 and § 402 of the Clean Water Act, these programs should be specifically listed. If no such authority exists, the definition must be revised to apply only to activities requiring an NPDES permit or § 401 water quality certification, which should be the only programs for which WVDEP may require compliance with water quality standards.

Nonpoint sources, for purposes of this rule, should be those that are not subject to permitting or water quality certification. This is a bright line definition that is easy to apply. Consequently, we urge that the DEP define nonpoint sources as "any discharge for which a permit or water quality certification is not required under Sections 402 or 401 of the Federal Act."

b. Applicability of antidegradation implementation procedures to nonpoint sources *(consensus).*

Nonpoint source activities are deemed in compliance with antidegradation implementation policies if they are subject to Best Management Practices (BMPs) "in accordance with 46 C.S.R. 1-4.1.b, herein." Section 4.1.b directs the Director to work with

agencies on BMPs if they are not protecting water quality standards, or to order cessation of the offending nonpoint activity.

The WVMA does not oppose the Director helping to revise BMPs that are not protecting water quality standards. Furthermore, the Director has authority to require compliance with water quality standards, as provided in *W.Va. Code* §22-11-6. There is no need to reiterate that authority in the water quality standards or to confuse the implementation of antidegradation procedures by trying to micromanage BMPs through the water quality standards. The changes to Section 4.1.b should be deleted.

There is a further reason to be concerned about this section. The way that Section 4A.2 is written calls into question whether the exemption from antidegradation is lost for all activities when there is any noncompliance with BMPs, even at a single facility. As long as a nonpoint source complies with valid BMPs, it should not be subject to loss of its exemption from antidegradation review. To the extent an individual activity is not protecting water quality standards in a given situation, the Chief (and any other relevant agency) can address that problem without implicating antidegradation review.

c. Authority of the Board to require action by the Director *(consensus).*

At several points throughout the antidegradation implementation procedures the Director is ordered to take action. For example, Section 4B.1 states that "the following procedure shall be performed by the Director when reviewing all activities subject to this rule." In Section 4.1.b the Director is even required to compel changes to BMPs by other agencies, such as the Department of Agriculture. The Board has no authority to compel the Director -- or any other agency -- to act as its directs. The antidegradation procedures primarily apply to permitting activities, and permitting is the province of the Director. The Board sets standards, and the Director applies those standards in the course of fulfilling his permitting obligations. How the Director goes about that is a matter the Director must decide.

One purpose of the implementation policy is to provide a means of guaranteeing that the antidegradation requirements will be carried out by the permitting agencies, especially when they are not under the direct control of the standard-setting agency. A rule is not necessary to accomplish that purpose, only a clear means of providing for antidegradation review. Given the Board's and OWR's respective jurisdictions, this could be done by joint adoption of guidance that leaves room for the Director to incorporate the antidegradation review into the existing permitting program. The Board and the Director could jointly issue a guidance document that would explain how the Director is interpreting the antidegradation policies already adopted by the Board. The OWR could explain when in the permitting process it will require the public notice, and when the need for a socio-economic review will be determined. This would allow some flexibility that is missing in the current approach.

d. Tier 1 Procedures.

Tier 1 antidegradation concerns the level of protection to be applied to all waterbodies, regardless of their present quality. The goal of Tier 1 antidegradation is to maintain and attain water quality standards necessary to protect the designated and existing uses of waterbodies. Tier 1 protection is implemented by first determining the existing and designated uses of a waterbody, and then setting controls to ensure that the water quality standards designed to protect these uses are met. We have the following concerns with the proposed Tier 1 procedures.

(1). Limited application of Tier 1 *(consensus)*.

Tier 1 should be the default tier. Streams that are fishable and swimmable are meeting Clean Water Act goals and should not be degraded below that level. Tier 2 should include the types of streams that are genuinely high quality, such as those streams currently designated as Tier 2.5. The antidegradation policy the Board has adopted essentially eliminates Tier 1 and bumps Tier 2 and 2.5 streams into more restrictive categories.

Section 4B of the implementation policy is filled with references to designated uses and requirements that apply to other tiers. Section 4B.1 and 4B.4 apply exclusively to Tier 1; the other parts of Section 4B are generic requirements that apply to all antidegradation review, regardless of the tier. If they apply to all other tiers, perhaps they should be in a separate section.

(2). Public notice requirements *(consensus).* Section 4B.1.d. provides that before the DEP makes a final determination concerning Tier 1 antidegradation, it must issue a public notice in the newspaper with the largest circulation in the county in which the activity will occur, and request public comment. This provision should be clarified to provide that this notice may be conducted in conjunction with public notice of a draft permit. Joint notice will serve the dual purposes of providing adequate public notice and opportunity to comment while at the same time allowing for the efficient and timely issuance of permits.

(3). Impaired waterbodies. Section 4B.2.a. states that if a designated use of a waterbody is impaired, the water quality with respect to the pollutant causing the impairment shall not be degraded. The proposed rules do not explain how this provision will be implemented, beyond the general direction to the DEP to not allow a lowering of water quality that prevents attainment of the standard or of the criterion for the pollutant. We are concerned that the DEP may determine that it is necessary to prohibit any new or increased discharge to an impaired waterbody in order to implement this provision. Any restrictions that are imposed on new and increased discharges to impaired waterbodies need to be carefully focused on significant new loadings. To impose restrictions on minor activities will introduce substantial time delays and transaction costs for little environmental benefit.

(4). The authority for the Director to set numeric criteria. Section 4B.2.c states that "where the Director determines that the designated uses do not

appropriately reflect the existing uses of the water, the Director shall determine whether numeric criteria for a related designated use would maintain water quality sufficient to protect the existing use." The Director has no authority to take criteria that the Board established in order to protect one use and apply it as criteria for another use. If the Board has not adopted criteria for its use, the Director cannot do so as part of an antidegradation review. Where there are no numeric criteria, there is no need for antidegradation review unless one of the narrative criteria are implicated.

(5). The trading provisions for Tier 1. Section 4B.4. provides that a new or expanded discharge subject to Tier 1 protection may be allowed if the discharger implements or finances upstream controls to offset the water quality impacts. In addition to requiring a margin of safety, the provision also requires that the offset be greater than the new or increased discharge, such that an improvement to the present water quality results. We have three fundamental concerns with this trading requirement. First, trading seems to be required for any new or increased discharge. There is no justification for such a requirement in Tier 1 protection, where the goal is to protect existing and designated uses, not to improve the existing water quality by mandating offsets to accompany every new activity. This section needs to be revised to provide that trading is only required if a discharger wants to undertake an activity that would cause a violation of instream water quality standards, in which case other sources of the pollutants to the waterbody must be reduced to account for the increase.

Furthermore, the improvement provision is completely contrary to the concept of Tier 1 protection, and must be removed. As previously stated, the Tier 1 antidegradation standard calls for maintenance and protection of existing and designated uses. It is beyond the scope of Tier 1 protection to make facilities undertake or fund water quality improvement projects in return for permission to add or increase discharges that will not otherwise violate water quality standards. For impaired waterbodies, the proper tool to correct water quality

problems is the TMDL process. For waterbodies that are not impaired, improvement projects simply are not warranted under Tier 1 antidegradation protection.

The trading section also should be clarified as it applies to interstream trades. Section 4B.4 states that "a trade may be made between more than one stream within a watershed where removing a discharge in one stream directly results in improved water quality in another stream, provided that no degradation results to any stream within the watershed." The final clause seems to negate the rest of the sentence. The purpose of a trade between streams (as compared to a trade with a stream segment directly upstream) is to offset degradation of a stream in one location with improvement of stream quality in another. Consequently, where there is an interstream trade one cannot meet the requirement that " no degradation results to any stream within the watershed." What may have been intended is that there will be no **net** degradation in the watershed, and we would propose that change to be made in this section.

e. Tier 2 Procedures.

(1). Definition of Tier 2 high quality waters *(consensus)*.

The goal of Tier 2 antidegradation is to allow only degradation that is necessary to accommodate important economic or social development. Tier 2 protection is implemented by first determining whether an activity will result in significant degradation. If it will, the activity must then be reviewed to determine whether it is technically necessary and whether it will accommodate important economic or social development in the area. We have the following concerns with the proposed Tier 2 procedures.

Tier 2 includes (a) all waters that are not Tier 2.5 or 3; and (b) have water quality that would support either fishable or swimmable uses. How one determines whether the Category B and C criteria are being met is not explained. Once a stream is properly characterized as Tier 2, the question of whether it is significantly degraded is determined on a parameter-by-parameter basis. However, the rule does not state that categorization of a stream as Tier 2

is done on a parameter-by-parameter basis. Indeed, the manner in which Tiers 1 and 2 are defined leads one to believe that categorization should be done on a biological, whole-stream evaluation rather than a parameter-by-parameter, chemical-specific basis. The proposed rules should be clarified to provide that for a particular waterbody, Tier 2 protection only applies to those parameters that are better than the applicable water quality criteria. For those parameters that are equal to or worse than that applicable water quality criteria, Tier 1 protection applies.

We are also concerned with the presumption that a waterbody should be considered high quality unless it can be demonstrated otherwise. This provision should be changed to provide that a waterbody will only be treated as a high quality water if there is credible data showing that its quality exceeds water quality standards. Furthermore, these provisions both misinterpret the Federal meaning of high quality waters, which only includes waterbodies whose quality **exceeds** the levels necessary to support the fishable and swimmable designated uses. See 40 CFR 131.12(b). Waterbodies whose quality equals the levels necessary to support the fishable and swimmable designated uses are protected by the Tier 1 standard. The proposed rules should be revised to explain the criteria for designating waterbodies as having water quality better than the fishable/swimmable goals of the Clean Water Act.

(2). **Harmonic mean flow for carcinogens in critical flow conditions.** Section 4C.2.a.1.A.1 should be rewritten as follows: "For non-precipitation induced discharges, the 7Q10 of the receiving stream plus the maximum permitted flow or the maximum flow specified in the application, for industrial activities; or the 7Q10 of the receiving stream plus the average design flow, for municipal activities. For carcinogens, the flow conditions would be the harmonic mean flow." As discussed later in these comments, the harmonic mean flow should be used for calculating permit limits for carcinogens, and the antidegradation implementation policy should be consistent with that.

(3). Exemptions from Tier 2 antidegradation review. Section 4C.2.a.2.A. lists several activities that are not subject to Tier 2 antidegradation review. These exemptions are generally based on one of two reasons: either the activity at issue will have minor water quality impacts (such as the exemptions concerning temperature, fecal coliform, pH, dissolved oxygen, and Nationwide and West Virginia general permits), or the activity has significant environmental or social benefit (such as the exemptions for by-products from treatment of ammonia, emergencies, and expansions of publicly owned treatment works to address failing septic systems, combined sewer overflows, and other sewage treatment problems). We support the inclusion of these provisions, which will ensure that the antidegradation review process stays focused on significant actions and does not discourage worthwhile projects. We do, though, have several specific concerns about the proposed exemptions, and we also have recommendations for adding several additional exemptions.

(a). The exemptions should be identified as activities that do not constitute significant degradation *(consensus).* Section 4C.2.a.2 identifies the exemptions to the Tier 2 review requirements. We believe it is intended that such activities will not be considered significant degradation. That is important, because only activities causing significant degradation are required by Section 4C.4 to undergo review. In order to clarify this, we suggest that Section 4C.a.2 be rewritten as follows: "The following circumstances do not constitute significant degradation and shall not be subject to further Tier 2 review requirements."

(b). Reissuance of an individual NPDES permit where no new increase in permitted levels will occur. Section 4C.2.a.2.E relieves an NPDES permit applicant of undergoing antidegradation review if there would be no increase in permitted levels. However, the Director may require review "where individual circumstances warrant." If there would be no increase in permitted levels, and public review is required of individual NPDES permits in any event, where would the individual

circumstances arise that would allow the Director to undertaken antidegradation review for a permit that does not have an increase in permitted levels?

We support the concept contained in this exemption, but we believe it should be strengthened by moving it into the general applicability of the antidegradation implementation procedures. Antidegradation review should focus on situations where a new or increased permit limit is necessary. This policy will ensure efficient administration of antidegradation review, which would otherwise become bogged down or even paralyzed by review of increases below permit levels or that could not trigger the need for a permit limit. We recommend that § 46-1-4A.1 be revised as follows:

> "The antidegradation implementation procedures herein are intended to apply to **a** new ~~and expanded~~ **or increased loading from a** regulated ~~activities that have the potential to affect existing water quality~~. **activity for which a new or increased permit limit would be required.** The specifics of the review called for in the regulation will depend upon the existing and designated uses of the waters or segments of waters that would be affected, the level of protection (tier) assigned to the applicable waters or segment of water, and the extent to which water quality would be degraded."

(c). **Addition of chemicals used for the treatment of drinking water or municipal wastewater.** The use of chemicals to treat drinking water or wastewater that do not violate water quality standards are exempt from antidegradation review. However, this exemption does not apply to "parameters of concern." Since parameters of concern include both numeric and narrative criteria, it is hard to imagine when this exception would apply. In essence, the last sentence of the exemption eliminates the exemption, and that last sentence should be deleted.

Furthermore, we believe this section should be expanded to cover use of all drinking water and wastewater treatment additives, regardless of whether they are used at a public or private facility. Often, treatment additives must be able to be used and changed quickly, in order to maintain proper operation and promptly address needs at a facility, including

preventing excessive corrosion and biofouling, which precludes further water quality problems. This need exists regardless of whether the facility is operated by a municipality, an industry, or a private sanitary wastewater system. Thus, there is no objective reason to limit the exemption to public facilities only.

(d). New or increased discharge of a substance used to treat zebra mussels or asiatic clams. This exemption is too limited, and should be expanded to cover treatment of all invasive nuisance species. The entire point of treating for nuisance species is to be able to respond quickly when new ones appear. Because it is impossible to predict whether new species will invade an intake structure, it is important for the rules to be flexible enough to allow treatment of new species. The general provision in the exemption concerning avoiding adverse impacts to human health and aquatic life outside of the mixing zone will more than adequately protect against use of inappropriate treatments.

(e). Antidegradation review applies during the application period. The word "application" in Section 4C.2.a.2.J should be "discharge" in order for that section to be consistent with the way the rest of the exclusions are expressed. Antidegradation review would occur while the application is being processed, but the review would be of the discharge and its effect.

(f). Groundwater remediation efforts for existing contaminated sites which do not constitute a new point source. This exemption recognizes the importance of encouraging remediations by streamlining regulatory requirements. However, it needs to be expanded to cover all cleanup activities conducted under CERCLA, RCRA, or similar Federal or State authorities. CERCLA, RCRA, and comparable remediation programs are designed to provide adequate assurance that cleanups are necessary and will improve the environment. Thus, there is no reason that antidegradation review is needed. In fact, having to go through that review would only delay the commencement of work on a remediation project, and could discourage parties from

undertaking responsible cleanup actions, which would result in more impact to the environment, rather than less. To encourage those cleanup activities, the exemption should provide that antidegradation review is not required. We suggest the following language:

> New or increased discharges of a pollutant of concern due to response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, corrective actions pursuant to the Resource Conservation and Recovery Act, or similar federal or state authorities, undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminations.

If the section is not amended as suggested, it should be better expressed. Groundwater treatment that is reducing an existing discharge, whether point or nonpoint, would not be increasing levels of pollutants, so there would be no need for an exemption. This exception would benefit from an explanation.

(g). Exemptions should be provided for research and development projects and brownfields and other redevelopment projects. There are other exemptions that we believe should be added to the rules. One would cover research and development projects. These projects provide a valuable benefit to society, and should be included as an exemption to antidegradation review, especially because the antidegradation program is intended to allow projects that are beneficial to social and economic development.

Another exemption that should be included would cover brownfields and similar projects. It is an important policy to encourage redevelopment of former industrial sites in urban areas. If a company seeks to build a new facility in one of those areas, bringing new jobs where they are often badly needed, State policies should encourage those activities. If a developer must go through the lengthy and resource-intensive antidegradation review process before beginning a redevelopment project, it might very well go elsewhere, especially since it might find out at the end of the process that its project would not meet the vague "important social or economic development" test, so that the project would not "pass"

antidegradation review and could not happen at all. To avoid that result, there needs to be a brownfields exemption in the antidegradation rules, so that companies are encouraged to pursue redevelopment of sites in urban areas, including areas that have been designated as "empowerment zones."

(4). Tier 2 Trading *(consensus)*. The trading exemption from Tier 2 antidegradation review is identical to the trading requirement for Tier 1 protection. For Tier 2 waterbodies, we support the concept of allowing facilities to implement or finance a project to offset a new or increased discharge, in return for not needing to undergo an antidegradation demonstration. However, as with the Tier 1 requirement, we believe that the requirement to improve water quality is not warranted under Tier 2 protection, which simply calls for water quality to be maintained and protected unless lowering water quality is necessary to accommodate important social and economic development in the area. Thus, the improvement requirement should be deleted.

The same problem with interstream trades for Tier 1 stream applies to Tier 2 streams as well. See comment B.7, above. The purpose of trading is to offset degradation at one location with improvement in another. Therefore, it would be technically impossible to provide that a trade between streams in a watershed would not result in any degradation to any stream within the watershed.

(5). Determining whether reasonable less-degrading or non-degrading alternatives exist. Sections 4C.4. and 4C.5. of the proposed rules provide that if an activity will cause a significant degradation of water quality, the discharger must determine whether reasonable less-degrading or non-degrading alternatives exist. This process involves an evaluation of alternatives to the proposed activity, including their costs and environmental impacts. If a reasonable less-degrading or non-degrading alternative exists, the DEP will require the discharger to revise the activity to incorporate the alternative. If the discharger refuses, the DEP will not allow the activity to occur. As explained in the

definition of "reasonable less-degrading or non-degrading alternatives" in § 46-1-2.20, an alternative generally will be considered reasonable where its costs are less that 110 percent of the costs of the pollution control measures associated with the proposed activity.

We are concerned that this alternatives review could become extremely cumbersome and time-consuming, slowing down the process for making changes in facility operations. Also, if not done properly, the alternatives review could contradict control decisions that have already been made by EPA or by the DEP itself. For many industries, EPA has issued effluent limitations guidelines, which specify the "best available technology economically achievable (BAT)" or "new source performance standards (NSPS)" for the industry. For some industries that do not have Federal guidelines (and for some parameters, where EPA has issued a set of guidelines that do not cover that substance), the DEP has set its own limits in permits, based on the "best professional judgment" of the agency.

Industrial dischargers have spent millions of dollars to install BAT/NSPS controls. These dischargers should not be forced to possibly spend even more to remove those controls and install other equipment based on an antidegradation review. Instead, if a discharger has installed BAT/NSPS controls, then it should be presumed that those controls meet the "reasonable less-degrading or non-degrading alternatives" test, and nothing more should be required. That would make the antidegradation review process significantly quicker and more efficient for all concerned, and would ensure that soundly-based technology decisions made by EPA or the DEP are given full credit.

(6). Determining whether an activity is necessary to accommodate important social or economic development. If it has been determined that an activity will cause a significant degradation of water quality and that reasonable alternatives do not exist, the activity must be evaluated to determine whether it is necessary to accommodate important social or economic development in the area. The proposed rules set forth two options for the process of evaluating and determining whether the activity is

socially or economically necessary. Option 1 provides that the DEP make a preliminary determination and submit it for review by a group of intergovernmental coordination agencies during the draft permit stage. Option 2 would set up an intergovernmental coordination agency panel that would give recommendations to the DEP at the draft permit stage. Both options give recognition to the fact that the DEP, which has expertise only in making environmental quality determinations, should not be given the sole responsibility of making decisions about the economic and social health of a community, which is clearly beyond its area of expertise. However, convening a large panel of agencies every time review is necessary will be extremely inefficient and significantly delay the permitting process, stalling many important new activities and projects.

Rather than organizing a panel of agencies, we suggest that the DEP coordinate with the West Virginia Council for Community and Economic Development to assist it in making determinations about social and economic necessity. The Council for Community and Economic Development is comprised of people representing diverse interests, including local government, State government, and a range of business sectors. See West Virginia Code §5B-2-2(a). Furthermore, the Council is charged with enhancing economic growth and development through the development of a comprehensive economic strategy for the State. See West Virginia Code §5B-2-3(a). The composition and responsibilities of the Council are uniquely suited to consider whether an activity will accommodate important social or economic development. Because the Council is already equipped to make this kind of determination, a thorough review can be conducted in a reasonable in a reasonable amount of time.

Finally, three of the pieces of information that WVDEP may request in § 4C.6.b. need to be deleted:

1. Information pertaining to current aquatic life, recreational, or other water uses.

2. Information necessary to determine the environmental impacts that may result from the proposed activity.

3. Land use in the areas surrounding the proposed activity.

These are not appropriate factors for determining the social and economic importance of a project.

f. Nomination process and qualification criteria for waters of special concern and outstanding national resource waters *(partial consensus).*

The proposed rules set up two categories of waterbodies that are regulated more stringently than the Tier 2 level of protection: Waters of Special Concern and Outstanding National Resource Waters (ONRWs). As explained in more detail below, the nomination process and qualification criteria for both of these categories in the proposed rules likely will lead to a substantial number of waterbodies that are currently high quality waters being designated as Waters of Special Concern or ONRWs. Such a designation would mean that dischargers to those waterbodies and their tributaries would not be able to expand their operations except under extremely limited circumstances. For dischargers to ONRWs, a requirement to reduce current discharges might even be imposed. These onerous requirements will cause severe impacts on economic growth, and could cause a decline in current business levels. Due to these consequences, the proposed rules need to be modified to create a higher bar to putting waterbodies in the Waters of Special Concern and ONRW categories.

The proposed rules list 9 factors for evaluating whether a waterbody is appropriate for designation, including:

1. Impact on private property owners.

2. Whether the interests of all affected parties have been adequately represented during the nomination and designation process.

3. The location of the waterbody.

4. Any previous special designation.

5. Existing water quality.

6. Ecological value.

7. Recreational or aesthetic value.

8. Other factors that indicate outstanding ecological or recreational resource value.

9. Other factors determined by WVDEP, when applicable.

These factors provide very few objective standards for determining whether a waterbody is appropriate for designation. Furthermore, they do not focus properly on the factors that should be most relevant to designations of Waters of Special Concern and ONRWs. Those factors are:

1. The need to protect the water quality of the waterbody, beyond the protections already provided through application of water quality standards and Tier 2 protection.

2. The social and economic impacts that will result from imposing requirements beyond the water quality standards and Tier 2 protections.

To appropriately account for these important factors, we suggest that the following factors be incorporated into the evaluation process as fundamental tests of whether a waterbody should be designated:

1. Biological and chemical quality of the waterbody must be excellent, based on an objective, technically sound scoring system.

2. Since designation would impose severe growth restrictions, the level of current urban and agricultural development in the area must be evaluated. If the area is significantly developed, the designation must not occur.

3. A complete economic analysis of the impacts of the designation must be conducted.

4. Consideration must be given to whether the designation is necessary to protect the unique or important characteristics of the waterbody.

5. An effluent-dominated waterbody should not be designated.

g. Opportunity to reclassify waterbodies *(consensus).*

The proposed rules contain a procedure for reclassifying Waters of Special Concern to other antidegradation tiers. Presumably, this procedure could be used to reclassify a waterbody either as a high quality water or an ONRW, depending on which category is most appropriate. We support inclusion of the reclassification procedure, and believe a similar procedure should be included in the rules concerning ONRWs.

h. Tier 2.5 provisions

(1). Tier 2.5 is excessively stringent *(partial consensus).* Limitation on development near Tier 2.5 waters is excessive. As written, no degradation, even of a limited or temporary nature, is allowed pursuant to Section 4D.2.a. The only exception to this strict standard is the provision in Section 4D.5., which would allow activities that are short term in nature, with resulting changes in water quality that are temporary and have limited effects, which is defined as less than a 5 percent change. This exception is similar to the Federal short term, temporary (weeks or months) lowering exception for Tier 3 waters. Absent meeting this exception, an activity would not be allowed. This is an unnecessarily severe policy that will halt all development on Waters of Special Concern. As explained in detail later in these comments, many waterbodies are likely to be designated as Waters of Special Concern, and will be subject to this strict policy. In fact, over 150 waterbodies with natural trout reproduction are already proposed for designation as Waters of Special Concern. See Appendix A of the proposed rules. As such,

the proposed rules would seriously restrict economic and social development throughout West Virginia.

Tier 2.5 was meant to protect some streams that were deemed entitled to additional scrutiny, but was never meant to prohibit all development along such streams. For example, a municipal wastewater treatment plant that discharges into a trout stream should be able to accommodate increased loading from citizens that close their septic tanks and connect to the POTW. Industry and municipalities should be allowed to justify such favorable changes, not have them rejected out-of-hand.

The WVMA opposed the prohibition against all degradation on Tier 2.5 streams in 1997 during the last triennial review, and reiterates that opposition here. There is a need for a change in Section 4.1.c, which currently forces the Board into the untenable position of prohibiting any degradation in Tier 2.5 waters. Thereafter, Section 4D should be amended to provide that closer scrutiny will be given Tier 2.5 waters, and that the economic or environmental benefits must be greater than required for Tier 2 waters. Without these changes, Tier 2.5 is essentially indistinguishable from Tier 3.

In addition to adding language allowing for lowering of water quality in some situations, the rules should also provide a list of exemptions to Tier 2.5 antidegradation review similar to those that exist for Tier 2 high quality waters. The Tier 2 exemptions include activities with minor water quality impacts or those that will result in significant environmental or social improvements. These reasons are just as applicable to Tier 2.5 protection, and there is no rationale for not including them.

Tier 2.5 is a special category of waters designated by the State as Waters of Special Concern. This tier of protection is not required by federal antidegradation policy, but is allowed as a subset of Tier 2 protection. Other States with Tier 2.5 or comparable antidegradation tiers generally provide a level of protection somewhere in between the

Federal Tier 2 and Tier 3 protection levels. In contrast, the proposed rules provide a level of protection that is at least as restrictive as the Federal Tier 3 category.

(2). The scope of Tier 2.5 waters is unclear *(partial consensus)*. The contradictory language in the antidegradations policy and implementation procedures regarding identification of Tier 2.5 streams is one of the items of critical concern in the proposed rule.

(3) Trading in Tier 2.5 waters *(consensus)*. The WVMA has the same concern about the trading in provisions of Tier 2.5 as expressed with the regard to Tiers 1 and 2. In addition, Section 4D.4 requires that, as a result, the trading to result in "water quality at all points within the Tier 2.5 waters will be improved." As long as stream quality is not degraded, there should be no requirement that it be improved.

Section 4D.4 provides a trading provision identical to those in Tiers 1 and 2. Our concerns with this provision are the same as those explained in our comments on Tiers 1 and 2.

i. Tier 3 provisions *(consensus)*

(1) Requirement to improve water quality. Tier 3 antidegradation provides the highest level of protection to waterbodies that have been designated by States as Outstanding National Resource Waters (ONRWs). Federal antidegradation policy provides that the water quality of ONRWs shall be maintained and protected without degradation. Federal policy provides only one exception to this requirement: short term, temporary lowerings of water quality, defined as lowerings that will last only weeks or months.

The proposed rules once again go beyond the federal requirements for ONRWs. The antidegradation standard for ONRWs in Section 4.1.d. calls for ONRWs to be maintained, protected, and improved where necessary. The concept of improvement is not

required by the Federal policy on ONRWs, which only calls for maintenance and protection of water quality. See 40 CFR 131.12(c). If improvement is required, it could only be achieved by reducing limits in existing permits. Such a reduction usually can be accomplished only by installing very expensive new control devices or by shutting down current operations and facilities. Presumably, if there are no direct dischargers to an ONRW, such reductions would need to be imposed on upstream and tributary dischargers, exacerbating the negative impacts on current production. This result is not necessary or warranted to protect ONRWs, and so the improvement requirement in the standards must be deleted.

(2). Nomination of Tier 3 streams. Section 4E.6 establishes nomination proceedings for ONRWs. As with Tier 2.5 streams, we assume that, in order to qualify as a Tier 3 stream, the stream must fall within one of the categories specified for ONRWs in Section 4.1.d of the rule **and** successfully go through the Tier 3 nomination procedure. We request that you confirm this point.

(3). Short-term, temporary exception. Section 4E.1 allows activities that would result in only short term, temporary changes in water quality of an ONRW, which is defined as activities with durations of less than one month and which will result in less than a 5 percent change in ambient concentrations. This exception is clearly more restrictive than the Federal exception for ONRWs, which allows lowerings that are short term and temporary, defined as weeks or months. Federal policy does not require lowerings to last less than a month or to result in such limited impacts. The proposed exception should be revised to be consistent with the Federal exception, to provide more flexibility and allow important projects to be undertaken.

C. Definition of Trading.

The definition of "trading" (Section 2.25) requires improvement in water quality as a result of the trading activity. If water quality remains the same as a result of the trade, there

is no degradation, and therefore no reason to regulate it under this rule. We suggest that the first sentence end after the second use of the word "parameter".

D. Definition of Regulated Activity.

The definition of "regulated activity" at Section 2.21 would benefit from a change in the last sentence of the definition. That sentence currently starts out "for the purpose of this implementation procedure. . ." It may be more appropriate to replace the words "implementation procedure" with the word "rule".

E. Category A Applicability on a Statewide Basis.

WVMA continues to oppose the application of Category A, public water supply, as a default use on a state-wide basis. Designating all waters of the state as Category A, public water supplies, is unwarranted. We support designating waterbodies as public water supplies where, after conventional treatment, the water is used for a public system, but we do not believe that the Category A use was meant to be applied state-wide. Nor was it the Office of Water Resource's original intent to apply the category A use in that fashion, as witnessed by General Permit No. WV0113506 for Stripper Oil Well Wastes, which prohibits use of the permit for discharges to any stream that is designated as Category A. If the Office of Water Resources actually interpreted the Category A designation as applying everywhere, it would not have written this prohibition into the permit.

The Board should develop a definition of Category A that provides protection for known public water supplies, including a reasonable protective zone upstream. Other stream segments should not have the Category A designation.

Consequently, we continue to urge the deletion of Section 5.2.c and the changes to Section 6.2 and 7.2.a.2 to specify that Category A does not apply except in those designated locations where the actual use is occurring.

F. Determining When Natural Quality Becomes the Water Quality Standard.

As early as 1977, West Virginia's water quality regulations contained a provision which acknowledged that where naturally occurring concentrations of a substance are greater than the water quality criterion that would otherwise apply, the natural occurring concentrations become the applicable water quality criterion. Specifically, § 7.01 of the West Virginia Administrative Regulations of the State Water Resources Board effective June 7, 1977 (Series I), stated as follows:

> 7.01 **Except where lesser quality is due to natural conditions,** the following criteria are established for the purpose of maintaining water quality in all streams and their tributaries in West Virginia, draining to the North Branch of the Potomac River . . . . [Emphasis added]

Similar language is included in other sections of the regulations establishing criteria for other streams.

Continuing without interruption since 1977, the regulations of the former Water Resources Board, and currently the Environmental Quality Board, that background conditions can determine the applicable water quality criteria. Until 1995, the U.S. Environmental Protection Agency, in its oversight of West Virginia's water program, regularly approved this provision of the water quality regulations. Beginning in 1995, however, EPA has filed objections to this provision of the rule, stating that it amounts to the establishment of a site-specific water quality criteria without satisfying the requirements applicable to such site-specific determinations. We believe that EPA's "revisionist view" (after 18 years of a different perspective) mischaracterizes both the intent and the effect of the "natural" conditions provision of § 7.2.c.4.

The current rule and its historical antecedents recognize a common sense approach to establishing water quality criteria. Obviously, the natural conditions of a stream will determine the uses that can be made of the stream. Thus, EPA's position that, in order to use

background concentrations as the applicable water quality criteria, it must first be demonstrated that existing uses will be protected, appears to be illogical. The issue is not whether the background concentrations protect existing uses (because the background concentrations determine existing uses), but rather how background concentrations should be determined.

EPA, after 18 years, now criticizes West Virginia's water quality regulations for not including a procedure to assure that natural background concentrations are determined accurately and reproducibly. Given EPA's inexplicable change in direction, we believe the Board could reasonably propose a procedure for determining background concentration. That concept has some precedent in West Virginia. We direct the Board's attention to the procedures for determining background concentrations that have been developed as a part of West Virginia's voluntary remediation program under the Voluntary Remediation and Redevelopment Act, W. Va. Code § 22-22-1, *et seq*. Specifically, Appendix B to the West Virginia Voluntary Remediation and Redevelopment Act Guidance Manual (December 1999) developed by the DEP's Office of Environmental Remediation sets forth detailed procedures for determining background concentrations. Section B.4 describes appropriate statistical methods to be used for determining background concentrations and whether site concentrations fall within background ranges. It is our recommendation that the Board incorporate these statistical methods in lieu of the detailed procedure set forth in the proposed rule.

With regard to the specific language proposed for § 7.2.c.4, we offer the following comments:

Our primary objection to the language proposed by the Board is that it accepts EPA's mischaracterization of the effect of recognizing background concentrations as a site-specific modification of water quality criteria. (See comment above).

- In addition, the proposed rule states that "[u]pon application or on its own initiative, the Board will determine whether a natural condition of a water body should be approved as a site-specific water quality criterion." Under what circumstances would the Board determine that a natural condition should not be recognized as the water quality criterion? We see no logic in providing the Board with discretion on this issue.
- The proposed provision goes on to state "[b]efore it approves a site specific water quality criterion for a natural condition, the Board must find that the natural condition will fully protect existing and designated uses." Under what circumstances would natural conditions not be fully protective of an existing uses, since existing uses are determined by natural conditions?
- We understand that where natural conditions conflict with designated uses (that are not existing uses), it will be necessary to make an adjustment of designated uses. On this point, we can agree with the intent of the Board's proposed language and EPA's suggestion that some more detailed procedural process should be used.
- The proposed language also states that "[i]f a natural condition of water body varies with time, the natural condition will be determined to be the prevailing highest quality natural condition of the water body measured during an annual season, or shorter time period before discharge or operation, or as the actual natural condition of the water body measured concurrent with discharge or operation." We believe this provision requires that if natural concentrations of a substance would vary, for example, from 1mg/l to 10/mg/l in a season, then the natural condition or background concentration will be determined to be 1 mg/l. Under this approach, a point source discharging this substance at a concentration of 5 mg/l would be in violation of the water quality standard. We can perceive no justification for this provision.

Such determination shall include an opportunity for public review and comment.

Where a natural condition will prevent the attainment of a designated use for a water body, the designated use may be removed in accordance with requirements relating to the revision of water quality standards as provided by W. Va. Code § 22B-3-4 and the Board's administrative procedural regulations with respect to revisions of water quality standards.

G. Harmonic Mean Flow Should Be Adopted For Carcinogens.

The Board should adopt harmonic mean flow as the critical flow for determining compliance with criteria for carcinogens. As the Water Quality Standards Handbook provides:

> EPA is recommending the harmonic mean flow to be applied with human health criteria for carcinogens. The concept of a harmonic mean is a standard statistical data analysis technique. EPA's model for human effects assumes that such effects occur because if a long-term exposure to low concentration of a toxic pollutant (for example, 2 liters of water per day for 70 years). To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques.

Water Quality Standards Handbook, EPA - 823-B-93-002 (September, 1992) at page 5-10. This is echoed in the *Technical Support Document for Water Quality-based Toxics Control*, EPA/505-2-90-001 (March, 1991) which, at page 88, states that "the long-term harmonic mean flow is recommended as the design for carcinogens."

Presently, Section 8.2.b of the standards provides that "the regulatory requirement for determining effluent limits for carcinogens. . ." continues to be the 7Q10, but recognizes that it is not a final decision. We would urge the Board this year to propose use of the harmonic mean flow for carcinogens in accordance with EPA guidance. If the Board is not comfortable in specifying the use of harmonic mean flow in all situations, it could at least

At the Board meeting on November 9, 1999, EPA requested that the Board provide a scientific justification for the adoption of dissolved aluminum criteria. On January 10, 2000, the WVMA provided the Board with a draft rationale document for the Board to provide to EPA. This twenty-page draft document explains in detail the scientific rationale for the adoption of dissolved aluminum criteria. The WVMA will not reiterate this rationale, but instead incorporates the arguments set forth in the draft rationale document by reference. The WVMA urges the Board to submit a detailed rationale document to EPA if the Board has not already done so.

2. **Arsenic.** The criterion of 100 ug/l under All Other Uses should be identified as applying only to crop irrigation (Use Category D1).

3. **Beryllium.** The Beryllium criteria should be updated to reflect the federal criteria. We recommend two changes: 1) Since EPA has not calculated an acute Beryllium criterion, West Virginia's acute criterion should be deleted, and 2) the Public A criterion should be updated to 4 ug/l.

4. **Cadmium.** The equations for calculating the aquatic life criteria need to be updated to reflect the current federal criteria.

5. **Chloride.** The human health criteria should be deleted as not reflective of current federal criteria.

6. **Copper.** The Use Category A criterion of 1,000 ug/l should be updated to 1,300 ug/l to reflect the current federal human health criterion.

7. **Copper.** The equations for the aquatic life criteria need to be updated to reflect the federal criteria.

8. **Cyanide.** The chronic aquatic life criteria should be revised from 5.0 to 5.2 ug/l; the human health criteria should be revised from 5.0 ug/l to 220,000 ug/l for Use Category C, and 700 for Use Category A, to conform to Federal Criteria for these uses.

9. Dissolved Oxygen. The dissolved oxygen criterion of 5 mg/l is for the protection of aquatic life. We are aware of no comparable federal guidelines that also apply this criterion to the other uses (e.g. Category A, C and "All other Uses). We therefore recommend that the dissolved oxygen criteria be removed for Categories A, C and "All other Uses."

We also believe that a change should be made in the dissolved oxygen criteria for aquatic life to reflect EPA's guidance. The Board has adopted never-to-be-exceeded concentrations that do not take into account the natural changes in dissolved oxygen levels. During the day, photosynthesis causes oxygen levels to rise, and during the night oxygen is consumed. In developing its recommended dissolve oxygen criteria, found in the 1986 Quality Criteria for Water, EPA has accounted for this variation by use of averages and mean concentrations. This approach recognizes that values at any given time may be below the average or mean criteria without having an adverse effect on aquatic life.

The water quality standards do not presently take into account the diurnal fluctuations in oxygen levels that are a natural part of the aquatic system. Nor has the Board, to our knowledge, ever explained why it believes that the criteria for dissolved oxygen should be set at the high levels presently found in the standards. We urge the Board to adopt daily minimum criteria of 4 mg/l dissolved oxygen for coldwater aquatic life and 3 mg/l for warm water aquatic life, and a 7 day mean minimum of 5 mg/l for coldwater aquatic life and 4 mg/l for warmwater aquatic life. Higher levels could apply during spawning periods.

10. Iron. In comments previously filed by the WVMA and others, we have explained that EPA conceded that the 304(a) aquatic life iron criterion is not scientifically defensible. Because of this, EPA has agreed to partner with the Electric Utility Industry to revise the national aquatic life criterion.

We understand that the EQB agrees with the scientific evidence documenting the deficiencies with the EPA's antiquated and scientifically indefensible Red Book iron

particular aquatic species and/or human health. EPA's most recent publication of these criteria was on December 10, 1998 (63 *Fed. Reg.* 68354). This publication doe snot contain an EPA recommended numeric turbidity criterion for either the protection of human health or aquatic life. To date, we have also been unable to find a comparable numeric turbidity criterion within any other state's water quality standards regulations that corresponds with West Virginia's turbidity criteria.

Given the above, we request the EQB review the rational use to derive the numeric aquatic life and human health turbidity criteria against EPA's published methodologies for deriving scientifically defensible aquatic life and human health criteria. If the original rationale document shows that these criteria were not derived using accepted aquatic life or human health methodology, the turbidity criteria outlined under Sections 8.32 and 8.32.1 should be deleted from 46 C.S.R.1.

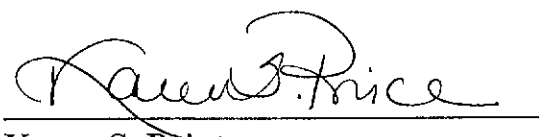
16. Zinc. The equations for deriving aquatic life criteria need to be updated to reflect the federal criteria.

17. Table 2 Cadmium. The first acute number listed should be revised from 1.136672 to 1.138672 to reflect the current federal number.

III. CONCLUSION

The WVMA appreciates this opportunity to offer comments on the triennial review of water quality standards and urges this Board to revise the standards in accordance with these comments.

Submitted this 16th day of August, 2000.



Karen S. Price
President
West Virginia Manufacturers Association

WEST VIRGINIA CHAMBER OF COMMERCE
The Voice of Business in West Virginia

RECEIVED
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 15, 2000

Edward M. Snyder, Chairman
Environmental Quality Board
1615 Washington Street
Charleston, West Virginia 25311

Dear Chairman Snyder:

Please find enclosed the comments of the West Virginia Chamber of Commerce concerning the proposed rulemaking package of July 3, 2000 for modification of 46 CSR 1. These comments set forth a number of important recommendations and observations. In summary, the Chamber is expressing some very basic concerns:

a. The state water quality standards need to be updated to reflect the best science available. The state water quality program has a number of deficiencies. The Chamber stands ready to help the Board meet the challenge to upgrade the state's program.

b. The Board's implementation proposal for antidegradation concerning waters of special concern (Tier 2.5 waters) will result in a prohibition against any discharge to the majority of the streams and waterbodies in the state, a result that will have a devastating effect on all citizens in the state. The Chamber has proposed a revision to the antidegradation policy and inclusion of a public participation process to educate and solicit input from the public on antidegradation water quality issues for state waters of special concern. See pages 5- 6 and pages 23-24 of the attached Comments.

c. The Board's broad application of the socio-economic analysis tool to all streams of the state that are not waters of special concern or outstanding national resource waters, results in the thorough study of even the smallest of discharge increases. The Chamber questions the merit of this level of review and proposes a trigger for such socio-economic analysis that more appropriately addresses actual environmental impacts. See page 14 of the attached Comments.

d. U.S. EPA Region III has filed comments about the antidegradation implementation proposal that depart significantly from existing federal statutory and regulatory antidegradation law. The Board is encouraged to question the underlying rationale for the tenor of Region III's comments.

Region III is not authorized to dictate the detail they have included in their comments.

Thank you for your consideration of the above and the attached detailed comments.

Very truly yours,

Kathy G. Beckett

/KGB
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Written Comments of the
West Virginia Chamber of Commerce
To the July 5, 2000 Proposed Revisions To
46 CSR 1
August 15, 2000

Introduction.

The following written comments are provided by the West Virginia Chamber of Commerce in supplement to oral comments offered during the August 3, 2000 public hearing in response to the July 3, 2000 proposal to modify 46 CSR 1. The Chamber appreciates the hard work devoted to the execution of this rulemaking by the Board, its staff, and the Antidegradation Stakeholders.

The Chamber has been an active participant with the Board in its efforts to promulgate antidegradation procedures. Early in the drafting process, the Chamber advanced a draft proposal for an antidegradation implementation program that was developed based upon U.S. EPA Region VIII's Guidance. The Chamber is very supportive of the need for West Virginia to establish antidegradation implementation procedures.

This year's Triennial review has been overshadowed by the significance of the development of the antidegradation implementation procedures. This has resulted in the inability of the limited resources of the Board to turn to other important water quality issues that now remain outstanding. A long list of those outstanding water quality issues now confronts all interested parties as we look to the agenda for the next three years. The Chamber is committed to working with the Board to correct this shortcoming and urges the Board to generate an aggressive schedule for all to review and prioritize for the upcoming three years of work.

§46-1-2. Definitions

1. §2.1. "Ambient Concentration." The Chamber finds no fault with the language proposed for this definition. The Chamber does, however, object to the manner in which the concept of "ambient concentration" is used in the proposed implementation procedures, as will be reflected in the comments provided to Appendix F.

2. §2.17 "Parameter of Concern." The Chamber supports the proposed definition. It is important to relate "parameters of concern" only to those parameters for which water quality numeric and narrative criteria have been established.

3. §2.20 "Reasonable Less-Degrading or Non-Degrading Alternatives." This definition originates in U.S. EPA Region VIII's Guidance, "Antidegradation Implementation: Requirements, Options, EPA Recommendations Pertaining to State/Tribal Antidegradation Programs" August 1993, p. 6.

U.S. EPA Region III filed a comment letter with the Board questioning Region VIII's statement, "Generally speaking less degrading or non degrading pollution control alternatives shall be considered reasonable where the costs of such alternatives are less than 110% of the costs of the pollution control measures associated with the proposed activity." Region III was unable to participate in the Antidegradation Stakeholder Process and is not intimately familiar with the Board's proposal. Region III has failed to understand the entirety of the evaluation process which focuses upon nine factors that are

not economically driven. Only after reviewing the nine technology-driven factors set forth in 4C.4.a.1 – 9 would an assessment of reasonableness be conducted. The reasonableness assessment generally not specifically described in the definition was designed to assist all participants in selecting a less-degrading or non-degrading alternative, once it is determined such an option exists using the nine factors. The Chamber supports this definition as providing appropriate implementation guidance, supports Region VIII's language, and objects to Region III's comment as irrelevant.

4. §2.21. "Regulated Activity." The Chamber supports the definition of "regulated activity." This definition originates in U.S. EPA Region VIII's Guidance, "Antidegradation Implementation: Requirements, Options, EPA Recommendations Pertaining to State/Tribal Antidegradation Programs" August 1993, p. 7. It is appropriate for the antidegradation implementation procedures to apply to those activities that are those controls required pursuant to the Clean Water Act.

5. §§2.25 and 2.26. "Trading" and "Trading Assessment Procedure." The Chamber supports the definitions of "trading" and "trading assessment procedure." Further comment concerning the application of these definitions is set forth below in comments to Appendix F.

Antidegradation Policy

1. §4.1.b. Tier 2 Protection. The proposed language creates an impossible standard for BMPs. The problem with this language was not highlighted during the Stakeholder Process and must now be discussed. By tying BMPs to a demonstration that they satisfy water quality standards, the implementation procedures rely on a body of data that is non-existent. The Stakeholder Group never discussed whether such a requirement is technically feasible. There are no numerical limits that apply to BMPs. The Board is urged to revisit this recommendation and exercise its oversight based upon new and additional information.

In addition the Chamber supports the recommended clarification in the language of this provision that the Director shall review the application of existing BMPs, before requiring the activity to cease. As a participant in the Stakeholder discussions it was the Chamber's understanding that this clarification is consistent with the group's discussions.

It is proposed that the Board consider replacing its proposed language with the following to reflect the two issues discussed above:

> The Director shall assure that the application of BMPs are sufficient to reduce impact on water quality ~~satisfy the requirements of the Water Quality Standards.~~ If applied BMPs are demonstrated by the Director to be inadequate to reduce water quality impacts ~~meet Water Quality Standards~~, the Director shall work with the appropriate authorities to revise or adopt BMPs, when BMPs are otherwise required, to assure reduction of impact. ~~compliance with those standards or~~, ~~and~~ If it is then demonstrated that application of new or revised BMPs to the particular

activity causing non-point source pollution cannot reduce impacts the director shall require the activity to cease.

2. §4.1.c. Tier 2.5 Protection. The existing language of this section creates a broadly stated list of waters that are defined as waters of special concern. At the request of the Stakeholders, the Office of Water Resources attempted to generate a map that reflected these streams. Upon review of the agency's draft map, it became apparent that a significant number of waterbodies fall within the general descriptions set forth of "waters of special concern." The pervasiveness of the list results in the inclusion of waters that are not in a location or of a quality that appears to warrant prohibition of any reduction in ambient water quality, regardless of socio-economic considerations.

The Chamber proposes that the list included in §4.1.c be referred to as a list of areas where Tier 2.5 protection may be warranted. On a case-by-case basis, determination of whether the specific stream or segment thereof warrants Tier 2.5 protection can be made. Criteria such as that which the Board has proposed for Tier 3 streams (Appendix F, §4E.6.a) could be used to make such case-by-case determinations and could also be used to generate a list of streams that truly are waters of special concern that must be afforded Tier 2.5 protection.

Creation of a list of waters of special concern will be an important tool for the DEP when implementing the antidegradation policy. Implementation of the policy as it is currently written will impact many adjacent property owners who have not been

confronted with the policy to date. In order for the public to engage in a thoughtful discussion with the Board as to which waters are of special concern to the state, development of a Tier 2.5 stream list needs to go through a more deliberative process - a process that looks at each stream or segment individually, applies criteria to it, and seeks comment from the public. The Chamber urges the Board to revise §4.1.c to read:

> In waters that constitute a water of special concern no activities which result in the reduction of ambient water quality shall be allowed. Waters of special concern may include:

The Chamber also urges that the following language be added below §4.1.c.4 that will read:

> Determination as to whether any of the above listed waters qualify as waters of special concern shall be based upon an analysis of the following: (1) impact on private property owners, (2) whether the interests of all affected parties have been adequately represented during the nomination and designation process, (3) the location of the water, (4) any previous special designations, (5) existing water quality, (6) ecological value, (7) recreational or aesthetic value, (8) other factors that indicate outstanding ecological or recreational resource value; and (9) other factors determined by the Director, when applicable. Waters may be nominated for inclusion in that category by any interested party or by the Board on its own initiative. To designate a nominated water as an water of special concern, the

Board shall follow the public notice and hearing provisions as provided in 46 C.S.R. 6.

3. §7.2.c.4 Natural Conditions. The Board's proposed language borrows heavily from similar provisions found in the Alaska water quality program. The Alaska rulemaking process is significantly less time consuming than the legislative approval process of West Virginia. As proposed this language will require modification to the water quality standards each time natural background concentrations are determined to be lower than a water quality criterion for the use classes and subclasses. The Chamber objects to this proposed modification.

4. §8.1 Dissolved Aluminum. The Chamber applauds the Board's decision to modify the aluminum criterion to the dissolved form. This proposal is based on sound science as is supported by U.S. EPA.

5. §8.9.2. Chromium. The Chamber supports the Board's proposal to reference the appropriate formula for the determination of the water quality standards for dissolved trivalent chromium.

6. §8.11 Dissolved Oxygen. The West Virginia Water Quality Standards (WV WQS) for dissolved oxygen (DO) are significantly more stringent than the Environmental Protection Agencies National Ambient Water Quality Criteria (NAWQC) and the Chamber urges modification thereof. The national criteria are based on averages which are reflective of the natural DO cycles in aquatic systems whereas the Board's criteria are simply minimum

concentrations for warm and cold water streams. The Chamber recommends adoption of the national criteria.

Dissolved oxygen levels rise during the daylight hours in response to photosynthetic oxygen production from, algae and macrophytes, and fall overnight in response to oxygen demand from algae, plants, animals, and chemical processes. This cycle is usually sinusoidal with the range from maximum to minimum oxygen concentrations dependant largely on the availability of nutrients in the system which support algal and macrophyte production. The current West Virginia Water Quality Standards (WV WQS) for dissolved oxygen are "not less than 5.0 mg/l DO" in warm water streams and "not less than 6.0 milligrams per liter (mg/l) DO at any time (46 CSR 8.11)" in cold water streams (with the exception of spawning areas). These criteria are significantly more stringent than the comparable National Ambient Water Quality Criteria (NAWQC) which are indicated below.

The NAWQC are designed to provide adequate protection of sensitive populations of organisms and are intended to be protective at typically high seasonal environmental temperatures for the appropriate taxonomic and life stage classification (Gold Book). Instantaneous minimum criteria protect against DO excursions into the range lethal for the organisms being protected. For example, the coldwater instantaneous minimum of 4.0 mg/l DO is more than protective of the acute lethal limit for salmonids (at or below 3.0 mg/l DO) and also protective of insects common to salmonid habitats which are less tolerant to acute exposures of low dissolved oxygen than the salmonids.

The daily cycles of dissolved oxygen are accounted for in the NAWQC by use of averages or mean DO concentrations. The inclusion of the 7 day mean minimum criteria

recognizes that instantaneous values may sometimes be below the instantaneous criteria without impairing aquatic life and prevents adverse effects to early life stages of aquatic life resultant from regularly recurring exposure to near lethal conditions. Thirty day average criteria protect other life stages incorporating the diurnal fluctuation in the DO levels. The current WV WQS does not account for diurnal oxygen cycles or the long term effects of exposure to regularly reoccurring low oxygen conditions as the NAWQC are designed to do. The strategy behind the more stringent instantaneous minimum criteria in the WV WQS is not defined and this number does not appear to be supported by the criteria used for development of the NAWQC.

TABLE 1

Water Quality Criteria for Ambient Dissolved Oxygen Concentration*

	Coldwater Criteria		Warmwater Criteria	
	Early Life Stages [1,2]	Other Life Stages	Early Life Stages [2]	Other Life Stages
30 Day Mean	NA3	6.5	NA	5.5
7 Day Mean	9.5 (6.5)	NA	6.0	NA
7 Day Mean Minimum	NA	5.0	NA	4.0
1 Day Minimum [4,5]	8.0 (5.0)	4.0	5.0	3.0

1 These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

2 Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

3 NA (not applicable).

4 For highly manipulatable discharges, further restrictions apply (see page 37).

5 All minima should be considered as instantaneous concentrations to be achieved at all times.

* Quality Criteria for Water (The Gold Book). 1986. EPA 440/5-86-001

7. §8.15 Iron. The Chamber continues to urge the Board to eliminate this water quality standard until EPA comes to closure on its research of the matter. There is no federal guidance on having such a standard. The existence of this unsupported standard is causing significant numbers of streams to fall within the TMDL program because of this standard. The Chamber urges the Board to either remove the standard or, at a minimum, establish a definitive agenda for the review of its continued usefulness.

8. §8.17 Manganese. The Chamber supports the removal of this provision concerning a water quality standard for manganese in areas that are not category A waters in light of the modifications to §7.2.a.2. (Public Water Supply).

9. §8.22 Chloroform. The Chamber supports the Board's proposal to eliminate the aquatic life criterion for Chloroform as requested by Region III.

10. §8.22.1 Practical Laboratory Quantification of Organic Chemicals. The Chamber supports the Board's removal of reference to fish body burden consistent with guidance of U.S. EPA.

11. §8.24.6 Pentachlorophenol. The Chamber supports the Board's proposal which references the appropriate formula on aquatic life criteria.

12. Appendix E, Table 2. The Chamber supports the Board's proposal to list the conversion factors for dissolved aluminum and Chromium III.

Appendix F – Antidegradation Implementation Procedures

1. Applicability. The Chamber supports the Board's decision to apply the new implementation procedures to new and expanded activities. Applying the new procedures on a retrospective basis would significantly increase the heavy burden that these new procedures will already impose on the Office of Water Resources. There is no other state in the country which has a policy that applies on a retroactive basis and accordingly there is no precedent for such.

2. Water Quality Standards. The Chamber supports the focus of the Board's proposal on designated uses and the applicable water quality standards. Region III has proposed changes to §4B.2 to address existing uses. The Chamber agrees that existing uses must be protected and directs EPA's attention to the fact that §4B.2.c and §4B.2.c.1 are specifically designed to address existing uses. The Board's proposal for implementation of the antidegradation policy is based upon meeting the state water quality standards. These standards provide the necessary tangible measure that the permitting authorities need when implementing the policy. The Board's proposal appropriately creates a functional procedure in adopting water quality standards as the measure of impairment.

3. Tier 1 Trading. The Chamber supports the trading provisions as set forth in §4B.4. The Chamber objects to Region III's suggestion that a 2:1 offset ratio will be

required "where uncertainty exists." Again, Region III has failed to understand the language as proposed by the Board. The Board's proposal requires an appropriate margin of safety that shall ensure that improvement in water quality occurs as the result of the trade. EPA Region III's suggestion presents the requirement in the negative stating that there shall be assurance that "a lowering of water quality does not occur as a result of the trade." Region III would also state that where uncertainty exists a 2:1 offset ratio will be required. In the Board's proposed language, uncertainty would not play a role in a trade since such would not be an "appropriate margin of safety." Region III states that it specifically is concerned with non-point source trading. It is unclear how one would measure 2:1 for non-point source related trading as EPA proposes. Rather than providing clear guidance, EPA's proposal creates additional confusion. Under the Board's proposal, the permitting agency will need to provide justification for allowing any trade, regardless of whether point or non-point, that provides an "adequate margin of safety." The Chamber urges the Board to reject Region III's comments as inappropriate.

Region III proposes clarifying modifications to §4B.4 by insertion of "from the same parameters" and "segment within an 8-digit Hydrologic Unit Code." The Chamber supports those additions and clarifications, but as discussed above objects to EPA's proposed sentence beginning, "In addition . . "

4. §4C.1.a. Tier 2. Region III has suggest the addition of a phrase "and are therefore more appropriately categorized as Tier 1." This phrase completes the thought

of the provision and provides clarification. The Chamber supports Region III's suggestion.

5. Cumulative Impacts. Region III drops a hint that it will be providing additional comment on whether the Board's proposal appropriately addresses cumulative impacts. By creating a close relationship between the implementation procedures and the state water quality standards, the Board has incorporated the best science available on cumulative impacts of the parameters of concern. The Chamber supports the Board's proposal and does not share the opinion with Region III that it does not appropriately address cumulative impacts.

6. §4C.2.a Signifiant Degradation. The Chamber has surveyed all fifty states in an attempt to understand how the Board's proposal compares. Thus far we have received responses from three quarters of those states. All states responding have indicated that their policy applies to new, expanded and/or existing NPDES dischargers. No state has indicated that its significance definition is 5%. Some states do not define significance with a percentage factor, and instead look to a number of factors to include impacts on uses, remaining assimilative capacity, quality and value of the resource, quantification of the degradation, etc. The conclusion that can be made from the Chamber's preliminary survey results is that the Board's proposal of "5% assimilative or ambient whichever is more restrictive" has no parallel in the country. The Chamber strongly urges the Board to modify its proposal to a more reasonable definition of significant degradation of 10% of assimilative capacity.

7. §4C.2.a.2 Tier 2 Exemptions. Region III suggests elimination of most of the exemptions that the Board has proposed. Many of the exemptions listed in §4C.2.a.2 have been approved by U.S. EPA and Region III in other states. It is offensive that when it comes to West Virginia the agency suggests a different standard. Rather than providing constructive comments on this section based upon the agency's work with other states, Region III again has expressed nothing but negative opinions.

§4C.2.a.2.A. Temperature. Region III's comment on the temperature exemption demonstrates its failure to read the language which clearly ties the exemption to approvals under §316(a) of the Clean Water Act. The state of Virginia has a similar exemption which is statutory at 9 VAC 25-260-30.B.

§4C.2.a.2.B. Fecal Coliform. It is simply not enough for Region III to provide a comment that fecal coliform may cause degradation and therefore objects to this exemption. The Chamber, again, does not find EPA's comment constructive. The practical issue is deminimus discharges of fecal coliform are going to occur. Rather than create a Tier 2 implementation requirement for very low level fecal coliform discharges, the Board has proposed to manage the issue with an implementation strategy that meets to environmental threat posed. The Chamber supports the Board's proposal.

§4C.2.a.2.C pH. Region III states that "Although this would only exempt dischargers within a more neutral pH range, any pH discharge different from that of the

receiving stream could cause degradation and be subject to a Tier 2 review, this region does not agree with this exemption." Region III is correct, this exemption only addresses the more neutral pH range. Rather than create a Tier 2 implementation requirement for very minor pH adjustment, the Board has proposed to manage the issue with an implementation strategy that meets to environmental threat posed. The Chamber supports the Board's proposal. It is noteworthy that the state of Texas has an exemption for pH.

§4C.2.a.2.D Dissolved Oxygen. Region III states that it does not know why it objects to this provision, but that without further understanding of it, the agency will default to rejection thereof. Again, constructive comments are far more helpful that mere negative ones. The Board's proposal is designed to address deminimus changes in dissolved oxygen that do not violate the specific DO water quality standards. Rather than create a Tier 2 implementation requirement for very low level DO reductions, the Board has proposed to manage the issue with an implementation strategy that meets to environmental threat posed. The Chamber supports the Board's proposal. The Chamber calls the Board's attention to the fact that it is renumbering the DO requirements and the cross-reference should be to 46 CSR 1.8.12 through 8.12.3.

§4C.2.a.2.E. Reissuance of Individual NPDES Permits Where No Change Occurs. Region III has generally objected to application of the antidegradation implementation procedures to new or expanded activities. The Chamber supports the Board's applicability proposal. Similar provisions are found in the Indiana

Administrative Code and in the Ohio Antidegradation Rule. In addition, the Virginia, Kentucky and Delaware programs would not apply if there were no increases.

§4C.2.a.2.F. Addition of Chemicals for Water Treatment. Region III states that it objects to this exemption. The Board's proposal recognizes the very practical fact that there is a need to balance improved drinking water and treated municipal wastewater against discharges that contain additional chemicals that do not otherwise violate water quality standards. Is EPA proposing that such treatment not occur or that we need to question the public as to whether it wants its public drinking water or municipal wastewater treated? The Chamber supports this exemption is sound public policy.

§4C.2.a.2.G Zebra Mussels. Region III states that it objects to this exemption existing in the West Virginia program. Careful reading of this exemption tells the regulated community that it may treat zebra mussels or asiatic clams if the new or increased discharge will not cause adverse effects on human health and aquatic life outside any applicable mixing zone except in areas where federally threatened and endangered species are known to occur. The water quality program, and therefore the antidegradation policy, is designed to protect human health and aquatic life. Region III has not clearly articulated its concern. A provision very similar to this one can be found in the Indiana Antidegradation Implementation Policy under Indiana Administrative code, 327 IAC 2-1-2.3.

§4C.2.a.2H Ammonia. Region III states that it objects to this exemption existing in the West Virginia program and state that "we are assuming that the treatment of ammonia would primarily involve the conversion of ammonia to nitrate. The new or increased discharge of such a parameter could cause a degradation of instream water quality and therefore should not be exempted from a Tier 2 review." Again, had Region III taken the time to read the exemption and considered a crafting a constructive comment, this objection could have been an approval. The provision for ammonia specifically states that the exemption would not be approved if the Director determined that the action will result in a net improvement of water quality in the water body. Before approval: (a) the Director determines that the new or increased by products cause less degradation than the release of ammonia to be treated and (b) the applicant demonstrates that all reasonable and cost effective methods for avoiding the new or increased discharge will be used. As with a trade, which is a concept EPA embraces, there would need to be a careful determination of a net improvement. Rather than create a Tier 2 implementation requirement for a net water quality benefit, the Board has proposed to manage the issue with an implementation strategy that meets to environmental threat posed. The Chamber supports the Board's proposal.

§4C.2.a.2I. Nationwide Corps of Engineers Permits. Region III actually does not object to this language and provides a comment that "The Board should consider procedures for ensuring that the individual and cumulative impacts of discharges approved for coverage under U.S. Army Corps of Engineers Nationwide permits would not result in degradation." At this point in the implementation procedures development

process, the Chamber urges the Board to maintain this exemption. It may be appropriate at a future time to delve into whether the Corps is doing its job well. Rather than create a Tier 2 implementation requirement for Corps issued permits, the Board has proposed to manage the issue with an implementation strategy that meets the environmental threat posed. The Chamber supports the Board's proposal. The Chamber also urges the Board to adopt the recommendation of the WV Coal Association and the WV Mining and Reclamation Association to incorporate all Nationwide permits in the exemption.

§4C.2.a.2.J. NPDES General Permits. Region III states it may or may not be providing comment on this provision. In the absence of a substantive statement as to why this provision causes concern, the Chamber urges the Board to ignore the suggestion that there may or may not be a problem. Again, rather than create a Tier 2 implementation requirements for NPDES general permits, that have already undergone antidegradation review, the Board has proposed to manage the issue efficiently. Similar language can be found in the Ohio program under Ohio EPA Antidegradation Rule 3745-01-5. The Chamber supports incorporation of this provision.

§4C.2.a.2.Emergencies. Region III's lack of confidence in the state of West Virginia is glaring in its comment suggesting that we can not appropriately apply this provision because we are likely unable to understand what an emergency is and how long an emergency lasts. The agency states, "Please explain how this is anticipated to work, and provide assurance that economic emergencies would not be included. Though such an explanation does not need to be contained in the implementation procedures, as a

matter of documentation, we would want it as part of the administrative records. . . Further, "emergency" should be quantified as a specific length of time so the burden is not placed on the Director to lift the waiver." Similar language can be found in the Ohio program under Ohio EPA Antidegradation Rule 3745-01-5. The Chamber supports incorporation of this provision and does not support any modification or supplementation thereof.

§4C.2.a.2.L Sanitary Waste Water Treatment. Region III claims to not understand why this provision is included or its meaning. From EPA's comment, it appears that it understands the provision very well by stating that "this exemption closely resembles that of a socioeconomic analysis." This exemption is intended to advance the Tier 2 analysis by deciding in preliminary fashion that new or expanded discharges from a sanitary wastewater treatment plant constructed or operated to alleviate a public health concern associated with a failing septic system or untreated or inadequately treated sewage shall be exempt from Tier 2 review. Similar language can be found in the Ohio program under Ohio EPA Antidegradation Rule 3745-01-5. The Chamber supports incorporation of this provision.

§4C.2.a.2.M Groundwater. The Chamber supports the Board's proposal to include this provision. This is the only exemption for which Region III failed to provide a criticism.

8. §4C.2.a.2.N Tier 2 Trading. Region III cross-references its trading comments provided in Tier 1. The Chamber does not agree with EPA as provided in comments to Tier 1 trading.

9. §4C.4 and §4C.5. Reasonable Less Degrading or Non-Degrading Alternatives. Region III proposes removal of the adjective "reasonable" from this provision. The Chamber objects to removal of that adjective, since it is clear from §4C.4.a and §4C.5. that only reasonable alternatives will be evaluated. This limitation is designed to protect the state and the applicant from having to entertain evaluation of alternatives regardless of the practicality or feasibility of them. Clearly the applicant must justify what they deem to be reasonable. The reasonable less degrading or non-degrading analysis is distinguished from a socioeconomic analysis because it simply asks the applicant to convince the Director that there are no alternatives that could have been implemented to minimize impact. This is an exercise in waste minimization, not an analysis of the socioeconomic impact of the project. This concept has been borrowed from U.S. EPA Region VII's Guidance. pp. 19-21. The Chamber supports these provisions and objects to U.S. EPA Region III's suggested changes to §§4C.4 and 4C.5a.

10. §§4C.6 – 4C.8 Socioecomonic Analysis and Intergovernmental Coordination. The Chamber supports Option 1 and finds Option 2 to be an administrative nightmare. At a time when state government has tried to streamline delivery of services, it is counter-intuitive to create yet another regulatory panel.

Region III provides comment to Option 1 by suggesting that the term "may" should be removed from §4C.6.a. §4C.6.a. requires the applicant to submit documentation which may include the list of items provided. The "may" was designed to allow addition to that list of other important items as determined by the director. There is not question however that the applicant must file documentation. The Chamber objects to EPA's comment as inappropriate within the context of this section.

Region III provides a suggested amendment to §4C.6.b to include the phrase, "including water quality impacts from the proposed activity in the affected stream segment." The Chamber does not object to inclusion of this language since it merely supplements the original proposal without changing its intent.

§4C.7 sets forth the intergovernmental coordination provisions. The Chamber supports these provisions if it is the case that the Board is intent on promulgating language. Since the intergovernmental coordination activity is going to be managed by DEP it seems more appropriate for the Board to defer to DEP to establish this element of the procedures. The Board could simply leave this detailed section out of the policy and provide that DEP shall develop an intergovernmental coordination process.

§4C. 8 states that "prior to authorizing any proposed activity that would degrade a Tier 2 water, there shall be assurance that the highest statutory and regulatory requirements shall be achieved by point sources and all cost-effective and appropriate best management practices shall be achieved." EPA comments that Tier 2 protection

procedures fail to mention compliance with such statutory controls. This provision is within Tier 2. Region III seems to have missed this point and its comment is therefore inappropriate.

10. §4D Tier 2.5. Region III asks for the Tier 2.5 list. In this instance the Chamber agrees that there is a real need to develop a list. The unfortunate fact is when the Board established the "waters of special concern" requirements it only generally identified streams that are "waters of special concern." Never in the history of the antidegradation policy has the Board or any other entity generated a list for the public to review and comment upon as warranting Tier 2.5 protection. The Chamber urges the Board to revisit the provisions of §4.1.c as set forth above in these comments. **Without revision to §4.1, the West Virginia antidegradation implementation program will have the largest tier 2.5 list in the country, rending this program the most stringent.**

The Chamber is otherwise supportive of the proposed provisions addressing Tier 2.5 protection.

11. §4D.4 Tier 2.5 Trading. Region III cross-references its trading comments provided in Tier 1. The Chamber does not agree with EPA as provided in comments to Tier 1 trading.

12. §4D.6 Tier 2.5 Nomination Procedures. The Chamber joins with Region III in its observation that DEP and DNR should be involved in establishing the Tier 2.5 stream list. The Chamber again reiterates its position that such a list must be developed

using the list of candidate waters identified in §4.1.c. which will be refined and delineated with public input.

13. §4E Tier 3 Outstanding National Resource Waters. The Chamber joins in with Region III in wanting to have a list of these waters generated. The Chamber urges that the Board to develop a process similar to that for Tier 2.5 waters where the language in §4.1.d would provide the general description of candidate waters, which would be refined and delineated with public input.

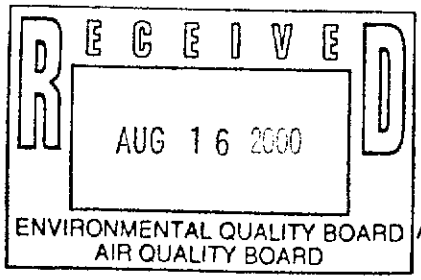
Region III has proposed insertion of language that recognizes that short term or temporary lowering of water quality is allowed in Tier 3 waters. The Chamber does not object to the suggested changes adding such language. The Chamber does object to removal of the reference to "permanent new or expanded point or nonpoint discharge of pollutants." This language recognizes the scope of the applicability of these provisions.

The Chamber supports the Board's proposal with regard to this section.

Repsectfully submitted this 15th day of August, 2000.

Kathy G. Beckett

LEGAL SERVICES



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August 14, 2000

Clerk of the Board
Environmental Quality Board
1615 Washington Street, East
Charleston, WV 25311

RE: **Comments of Allegheny Energy to Water Quality Standards**

Dear Clerk:

Enclosed please find the comments of Allegheny Energy to the Board's proposed revisions to its water quality standards.

Sincerely,

Gary A. Jack
Senior Attorney

GAJ:tmw

ENVIRONMENTAL QUALITY BOARD

Legislative Rules
Title 46, Series I
Requirement Governing Water Quality Standards

COMMENTS OF ALLEGHENY ENERGY

These comments, on the West Virginia Water Quality Standards (46 CSR 1), are submitted by Allegheny Energy, a diversified energy company serving approximately 1.7 million customers across portions of five states including all of northern and eastern West Virginia. Allegheny serves 675,000 gas and electric customers in West Virginia and has approximately 9,000 Mwh of electric generation capacity, the majority of which lies in West Virginia. We thank the Board for the opportunity to submit these comments and ask that you consider them in your final deliberations on the rulemaking. Allegheny has offered its support and assistance where possible and will continue to do so in the best interests of West Virginia's environment and citizens. We assure you that Allegheny conducts, and will continue to conduct, its operations in a manner that is protective of human health and the environment and will continue to constructively work to ensure West Virginia water quality standards are based on the best available science and public policy.

We incorporate by reference the comments of both the West Virginia Manufacturers Association and Chamber of Commerce. These organizations have spent numerous hours thoroughly reviewing the rules, and their comments should be

given great preference. The business community has many knowledgeable and experienced personnel working on environmental issues and is familiar with these matters on a nationwide basis.

Specific Comments

1. Section 7.2.d.8.1

The site-specific selenium criterion derived for the Unnamed tributary to Daugherty Run will be protective of aquatic life. We recommend adoption of the proposed change as written. The concentration of selenium emanating from Albright Power Station Coal Combustion Byproduct Facility is generally below the 5 ug/l effluent limitation/water quality standard but on occasion minor exceedances of the limit do occur. The proposed allowance for three exceedances of the limitation over three years is an equitable and reasonable solution that will not harm the receiving system. To ensure that no impact will occur, Allegheny has committed to continue chemical and biological monitoring of both the Unnamed tributary and Daugherty Run. We are indebted to the Board for working cooperatively with EPA , DEP and Allegheny in developing an equitable resolution that otherwise would have resulted in the expenditure of millions of dollars for unnecessary wastewater treatment.

2. Section 7.2.d.9. Blackwater River

While we do not necessarily disagree that the Blackwater River below Davis should be classified as a trout water, category B2, Allegheny does object to the manner in which the Board proceeded in reclassifying this portion of the river. According to rule, a river classification for designated use cannot be changed unless a detailed analysis is provided to the Board and then reviewed by the Board. No detailed analysis has been

provided to the Board. Therefore, it is procedurally inappropriate for the Board to proceed with reclassification without such use designation change justification having been submitted and reviewed by the Board.

As the Board is aware, Allegheny feels strongly that the Upper Blackwater River (which is above Davis) is not a trout water inasmuch as it does not meet the criteria of a trout water. There is no natural spawning of trout in the Upper Blackwater River. Additionally, based on temperature alone, trout cannot survive in the Upper Blackwater River for extended periods of time due to the elevated temperatures. It is purely a put and take river, and we believe our analysis submitted to the Board demonstrated the same. Yet, it was rejected.

3. Appendix E-Dissolved aluminum criteria

We support the Board's proposal to change the aluminum criterion from the total to dissolved form. Both EPA and DEP acknowledge that aluminum in the total form is essentially nontoxic because it is adsorbed to particulate matter and is biologically unavailable. Aluminum occurs in the water column primarily in the total form, because it is derived from soils, especially clays, and is eroded from the land. Moreover, at circumneutral pH, only a small amount of aluminum will be dissolved in the water column, with the majority remaining in total form. Therefore, the science supports an aluminum criterion that is some portion of the total concentration in the water column. The Board is wise to make this change, otherwise most, if not all, streams in the state would be listed on the 303(d) list for aluminum impairment and resulting in development of numerous unnecessary TMDLs.

4. Appendix E-Total Iron Criterion

The current Iron criterion is flawed because it is not based on aquatic toxicological data and must to be deleted from the standards before any more needless iron TMDLs are developed. Iron, like aluminum, is not generally found in any appreciable dissolved concentration in the water column. It occurs instead in association with particulate matter. Therefore, its toxicity to aquatic life is very low even at high concentrations. That's why EPA classifies iron as a "nonconventional pollutant" rather than a toxic and therefore does not require the states to adopt an iron criterion. The EPA has acknowledged that the iron criterion is flawed and has agreed to partner with Electric Power Research Institute to revise the criterion. Until this work is completed, the Board should suspend the iron criterion before more money is wasted on needless TMDLs and construction of wastewater treatment facilities.

5. Appendix E - Dissolved Oxygen Criteria

The West Virginia Water Quality Standards (WV WQS) for dissolved oxygen (DO) are significantly more stringent than the Environmental Protection Agency's National Ambient Water Quality Criteria (NAWQC). The national criteria are based on averages which are reflective of the natural DO cycles in aquatic systems.

Dissolved oxygen levels rise during the daylight hours in response to photosynthetic oxygen production from algae and macrophytes and fall overnight in response to oxygen demand from algae, plants, and chemical processes. This cycle is usually sinusoidal with the range from maximum to minimum oxygen concentrations dependant largely on the availability of nutrients in the system which support algae and macrophyte production. The current West Virginia Water Quality Standards (WV WQS) for dissolved oxygen are "not less than 5.0 mg/l DO" in warm water streams and "not

less than 6.0 milligrams per liter (mg/l) DO at any time (46 CSR 8.11)" in cold water streams (with the exception of spawning areas). These criteria are significantly more stringent than the comparable National Ambient Water Quality Criteria (NAWQC) which are indicated below in Table 1.

The NAWQC are designed to provide adequate protection of sensitive populations of organisms and are intended to be protective at typically high seasonal environmental temperatures for the appropriate taxonomic and life stage classification (See EPA Gold Book which incorporates the criteria). Instantaneous minimum criteria protect against DO excursions into the lethal range for the organisms being protected. For example, the coldwater instantaneous minimum of 4.0 mg/l DO is more than protective of the acute lethal limit for salmonids (at or below 3.0 mg/l DO) and also protective of insects common to salmonid habitats which are less tolerant to acute exposures of low dissolved oxygen than the salmonids.

The daily cycles of dissolved oxygen are accounted for in the NAWQC by use of averages or mean DO concentrations. The inclusion of the 7-day mean minimum criteria recognizes that instantaneous values may sometimes be below the instantaneous criteria without impairing aquatic life and prevents adverse effects to early life stages of aquatic life resultant from regularly recurring exposure to near lethal conditions. Thirty day average criteria protect other life stages incorporating the diurnal fluctuation in the DO levels. The current WV WQS do not account for diurnal oxygen cycles at all or the long term effects of exposure to regularly reoccurring low oxygen conditions as the NAWQC do. The strategy behind the more stringent instantaneous minimum criteria in the WV WQS is not defined and this number does not appear to be supported by the criteria used for development of the NAWQC.

Accordingly, we strongly recommend these known variations in DO due to photosynthesis be incorporated in the Water Quality Standards by adopting the EPA Goldbook criteria on this issue. The WVWQS cannot continue to ignore this known phenomena.

TABLE 1

Water Quality Criteria for Ambient Dissolved Oxygen Concentration*

	Coldwater Criteria		Warmwater Criteria	
	Early Life Stages [1, 2]	Other Life Stages	Early Life Stages [2]	Other Life Stages
30 Day Mean	NA[3]	6.5	NA	5.5
7 Day Mean	9.5 (6.5)	NA	6.0	NA
7 Day Mean Minimum	NA	5.0	NA	4.0
1 Day Minimum [4,5]	8.0 (5.0)	4.0	5.0	3.0

**Quality Criteria for Water (The Gold Book). 1986. EPA 440/5-86-001*

1 These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

2 Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

3 NA (not applicable).

4 For highly manipulatable discharges, further restrictions apply.

5 All minima should be considered as instantaneous concentrations to be achieved at all times.

6. Section 7.2.c.4. Natural Background Conditions

The natural background exemption from the water quality standards is critically important to both point and nonpoint sources dischargers who would otherwise be required to expend resources to improve their discharges/runoff to a better quality than what naturally occurs in the receiving stream. The Board's proposal of using the highest measured concentration of the constituent as background at first appears to be a pragmatic approach. However, upon closer analysis, it becomes apparent that this approach fails to incorporate the inherent temporal variability associated with upstream water quality as well as sampling and analytical variability. Failure to incorporate this variability will subject the discharger to potential compliance liabilities especially if all or a portion of the discharge is made up of upstream water.

A simple remedy is to use a historical data set (which incorporates the above mentioned variability) and statistically derive, using a prediction interval approach, a background level at an agreed upon confidence level. This approach is used by DEP Office of Water Resources to derive upgradient groundwater quality for compliance purposes with downgradient quality. The methodology is adapted from EPA's RCRA groundwater guidance and therefore should be acceptable to the Agency.

Attachment 1 contains an example application of the prediction interval approach for deriving background aluminum conditions in an Unnamed Tributary of Daugherty Run, a first order receiving stream at Allegheny's Albright Coal Combustion Byproduct Facility in Preston County. This approach provides a fair and scientifically sound means for deriving background water quality, and we ask the Board to adopt it.

7. Appendix F, Antidegradation Implementation Policy

Allegheny supports adoption of a reasonable and workable antidegradation policy. There is no EPA mandate to require states to subject existing NPDES permittees to undergo antidegradation review. The purpose of antidegradation is to establish a "floor" to preserve existing water quality. Under the CWA, permittees have been subjected to increasingly more stringent requirements with subsequent permit renewals. First, the permittees have been subjected to more stringent requirements with implementation of technology-based effluent limitations and more recently with application of water quality based effluent limitations. Now with implementation of TMDLs, many permits will be ratcheted down further to achieve wasteload or load allocations across watersheds. In light of all this, existing sources must be grandfathered. It is further our understanding that EPA now agrees to grandfathering existing sources contrary to interpretation of their earlier written comments.

The proposed antidegradation implementation policy will have significant economic implications for West Virginia's economic stability and development. Therefore, it should be subjected to a detailed fiscal analysis.

The proposed trigger level for determining whether a new or increased discharge is significant is too low. Additionally, subjecting the review to a socio-economic justification analysis is too expensive and unworkable. The trigger should be no lower than the most stringent of the surrounding states or ten percent of assimilative capacity. To use five percent of assimilative capacity or ambient conditions, as proposed, is so restrictive as to cause significant administrative and cost burdens as well as delays for both the regulated community and DEP. Moreover, even adopting a standard that

mimics our most stringent neighboring state is hardly admirable from any economic development standard.

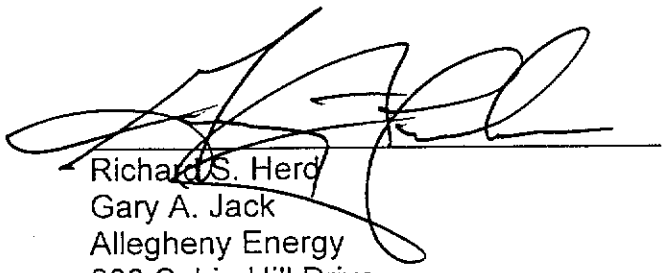
The designation of a water body for tier 2.5 classification must require a formal nomination process with opportunity for full public notice and comment. Once a stream is classified as tier 2.5, it will become extremely difficult, if not impossible, to site a new facility or even expand an existing facility. Under the proposal, the majority of streams located in Tucker, Pendleton, Pocahontas and Greenbrier Counties would meet the definition of tier 2.5. Therefore, the proposal would essentially prohibit growth of the municipalities and developments not to mention any industrial and business development located in or above these areas.

The proposal outlines two process options for evaluating whether a proposed activity is necessary to accommodate important economic or social development in the area in question. We recommend these process options not be required. If they remain, the rules must contain provisions for the intergovernmental coordination panel to respond to the Director within a reasonable amount of time or for the applicant to appeal the decision to the Environmental Quality Board. Industry looking to locate or expand a facility in West Virginia must be given a decision in a reasonable amount of time or they will likely locate elsewhere. Therefore, the Board should specify that the intergovernmental coordination must be completed and a decision issued by the Director within sixty days. An applicant should be given the opportunity to appeal a decision by the Director and be given a final decision by the Board within 90 days.

Allegheny pledges its support to work with the Environmental Quality Board to promulgate reasonable and protective water quality standard rules for West Virginia.

Respectfully submitted,

ALLEGHENY ENERGY



Richard S. Herd
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ATTACHMENT 1

bc: R. H. Collins
R. L. Crane – Fort Martin P.S.
C. R. Hare – Albright P.S.
J. P. Lapcevic
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May 5, 1998

Barbara Taylor, Chief
Office of Water Resources
West Virginia Department of Environmental Protection
1201 Greenbrier Street
Charleston, WV 25311-1088

Re: Order No. 3440; Albright Ash Disposal Site

Dear Ms. Taylor:

Your letter of May 13, 1996 extended the compliance date contained in Order No. 3440 for the Albright Ash Site to March 27, 1998. Allegheny Power is hereby providing notification that studies have been completed that demonstrate that the existing discharges do not have an adverse impact to the receiving waters. Therefore, the Environmental Quality Board, with legislative approval, have adopted site-specific water quality criteria for Fly Ash Run and the Unnamed Tributary to Daugherty Run. With this change, effluent limitations for NPDES/Solid Waste Permit numbers WV 0050784 and WV 0075281 should be adjusted accordingly.

Fly Ash Run		Unnamed Tributary	
Aluminum	0.8885 mg/l	Iron	3.5mg/l
Manganese	5.0 mg/l	Selenium	0.015 mg/l

Additionally, please find enclosed a copy of a report entitled: "Determination of an Effluent Limit for Aluminum based on a Naturally Occurring Background Concentration of Aluminum at the Albright Ash Site". This report recommends using the prediction interval approach for calculating an effluent limit for ponds 003,004 and 005 where the natural background concentration of aluminum upstream of the ash site exceeds the water quality standard. Prediction intervals are appropriate to use because they incorporate temporal and spatial as well as analytical variability into the interval. Moreover, there is precedent for using this methodology in the OWR Groundwater Program where it is applied in determining upgradient groundwater concentrations. Beyond the Albright site, we believe the methodology has potential for statewide application for the development of equitable and sound permit effluent limitations where naturally occurring background concentration exceed the state criteria.

We appreciate your office's cooperation and patience in our efforts to develop the water quality criteria and appropriate compensation for upstream conditions beyond our control.

Sincerely,

Richard Herd
Advisor

Attachment

klp

C: Libby Chatfield, Environmental Quality Board
Jerry Ray, Assistant Chief - Office of Water Resources

REPORT

DETERMINATION OF AN EFFLUENT LIMIT FOR ALUMINUM BASED ON A NATURALLY-OCCURRING BACKGROUND CONCENTRATION OF ALUMINUM AT THE ALBRIGHT ASH DISPOSAL SITE

NPDES PERMIT NO. WV0075281

1.0. INTRODUCTION

The purpose of this report is to provide the necessary information for the determination of an effluent limit for aluminum at Allegheny Power's Albright active ash disposal site based on the naturally-occurring background concentrations of aluminum in Unnamed Tributary upstream of the influence of the ash site. Data are presented which show that aluminum concentrations in Unnamed Tributary upstream of the three sedimentation ponds that collect surface and subsurface runoff from the ash site exceed the former West Virginia chronic water quality criterion for aluminum of 0.087 mg/L and, the acute criterion of 0.750 mg/L on occasion. Under Legislative Rule §46-1-6 Section 7.a.B.c.D., exceptions to Water Quality Standards are allowed where lesser quality is due to natural conditions. In such cases, the naturally occurring values shall be the applicable criteria. Given that the background concentrations of aluminum entering the sedimentation ponds already exceed the former chronic water quality criterion, the effluent limit for the ponds should not be based on the chronic criterion, but rather on the background concentrations of aluminum entering the ponds.

An approach used by the West Virginia Department of Environmental Protection (WV DEP) for establishing groundwater quality protection standards and evaluating compliance (Christman, 1996) was used in this report to determine a proposed effluent limit for aluminum at Outfall 003/004/005. The WV DEP approach uses historical data which implicitly incorporates spatial and temporal variability in background concentrations as well as sampling and analytical variability. This approach develops a statistically-based number (the groundwater standard or in this case the effluent limit) based on the variability of the background data. The statistically-based effluent limit will be a number that will statistically have a small probability that a false positive value will result leading to an exceedance at the ash site. This background level should statistically provide protection that no more than one false positive, leading to an exceedance should occur during a specified period (e.g., 3 or 5 years).

The following sections present background information for the site, and the procedures and calculations used to derive the effluent limit based on monthly monitoring data for aluminum (May 1994 through January 1998).

2.0. BACKGROUND

2.1. Site Information

The Albright Power Station is owned and operated by the Monongahela Power Company. The WV DEP has granted Monongahela Power Company permission to construct and operate a site for the disposal of fly ash, bottom ash, construction debris, boiler refractory material, screenhouse debris, pyrites, insulation containing non-friable asbestos, wastewater lagoon sludges, coal pile sludges, spent filter materials, and spent resins, all of which are generated at the Albright Power Station. The disposal site, located approximately two miles from Albright Power Station, consists of an active area where waste material is currently being disposed, and a closed area containing waste material which has been covered over with soil and planted for land reclamation.

The surface water runoff and leachate from the active area is collected in three sedimentation ponds before being discharged into Unnamed Tributary approximately one-third mile upstream from its confluence with Daugherty Run. The confluence of Unnamed Tributary and Daugherty Run is approximately one mile upstream of Daugherty Run's confluence with the Cheat River.

2.1. Unnamed Tributary

Unnamed Tributary is a first order stream which originates on the southern edge of the active area of the ash disposal site. Prior to construction of the ash disposal site, Unnamed Tributary flowed through what is now part of the disposal site. During construction, the upper portion of Unnamed Tributary was diverted to an area south of the site.

Unnamed Tributary is the receiving stream for effluent discharged from Outfalls 003, 004 and 005. All three effluents enter Unnamed Tributary via a small stream (also unnamed) at a point on Unnamed Tributary approximately one-third mile upstream from its confluence with Daugherty Run. The discharges from the outfalls are continuous throughout the year (except in extreme drought conditions), and as a result the flow in Unnamed Tributary is continuous throughout the year downstream of the outfalls. Upstream of outfalls, however, the flow is intermittent during low flow periods. Unnamed Tributary is a high gradient stream downstream of the outfalls, dropping approximately 350 feet in elevation over the one-third of a mile segment to the confluence with Daugherty Run. The West Virginia Department of Environmental Protection (WV DEP) assigned a 7Q10 design flow for Unnamed Tributary of 0 cfs.

3.0. METHODS

3.1. Proposed Approach for Establishing Effluent Limit

3.1.1. Prediction Limit Approach

Statistical predication limits provide a method for dealing with the comparative strategy of upgradient versus downgradient, i.e. they provide a method to test the null hypothesis of no difference between upgradient (upstream) background and monitoring measurements downgradient (downstream).

Prediction limits are determined to provide a certain level of assurance of being larger than a future observation. If more than one future observation is anticipated, then the confidence level of the limit is changed appropriately. The prediction limit procedure is described in the document "West Virginia Department of Environmental Protection Guidance for Establishing Groundwater Quality Protection Standards and Evaluating Compliance" (Christman, 1996), The statistical methods of which are based on the USEPA document "Statistical Analysis of Ground-water Monitoring Data at RCRA Facilities - Interim Final Guidance" (U.S. EPA, 1989).

The prediction limit is established using historical data on aluminum concentrations in water that enter the site. The limit is designed to estimate the concentration of individual samples taken from this water, and set a limit that will give a stated level of confidence that the limit will not be exceeded, if in fact there is no increase in background aluminum concentrations. The procedure assumes the historical data and future results are normally distributed and are independent. Independence of results means that the value obtained on one reading is unrelated to previous or subsequent readings; all are equally likely to be high or low with no pattern of occurrence.

3.2. Procedure

A. Analyze historical data to check for outliers and test the distribution of results. Test extremely large or small data points to see if they are outliers, following the U.S. EPA procedures. These procedures call for manual examination of all results with less than 0.025 probability of arising from the distribution of all other results (t-test with n-1 degrees of freedom and $\alpha = .025$ and .0975). If the manual review produces no evidence of clerical, analytical, or procedural errors, the value is retained.

B. Test the data to see if it is normally distributed, using the Shapiro-Wilk test at $p > 0.05$. If this test shows the data to be sufficiently normal, then proceed. If the data are not normally distributed, try to find a transformation that produces a normal distribution. Typical transformations usually take some power of the original data, such as a logarithm or an exponential power. If transformed, the resulting limit must also be

transformed by the reverse transformation prior to implementation.

C. If no transformation produces a suitably normal distribution, then use the nonparametric interval, which usually will be the largest (non-outlier) data point.

D. If the raw data or a transformed value is normally distributed, calculate the mean and standard deviation for those data points.

E. Find the t distribution multiplier for the standard deviation and calculate the upper 95% predication interval, for the stated number of historical (n) and future (k) cases:

$$\text{Limit} = x + t_{(n-1,\ 1-a/k)} * s * \sqrt{(1+1/n)}$$

With: x = mean of raw or transformed data
s = standard deviation of raw or transformed data
n = number of observations in historical data
k = number of observations in future dataset
α = confidence level for predication limit

4.0. RESULTS

A total of 45 total aluminum measurements were made on samples collected on a monthly basis during the period, May 1994 through January 1998. The samples were collected at Station 11 in Unnamed Tributary, a location upstream of any influence from the ash site. The 45 total aluminum measurements (mg/L), ranging from 0.12 - 0.94 mg/L, are given below:

0.6793	0.5138	0.5168	0.1167	0.5241	0.5955	0.6112	0.5346	0.4837	0.7029
0.6900	0.7090	0.7246	0.6152	0.6192	0.4560	0.5283	0.3745	0.1521	0.2344
0.7703	0.6988	0.6569	0.4905	0.5114	0.5195	0.5560	0.6615	0.2793	0.5210
0.6760	0.8210	0.7340	0.7960	0.8315	0.6755	0.4892	0.5408	0.3602	0.5258
0.5192	0.5281	0.8750	0.9434	0.8414					

The historical data have two low values that lie below the warning level for outliers (0.1167 and 0.1521 mg/L, both below the 0.025 percentile of the t distribution with 44 degrees of freedom). However, review showed no reason to question the validity of these values, so no outliers were removed. The data are sufficiently normally distributed using the Shapiro-Wilk test ($p = 0.17$).

The mean and standard deviation of the data points are:

Mean = 0.5812 mg/L
Std Dev = 0.1791 mg/L

Prediction intervals were determined for both 3 years and for 5 years. The prediction interval for 3 years was determined to reflect recent changes in the background concentration of aluminum. The prediction interval for 5 years was determined to coincide with the review period for the permit.

The predication interval to be applied for 3 years is a situation where tests are conducted monthly over a 3 year period (36 tests). Therefore, the t multiplier is as follows:

$$t_{(45\text{-}1,\ 1\text{-}.05/36)} = t_{(44,\ 0.9986)} = 3.1667$$

Multiply this by $\sqrt{(1+1/n)} = 1.0111*3.1667 = 3.2019$

The limit therefore is:

$$0.5812 + 3.2019*0.1791 = \mathbf{1.1547\ mg/L}$$

To provide a limit for 5 years of monthly tests, the above procedure was followed with the exception of the t-distribution multiplier. A 5 year limit for aluminum would be determined as follows:

$$t_{(45\text{-}1,\ 1\text{-}.05/60)} = t_{(44,\ 0.9992)} = 3.3641$$

$1.0111*3.3641 = 3.4014$, and the limit is:

$$0.5812 + 3.4014*0.1791 = \mathbf{1.1904\ mg/L}$$

5.0. SUMMARY/RECOMMENDATION

Based on the statistical analysis of the historical aluminum data collected from Unnamed Tributary upstream of the influence of the ash site, the prediction limit that aluminum will not be exceeded more than once at the permitted site (Outfall 003/004/005) due to additional aluminum being added from the ash site is:

1.1547 mg/L aluminum for a 3 year period, and

1.1904 mg/L aluminum for a 5 year period.

It is our recommendation that the 5 year prediction limit be established as the effluent limit for Outfall 003/004/005. Five years coincides with the permit cycle and the limit can be reviewed upon permit renewal.

6.0. REFERENCES

Christman, J.D. 1996. Guidance for Establishing Groundwater Quality Protection Standards and Evaluating Compliance, West Virginia Department of Environmental Protection. Office of Water Resources.

U.S. EPA 1989. Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities Interim Final Guidance. Office of Solid Waste, Waste Management Div., 401 M Street. SW. Washington D.C. 20460. EPA/530-SW-89-026.

RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Comments on the Proposed Amendments to 46 CSR 1 "Requirements Governing Water Quality Standards"

Submitted by:

Affiliated Construction Trades Foundation
523 Central Avenue
Charleston, West Virginia 25302

Prepared by:

Carpenter Environmental Associates, Inc.
70 Hilltop Road
Ramsey, New Jersey 07446

August 14, 2000
CEA No. 97039

Carpenter Environmental Associates, Inc. (CEA), on behalf of the Affiliated Construction Trades Foundation (ACT) has reviewed and evaluated the proposed revisions to 46 CSR 1. Of particular concern are the proposed revisions to the body burden criteria. Comments 1 and 2 deal specifically with the body burden criteria and the dioxin (2,3,7,8-TCDD) standard. Comment 3 concerns the deletion using fish body burden from Appendix E Section 8.22.1. Comment 4 provides ACT's recommendations regarding the antidegradation implementation procedure. Comment 5 summarizes our comments on the remaining proposed changes and Comment 6 provides additional comments.

Comment 1. The body burden criteria at Appendix E, section 8.22.2 should not be deleted. Rather, these criteria should be retained and adjusted to reflect "an estimated risk level of one additional cancer case per one million persons" as required in section 8.2.a of the regulations.

The body burden criteria at Appendix E, section 8.22.2 should not be deleted. Rather, these criteria should be retained and adjusted to reflect "an estimated risk level of one additional cancer case per one million persons" as required in section 8.2.a of the regulations. Taking the dioxin criterion as an example (the same arguments apply to the other bioaccumulative compounds of concern listed at 8.22.2), the Water Resources Board (WRB) (now the EQB) recognized in its August 19, 1991 "Rationale Document" that the dioxin body burden criterion was being proposed as "an additional criterion for allowable fish tissue burden"and is "intended for additional safety to fish consumers" (State Water Resources Board of West Virginia, Rationale Document for Revision of Legislative Rules, Title 46, Series 1, Water Quality Standards, August 19, 1991, page 52). The following Spring, the Legislature had the vision to adopt this additional protection into the rules. But now, it is proposed that the body burden criteria that were purposefully voted in by the Legislature be deleted. ACT disagrees with this decision and asks that the Legislature consider these facts.

Fish body burden criteria are the most direct means of protecting fish consumers from unacceptable risk. Water quality criteria are established at a level to protect the aquatic environment, wildlife, human health, etc., depending upon which of these categories is most at risk from exposure to a particular pollutant. For instance, copper, at concentrations that are very harmful to the aquatic environment, has little or no effect on humans. Therefore, the water quality criteria for copper are established at a level that will protect the aquatic environment, not human health. On the other hand, dioxin and the other bioaccumulative contaminants of concern addressed by the rule are very harmful to humans, and so, water quality criteria are established at levels that will protect human health. Both the body burden criteria and the instream water quality criteria are based on protection of human health. Exposure to dioxin occurs from eating contaminated fish, drinking contaminated water, or both, but, the greatest exposure pathway is by eating contaminated fish. This is demonstrated by comparing the instream criteria for Class A and Class C waters. In Class A waters, where exposure is by eating fish and by drinking water, the criterion is 0.013 pg/l (picograms per liter, or parts per quadrillion). In Class C waters, where exposure is from eating fish but not from drinking water, the standard is 0.014 pg/l, just 8% less stringent than in Class A waters. Thus, eating fish is by far the more significant human exposure pathway. It is clear then that determining how much dioxin (or other substance) in fish tissue presents an unacceptable risk to human consumers is a more direct method of protecting humans than determining the concentration in ambient water that will result in a fish living in that water accumulating dioxin to the extent that eating the fish presents an unacceptable risk.

It is instructive to realize that one of the starting points used by EPA to derive in stream water quality criteria is the acceptable body burden in fish tissue. That value is calculated from the risk specific dose (RSD), (which is the risk level (1 in 10^6 in West Virginia) divided by the cancer potency factor), body weight of the fish consumer (70 kilograms), and the fish consumption rate (about six pounds per year, or, just under one-half pound per month).

Establishing body burden criteria for edible fish tissue that reflects a 1 in 10^6 risk of cancer is the most direct means of protecting fish consumers. In other words, if we know what fish body

burden presents a 1 in 10^6 risk to human consumers, we can sample and analyze fish tissue from West Virginia waters to determine if that body burden is being exceeded. We should realize that if a body burden criterion is exceeded, that constitutes a violation of the water quality standard: the fish tissue presents a cancer risk of greater than 1 in 10^6 and, the contamination in the fish results directly from the fish having lived in unacceptably polluted water.

The present dioxin body burden criterion for edible fish fillets is 6.4 pg/g. EPA Region 3 objected to this criterion because it did not reflect a risk of 1 in 10^6 as is required by West Virginia regulations (Section 8.2.a). EPA also provided a risk specific dose for dioxin and the other bioaccumulative contaminants of concern. Using EPA's RSD adjusted to a risk of 1 in 10^6, the human body weight of 70 kilograms, and a fish consumption rate of on-half pound per month (0.0065 kg/day), a dioxin body burden criterion of 0.07 pg/g results (see Attachment I). ACT recommends that the good intentions of the Legislature expressed in 1992 by establishing body burden criteria as an "additional measure of protection" be preserved and that the present dioxin body burden criterion for edible fish fillet be amended to 0.07 pg/g in order to reflect no greater than a 1 in 10^6 risk of cancer as required by West Virginia rules. ACT also recommends that the OWR and EQB, working in concert with EPA Region 3, adjust the fish body burden criteria of the other bioaccumulative compounds of concern to reflect no greater than a 1 in 10^6 risk of cancer.

Comment 2. The instream water quality criteria for dioxin (2,3,7,8 - TCDD) and other BCCs must be adjusted to reflect a risk level of one additional cancer case per one million persons (1 in 10^6).

West Virginia water quality regulations at 46 CSR-1-8.2.a require that "toxicants which are carcinogenic have human health criteria (Water Use Categories A and C) based upon an estimated risk level of one additional cancer case per one million persons...". The present dioxin water quality criteria of 0.013 pg/l for Class A waters and 0.014 for Class C waters were intended, when developed by EPA and adopted by West Virginia, to result in a 1 in 10^6 risk as required by

regulation. However, as shown by Attachment II, EPA used a bioconcentration factor (BCF) of 5,000, rather than a bioaccumulation factor to derive the criteria. In the years that have passed since EPA developed the criteria there has been wide realization and acceptance of the fact that bioaccumulation rather than bioconcentration more accurately reflects the relationship between instream dioxin concentrations and fish tissue levels (EPA, *Great Lakes Water Quality Initiative Technical Support Document for the Procedure to Determine Bioaccumulation Factors*, March 1995). In the present case, this is best demonstrated by the EQB's proposal to adopt the procedure to calculate instream concentrations of dioxins and the other BCCs from fish tissue concentrations by using appropriate bioaccumulation factors (BAFs). Therefore, more scientifically valid instream criteria can be derived using the EQB (and EPA) recommended protocol instead of the now obsolete method originally used by EPA. In this way, starting with the fish tissue level that presents a 1 in 10^6 risk, and the protocol and supporting information provided by the EQB in their proposal, more accurate water quality criteria can be derived.

The edible fish tissue level that presents a 1 in 10^6 human cancer risk is 0.07pg/g, based on a 70 kg body weight and EPA's cancer potency factor (CPF) and fish consumption rate (FCR) (see Attachment I for the calculation). ACT back calculated the appropriate Water Quality criterion from the 0.07pg/g fish tissue concentration utilizing the following:

- EQB's proposed protocol
- EQB's recommended dioxin BAFs for trophic levels 3 and 4
- EQB's recommended partition coefficient (log K_{ow}) for dioxin
- EPA's average percent lipid values for edible tissue for trophic levels 3 and 4 from the Great Lakes studies
- average POC and DOC values from all West Virginia STORET stations

The resulting calculated instream value for trophic levels 3 was 0.0062 pg/l and for trophic level 4 was 0.0038 pg/l, both of which are significantly lower than the present dioxin standard of 0.013 pg/l (see Attachment III for calculation). Therefore, the current 0.013 pg/l dioxin standard

presents a risk greater than the 1 in 10^6 risk required by West Virginia regulations. ACT recommends that instream standards that comply with the regulations for dioxin and the other bioaccumulative chemicals of concern be derived and adopted.

Comment 3: The use of fish body burden to determine instream values should not be deleted from Section 8.22.1 of Appendix E.

Section 8.22.1, describes how instream values can be determined if the specified criteria (the instream water column criteria) are less than the practical quantification level (PQL). This section now states that when "specified criteria are less than the PQL, instream values shall be calculated from discharge concentrations, flow rates, and fish body burdens". The EQB proposes to delete the use of fish body burdens to determine instream concentrations. Fish body burden can be an important tool for determining instream concentrations of parameters when the water quality criteria is less than the practical quantification level and should be retained.

Fish body burden has been used by the EPA to determine that the instream concentration of dioxin exceeded the water quality standard. In 1995, the EPA conducted an evaluation of fish collected from the Kanawha and Ohio Rivers. This study showed elevated levels of dioxin in fish collected from the Kanawha River and in the Ohio River downstream of its confluence with the Kanawha River (Ohio River 8.7, 15.9 and 26.5 ppt, Kanawha River 23.1, 28.5, and 35.8 ppt). The EPA then concluded in its "Qs and As Regarding Ohio/Kanawha River Fish Tissue Study Dioxin and the Apple Grove Permit" that "the concentrations of dioxin in the fish ... indicate that the level of dioxin in both the Ohio and Kanawha Rivers exceeds West Virginia's water quality standard for dioxin, 0.013 parts per quadrillion." Based upon these results, the EPA determined the need to develop a Total Maximum Daily Load for dioxin in the Ohio and Kanawha Rivers. It is important to note the current water quality standard for dioxin of 0.013 ppq is well below the detection limit for dioxin of 10 ppq and that the correctly calculated water quality standard for trophic levels 3 of 0.0062 pg/l and for trophic level 4 of 0.0038 pg/l. are also well below the detection limit. Without the use of fish body burden, the EPA could not have determined that the

water quality standard for dioxin was exceeded and begun development of a TMDL to reduce dioxin levels in the Kanawha and Ohio Rivers.

As discussed in Comment 1, the use of fish body burden is especially relevant for parameters such as dioxin where the water quality standard itself is based upon the allowable concentration in fish. Most of the risk to human health associated with dioxin in a water body is associated with consumption of contaminated fish. Using fish body burden as a basis for determining the water quality standards are violated would therefore be a more direct way of determining whether the water quality was protective of human health. The level of dioxin (or other BCCs) could be compared directly to the level determined to represent a 1 in 10^6 risk as required by West Virginia regulations.

Further evidence that the use of fish body burden to determine instream concentrations can be found in EPA's August 6, 1996 letter EPA in which it recognized that fish tissue concentrations can be "an important tool" to determine compliance with water quality standards and enclosed an example procedure for calculating instream dioxin concentrations from lipid normalized fish tissue concentrations. Additionally, other similarly scientifically valid procedures may be appropriate to calculate instream values from fish tissue concentrations for dioxin and other parameters listed in Section 8.22, whose PQL is greater than the specific criterion.

Comment 4: Review of antidegradation implementation procedure.

We have reviewed the proposed antidegradation implementation procedures and the comments provided by the EPA. In general we agree with the comments provided by the EPA. Our specific comments follow.

a) Section 4A.1. specifies that the antidegradation implementation procedures would apply to new and expanded regulated activities. We agree with EPA's comment that the antidegradation implementation procedures should apply to all activities that have the potential to affect

existing water quality.

b) Section 4B.1 should be moved to Section 4A.3 as recommended by the EPA so that the Director is identified as reviewing the activities for all Tiers and not just Tier 1.

c) Section 4B.2.a states that when the designated uses of a waterbody are impaired there shall be no degradation of water quality with respect to the parameters of concern that are causing the impairment. As currently written, the procedure implies that reductions in water quality for parameters other than the parameter causing the impairment are allowable. This provision should be revised to clarify that the prohibition on degradation applies to all parameters, not just the parameters causing the impairment. In addition, we agree with EPA's comment that the language of this section should be revised to ensure that designated and existing uses are maintained and protected, rather than just water quality standards.

d) Section 4B.2.b states that where uses are not impaired, controls shall be applied as necessary to ensure that the appropriate numeric and narrative criteria established in the rule will be met. We agree with EPA's comment that Section 4B.2.b should be revised to reflect that controls should be applied to ensure that existing uses are protected and maintained. As stated by the EPA, the purpose of the antidegradation procedure is to protect and maintain existing uses and existing water quality not water quality standards.

e) We agree with EPA's comments on Section 4B.4 regarding trading. Trading should be allowed only within limited area of a watershed; the effluent trade must be for the same form of the parameter as the proposed discharge; a margin of safety must be included; dischargers should not be allowed to claim offsets for water quality improvements that are required or will occur irrespective of the new or expanded discharge; and offsets must be enforceable.

f) According to Section 4C.1.a, a waterbody is to be considered a "high quality" water if it meets either the fishable or swimmable goal. This limited definition of a high quality water

would allow the potential for a large number of waterbodies not to receive appropriate antidegradation protection. For example, a waterbody could not meet the fishable/swimmable goals due to an exceedance of one or two parameters, and be a high quality water for all other parameters. According to United States Environmental Protection Agency (EPA) guidance (Water Quality Standards Handbook, 2nd Edition) "all parameters do not need to be better quality than the State's ambient criteria for the water to be deemed a "high-quality water", EPA believes that it is best to apply anti-degradation on a parameter-by-parameter basis. Otherwise, there is potential for a large number of waters not to receive antidegradation protection...". The Summary of Comments dated March 25, 1999, states that it was the intention of the Board to establish high quality waters on a parameter by parameter basis and that the language of 4C.1.a. would be clarified to reflect this intention. This has not been done. The regulations must be revised to reflect the parameter-by-parameter approach for determining high quality waters.

g) Section 4C.2.a.1.A states that any proposed activity that would increase the ambient concentration of any parameter more than 5% at critical flow conditions or reduce the assimilative capacity by more than 5% will be presumed to pose significant degradation. We commend the EQB for adding the provision regarding use of assimilative capacity to determine significant degradation as ACT recommended in its July 1999 comments.

h) Section 4C.2.a.1.A.1 defines critical flow conditions for non-precipication induced discharges. The critical conditions for precipitation induced discharges should also be defined.

i) We agree with EPA's comment at that a section to address cumulative impacts is necessary as the proposed procedures do not include a method for tracking allowed reductions in water quality and assessing cumulative impacts.

j) Section 4C.2.a.2.A waives an antidegradation review where the temperature of the discharge will not cause a violation of applicable temperature criteria. We agree with EPA's comment

that a thermal discharge different from the receiving stream could cause degradation and must be subject to Tier 2 review. In addition to considering the effect of the temperature change itself, a review must include consideration of the affect of temperature on pollutant toxicity. For example temperature affects dissolved oxygen demand, ammonia toxicity and some metals toxicity.

k) Section 4C.2.a.2.B waives an antidegradation review for fecal coliform if the fecal coliform concentrations are established as 200/100 ml monthly average and 400/100 ml daily maximum. We agree with EPA's comment that a fecal coliform discharge at these levels could cause degradation and must be subject to review.

l) Section 4C.2.a.2.C waives and antidegradation review for pH if the discharge is in the range of 6.0-9.0 Standard Units. We agree with EPA's comment that any pH discharge different from that of the receiving stream could cause degradation and must be subject to review.

m) Section 4C.2.a.2.D states that any reduction of water quality of less than 0.4 ppm at maximum dissolved oxygen (DO) sag would not be considered significant degradation. According to the Summary of Comments, the value of 0.4 ppm represents 5% of the initial DO in typical DO modeling procedures (95% of DO saturation values at temperatures between 21° and 27° C. We question the appropriateness of the 0.4 ppm value. Using assimilative capacity calculations, we calculate a value of 0.15 ppm (5% of the assimilative capacity of a waterbody at 27° C assuming a water quality standard of 5.0 ppm and a saturation concentration of 7.95 ppm). We recommend using this value to determine significant degradation due to oxygen reduction. We would also recommend that the regulations specify that any reduction in DO would be allowable only if no water quality violations of the DO standard were predicted using appropriate wasteload allocation modeling.

n) Section 4C.2.a.2.F waives an antidegradation review for the addition of chemicals used for the treatment of drinking water or sanitary wastewater that do no otherwise violate water

quality standards. We agree with EPA's comment that the addition of chemicals could cause a degradation and therefore warrants a review.

o) Section 4C.2.a.2.G waives an antidegradation review for substances used to treat zebra mussels or asiatic clams. We agree with EPA's comment that the discharge of such a substance could cause degradation and therefore warrants a review.

p) Section 4C.2.a.2.H waives an antidegradation review for the discharges of by products from the treatment of ammonia. We believe that the first sentence of this section should be rewritten as follows. "A new or increased discharge of nitrate from the biological treatment of ammonia..." No exemption should be allowed for the byproducts from the treatment of ammonia by methods other than biological treatment such as break point chlorination and ion exchange as the byproducts of such processes may be highly toxic or carcinogenic.

q) Section 4C.2.a.2.N. allows a trade to avoid significant degradation review for high quality waters. The trading proposed by the regulations should only be allowable after a complete antidegradation review including a social and economic justification analysis and public participation. EPA guidance (EPA Water Quality Standards Handbook: 2nd Edition) states that when a pollutant discharge ceases for any reason, the waste load allocations for other discharges in the area may be adjusted to reflect the additional loading available for high quality waters "where after full satisfaction of all public participation and intergovernmental review requirements, such adjustments are considered necessary to accommodate important economic or social development..."

r) Section 4C.5.a states that if a reasonable less degrading or non degrading alternative to the propose activity does exist, the project shall be revised using the alternative or combination of alternatives that provide the least amount of degradation "up to the reasonable threshold".

We question how the Director intends to determine the appropriateness of pollution control technologies for proposed activities. The anti-degradation implementation procedures should set forth the minimum pollution control requirements for any proposed activity.

We agree with EPA's comments that the term "reasonable" implies that there are socioeconomic considerations.

According to the definition an alternative is considered reasonable if "the costs of such alternatives are less than 110% of the costs of the pollution control measures associated with the proposed activity". The use of less than 110% of the base costs to determine the reasonable alternatives is meaningless. An initial cost estimate for pollution control measures is typically not accurate within 10%. According to the American Association of Cost Engineers (AACE) International Recommended Practice No. 18R-97, the accuracy range of cost estimates in the study or feasibility stage of estimating is +50% to -30%. It would be expected that any cost estimates developed for a proposed project and alternatives would be in the feasibility stage. More detailed cost estimates are usually developed at the design and bidding stage. It is important to note that at this level of estimating, there is no difference between high end (+50) and low end (-30%) cost estimates, they should be considered the same cost. If the "reasonable" evaluation considers a proposed project cost estimate of $100,000, then any project that costs greater than $110,000 would be considered an unreasonable alternative. However, a $110,000 project (with a range of $77,000 to $165,000) must be considered to be cost the same as the $100,000 project (with a range of $70,000 to $150,000) because it falls within the range of accuracy of cost estimating. To be truly different from the proposed project the low end cost (70% of the estimated cost) of the alternative would have to be +10% of the high end cost (150% of the estimated cost) of the proposed project. Therefore, a cost differential of 235% would be required for the two projects to be truly different in cost (Attachment IV provides detailed calculations).

In addition, the evaluation of alternatives and the determination of whether alternatives would

be required should be open to public comment to ensure that the decision made by the Director is reasonable and protective of water quality. The public notice should include all of the information contained in 4C.7.c.

s) Section 4C.5.b states that if no reasonable less degrading or non degrading alternatives to the proposed activity exist, the Tier 2 review shall continue. We question whether the implementation of the reasonable alternatives would constitute the end of the Tier 2 review. As written, the procedure implies that a socio-economic analysis would only be required if no reasonable alternatives are identified. No further review should be necessary only if the implementation of the alternatives would result in no significant degradation.

t) Two options are set forth for the process of evaluating whether a proposed activity is necessary to accommodate important economic or social development. We recommend implementing Option 2 which establishes an intergovernmental coordination panel which would provide recommendations to the DEP Director regarding this issue prior to the draft permit stage. This Option seems to provide the best opportunity for public and agency comment and would allow the DEP Director to base his decision upon all available information.

u) We agree with the EPA that the word "may" should be replaced with the word "shall" in section 4C.6.b as the submittal of the listed information should be a requirement rather than an option.

v) Section 4C.6.a sets forth that the social and economic evaluation would include increased production as one of the factors considered. Increased production alone should not be considered sufficient reason to allow a discharge which would cause significant degradation.

w) The first sentence of Section 4E.3.b should be rewritten as follows: "If after reviewing the factors at 4E.3.a.1-7, a preliminary determination is made that the proposed activity will not result in the lowering of water quality in the downstream ONRW stream segment, the

antidegradation review findings shall be documented and the public notice requirements at 4E.4 shall be initiated". As currently written this section implies that the factors to be considered at 4E.3.a.1-7 are "criteria" to be met rather than factors to be considered as set forth in Section 4E.3.a. .

x) Section 4E.4.b.2 should be rewritten as follows: "A determination that the activity will be short-term in nature and the resulting changes in water quality will be temporary or a determination that the proposed activity will not result in the lowering of water quality in a downstream ONRW stream segment. This determination shall be based on the factors listed in section 4E.1.a 1-6 or 4E.3.a 1-7 above as applicable."

Comment 5. Review of Proposed Changes.

a) Section 7.2.c.4. previously allowed an exemption for the application of numeric criteria in waters "where lesser quality is due to natural conditions" and provided that "In such cases the naturally occurring values shall be the applicable criteria". We commend the EQB for revising this section as recommended by ACT in its July 1999 comments by including a provision which states that site specific criteria for natural conditions may only be established through the legislative rule making process, including public participation.

b) Section 7.2.d.8. Revisions to the site-specific numeric criteria for aluminum, iron, manganese and selenium in two tributaries of the Cheat River are proposed. Site specific criteria for iron and selenium apply to an unnamed tributary of Daugherty Run approximately one mile upstream of Daugherty Run's confluence with the Cheat River and that site specific criteria for aluminum and manganese apply to Fly Ash Run of Daugherty Run. The Allegheny Power Company proposed these site-specific criteria to ensure that the Albright Power Station, located in Albright, West Virginia does not exceed current and expected water quality based effluent limitations for these parameters. ACT previously determined that Allegheny Power had not provided sufficient justification to support the use of these alternate criteria. Unless

Allegheny Power has provided additional information since January 1998, ACT recommends that these criteria be rejected until such time as sufficient supporting data are available..

The WER is a measurement of relevant differences between the toxicity of a metal in laboratory dilution water and in site water. After a WER is determined for a site, a site specific criterion can be calculated by multiplying an appropriate national, state or recalculated criterion by the WER. A WER can be calculated for both acute and chronic criteria but the two WERs so calculated cannot be assumed to be equal (EPA, *Interim Guidance on Determination and Use of Water Effect Ratios for Metals*, 1994). In some cases it may be appropriate to apply the acute WER to the chronic criterion. However, EPA recommends that the chronic WER be determined if permit limits are to be based upon the chronic criterion. The reports and information sheet provided by Allegheny Power indicate that the site-specific criterion for aluminum is a chronic criterion. Therefore, the chronic WER should be determined. The WER determined by the company and used in the calculation of the site-specific chronic aluminum criterion is an acute WER. The acute WER calculated by the company does not and can not provide an accurate representation of the chronic WER and should not be used in calculating the site specific chronic criterion.

The second step used by the company in determining the site specific criterion for aluminum is EPA's recalculation procedure. The recalculation procedure determines site specific criteria based upon differences in species and toxicology between the national data set and the site. According to the company, the general approach to the recalculation procedure is to generate a list of species that have been found at the site and to use list this in the process of deleting taxa from the national data set. This is an oversimplification of the recalculation procedure. The EPA recalculation procedure requires corrections and additions to the national data set as well as deletions. In fact, according to the EPA guidance, additions and corrections must be made before the deletion process is performed. Additions and corrections entail EPA approved corrections and additions to the national dataset. Selective additions and corrections are not allowed. All additions and corrections on EPA's current list must be

made. The company did not perform any additions or corrections, only deletions, thereby rendering their recalculation procedure incomplete. Additional errors were made in the procedure, casting even more doubts as to the validity of the results. For instance, after deleting taxa that did not occur on site from the national data set, the company determined a site-specific final acute value (FAV) of 2,533 ug/l. Then they determined that the site specific FAV differed from the national FAV of 1,496 ug/l by a factor of 1.693. They then derived the recalculated chronic criterion by multiplying the chronic criterion of 0.087 mg/l by the factor of 1.693 to obtain 0.1473 mg/l. This is not an appropriate or EPA recommended method of determining a recalculated chronic criterion. According to EPA guidance (EPA, 1994) the site specific final chronic value (FCV) is calculated by dividing the FAV by the national or site specific final acute to chronic ratio (FACR). The acute to chronic ratio is the ratio of the acute toxicity of an effluent or a toxicant to its chronic toxicity and is almost always greater than one. The Allegheny Power Company did not determine the FACR nor did they consider it in their calculations. Therefore, these calculations do not follow the EPA guidance, are inaccurate, and should not be used to set a site specific criterion for aluminum.

Allegheny Power calculated, albeit incorrectly, a site specific chronic criterion for aluminum. The proposed regulations include a site specific acute criterion. No justification has been provided for the acute criterion.

The EPA recommended acute criterion of 750 ug/l and chronic criterion of 87 ug/l should continue to be the required criteria for aluminum in the unnamed tributary. Allegheny Power did not calculate the WER or the recalculated criterion following EPA protocol nor did they provide sufficient evidence to show that the method used is scientifically valid.

In an attempt to justify the proposed site specific criteria for manganese and iron, site-specific toxicity tests were conducted. However, the tests conducted can in no way provide scientifically defensible justification of the proposed criteria. Only one set of acute tests and only two sets of chronic tests were run. In addition, the results of the acute tests for one of

the two species tested were inconclusive and could not be validly interpreted for either iron or manganese. Additional information must be provided to support the use of these alternate criteria before any revisions to the criteria are approved.

With respect to selenium, Allegheny Power collected brook trout samples from one station on Daugherty Run upstream of the confluence of Unnamed Tributary with Daugherty Run (and upstream of the influence of the outfalls) and at one station downstream of the confluence, an area that is influenced by Allegheny Power's wastewater outfalls. Allegheny Power's data show that the mean downstream selenium concentrations in the brook trout were 21.7 percent and 16.7 percent higher than the upstream mean concentrations on a wet weight and dry weight basis, respectively. The company reports that the upstream and downstream mean values are statistically different. That is, the selenium concentrations in the downstream fish are, in fact, greater than the selenium values in the upstream fish. Also, the data show that the downstream wet weight selenium value of 0.882 ug/g is well above the 0.73 ug/g value reported by Allegheny Power as the 85th percentile of selenium concentrations in fish from 117 stations across the United States. Finally, Allegheny Power admits that the mean selenium concentration in the downstream fish is greater than the safe level suggested for the protection of fish and wildlife (see Tables 9 and 10 of Allegheny Power's June 6, 1997 report). Given these facts, Allegheny Power has not accomplished its goal, as stated in the introduction of its report, "to demonstrate that the existing numeric criteria for the chemicals of concern (46 CSR 1, Appendix E) are overprotective of the aquatic life residing in the receiving stream segments, thereby warranting implementation of the proposed site-specific criteria." For selenium, just the opposite was demonstrated: brook trout are being unacceptably impacted rather than protected. ACT recommends the EQB reject the request for a site specific selenium criterion and, rather, require that Allegheny Power comply with the existing criterion.

Combination tests were run to determine the combined effects of the proposed site specific criteria. These tests do not support the use of the site specific criteria for the unnamed

tributary. First, the aluminum concentration used by Allegheny Power in the combined tests was 0.47 ug/l. The proposed site specific criterion is 0.88 ug/l, almost double the concentration used in the tests. Second, the tests showed significant reduction in the reproduction of the test.organism *Ceriodaphnia dupia*. The company hypothesized that this reduction was the result of iron precipitate and that the test results could not be properly evaluated. ACT points out that because the test results can not be properly evaluated, they certainly can not be used to demonstrate that the proposed site specific criteria are appropriate.

It is apparent that Allegheny Power Company has not sufficiently demonstrated that the proposed limits are protective of the aquatic community. The WER and recalculation procedure used to determine the aluminum criteria were incorrectly applied and therefore suspect. Very limited data are available to support the manganese, iron and selenium criteria. In fact, half of the tests in support of these criteria came back as inconclusive and can not be used in support of the criteria. The selenium data provided show that downstream brook trout are unacceptably contaminated. The combination test for aluminum, iron and selenium showed reduced reproductive capacity which demonstrates that these criteria may not be "ecologically safe". Until Allegheny Power Company provides additional data in support of these criteria, ACT recommends that these criteria be rejected.

c) Section 7.2.d.9. ACT has no comment regarding the reclassification of the designated use of the Blackwater River below Davis from a warm water fishery (Category B1) to a trout water (Category B2).

d) Section 7.2.d.16.2 revises the variance for Weirton Steel. This section allows a socio-economic variance to Weirton Steel allowing that the Harmon Creek shall not have water use Category A designation and shall have alternate criteria for lead, temperature, iron, and zinc. ACT previously commented upon Weirton Steel's request for a variance from the ½ mile rule which applies to Category A waters. The ½ mile rule requires that "each segment extending

upstream from the intake of a water supply public (Water Use Category A), for a distance of one half (½) mile or to the headwater must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this water use category". This regulation therefore requires that water quality standards for water use Category A be met at end-of-pipe within ½ mile of a drinking water intake. The Weirton Steel Outlet 002 is within ½ mile of the intake for their drinking water plant. Therefore, the permit for Outlet 002 contained permit limits which are equivalent to the water quality standards. Weirton Steel requested an exemption from the ½ mile rule because "the discharge from the company's Outlet 002 is almost entirely once through noncontact cooling water which is withdrawn from the Ohio River. As such, Outlet 002 is basically discharging water taken from the Ohio River back into the Ohio River". This statement is untrue. According the permit, Outlet 002 contains treated wastewaters from scrubbers, untreated contact and non-contact cooling water and storm water. If Weirton Steel was merely discharging Ohio River water to which no pollutants had been added, they should have no difficulty meeting water quality standards at the end-of-pipe. However, this is obviously not the case. Weirton Steel apparently has been unable to meet the requirements of the ½ mile rule. The State apparently granted Weirton Steel's request by changing the designation of Harmon Creek. The State should not allow this change in designation to remain. The ½ mile rule is intended to protect drinking water supplies. By allowing Weirton Steel this amendment the State has set a precedent which may endanger water supplies throughout the state.

This section further sets site specific instream criteria for a number of parameters. However, the site specific criteria are contingent upon Weirton Steel submitting the information required by the section. It is apparent that the EQB feels that Weirton Steel has not yet provided sufficient information to justify the need for site specific criteria by making the criteria contingent upon submittal of additional information. If this is indeed the case, site specific criteria should be disallowed until such time that Weirton Steel has provided sufficient information. This section should be rewritten to make clear that statewide criteria apply until Weirton Steel provides the sufficient information to justify the site specific criteria.

e) Section 7.2.d.32.1. ACT has no comment regarding the deletion of the variance on Bluestone Lake.

f) Section 8.17.1. ACT has no comment on the deletion of the manganese variance.

g) Appendix E Section 8.1. The proposed regulations add a chronic criterion for the protection of aquatic life for aluminum as recommended by ACT in its July 1999 comments . ACT agrees with this revision.

h) Appendix E Section 8.2.1 ACT agrees with the amended ammonia criteria.

i) Appendix E Section 8.22 ACT has no comment regarding the amended criteria for 1,1,2,2 tetrachloroethane and chloroform.

j) Appendix E Section 8.24.1 ACT has no comment regarding the revised phenol criteria.

k) Appendix E Section 8.24.2 adds numeric criteria for the protection of human health for 2-chlorophenol. The proposed criteria incorrectly apply the EPA criteria as recommended in National Recommended Quality Criteria, December 1998 (63 FR 68354). The 120 ug/l criteria is based upon consumption of organisms and water and should apply to Category A waters rather than Category C and the 400 ug/l criteria is based upon consumption of organisms only and should apply to Category C waters rather than Category A waters.

l) Appendix E Section 8.24.3 adds numeric criteria for the protection of human health for 2, 4-dichlorophenol. The proposed criteria incorrectly apply the EPA criteria as recommended in National Recommended Quality Criteria, December 1998 (63 FR 68354). The 93 ug/l criteria is based upon consumption of organisms and water and should apply to Category A waters rather than Category C waters and the 790 ug/l criteria is based upon consumption of

organisms only and should apply to Category C waters rather than Category A waters.

m) Appendix E Section 8.24.4 adds numeric criteria for the protection of human health for 2,4-dimethylphenol. The proposed criteria incorrectly apply the EPA criteria as recommended in National Recommended Quality Criteria, December 1998 (63 FR 68354). The 540 ug/l criteria is based upon consumption of organisms and water and should apply to Category A waters rather than Category C waters and the 2,300 ug/l criteria is based upon consumption of organisms only and should apply to Category C waters rather than Category A waters.

n) Appendix E Section 8.24.5 adds numeric criteria for the protection of human health for 2,4-dinitrophenol. The proposed criteria incorrectly apply the EPA criteria as recommended in National Recommended Quality Criteria, December 1998 (63 FR 68354). The 70 ug/l criteria is based upon consumption of organisms and water and should apply to Category A waters rather than Category C waters and the 14,000 ug/l criteria is based upon consumption of organisms only and should apply to Category C waters rather than Category A waters.

o) Appendix E Section 8.24.6 adds numeric criteria for the protection of human health for pentachlorophenol. The proposed criteria incorrectly apply the EPA criteria as recommended in National Recommended Quality Criteria, December 1998 (63 FR 68354). The 0.28 ug/l criteria is based upon consumption of organisms and water and should apply to Category A waters rather than Category C waters and the 8.2 ug/l criteria is based upon consumption of organisms only and should apply to Category C waters rather than Category A waters.

p) Appendix E Section 8.24.7 adds numeric criteria for the protection of human health for 2,4,6-trichlorophenol. The proposed criteria incorrectly apply the EPA criteria as recommended in National Recommended Quality Criteria, December 1998 (63 FR 68354). The 2.1ug/l criteria is based upon consumption of organisms and water and should apply to Category A waters rather than Category C waters and the 6.5 ug/l criteria is based upon consumption of organisms only and should apply to Category C waters rather than Category A waters.

Comment 6: Additional comments on "Requirements Governing Water Quality Standards."

ACT has reviewed the "Requirements Governing Water Quality Standards" in its entirety and offers the following additional comments.

a) Section 46-1-2 Definitions. In its November 6, 1995 letter, the EPA requested that the definitions of the following terms be clarified: conventional treatment, intermittent streams, natural/naturally occurring, non-point source, and wet weather stream. The regulations do not appear to contain clarifications of these terms.

The EPA also requested that definitions for the following terms be added: lethality, mixing zone, surface impoundment, and toxic. The proposed revised regulations do not contain definitions of these terms as requested by the EPA.

b) Section 46-1-6 Water Use Categories. In their November 6, 1995 letter the EPA recommended that section 6 be revised to include the goal established in section 101(a)(2) of the Clean Water Act which states that water quality standards should provide for the protection of fish, shellfish and wildlife. As written, the rule states that at a minimum all waters of the State are designated for the propagation and maintenance of fish and other aquatic life . This goal does not include protection of wildlife such as birds and terrestrial animals that are not considered aquatic life but which may drink or feed in the waters of West Virginia. The water quality standards should be protective of all wildlife as required by the Clean Water Act.

The regulations must ensure that category B criteria fully protect the biological integrity of the water body, including flora and fauna. The EPA commented that it should be made clear that the term Other aquatic life includes flora and fauna and all other factors important to

the biological integrity of the water body.

West Virginia must ensure that its water quality standards provide adequate protection of wildlife in accordance with Section 101(a)(2). The State should identify the instream criteria associated with the protection afforded for wildlife in Category D3 Wildlife , which includes all stream segments and wetlands used by wildlife.

The application of the last sentence in section 6.1 Incidental utilization for whatever purpose may or may not constitute justification for assignment of a water use category to a particular stream segment should be clarified. In addition, the state should include the rationale for distinguishing between existing uses and incidental uses.

c) Appendix E Quality Criteria.

Section 8.9.1. Chromium, dissolved hexavalent: It is unnecessary to multiply the acute and chronic criteria for dissolved hexavalent chromium by a conversion factor to obtain the dissolved criteria. According to EPA s National Recommended Quality Criteria , December 1998 (63 FR 68354), the chronic value of 11 ug/l and the acute value of 16 ug/l represent the dissolved metal and were calculated by multiplying the total recoverable metal standard by the conversion factor. The multiplication by the conversion factor should be deleted from the regulations.

Section 8.10 Cyanide: The correct number for chronic exposures to cyanide is 5.2 ug/l, not 5.0 according to EPA s National Recommended Quality Criteria , December 1998 (63 FR 68354.

Section 8.11.1 Dissolved Oxygen, Kanawha River: According to its November 6, 1995 letter, the EPA does not believe that the dissolved oxygen concentration of 4.0 mg/l supports the minimum fishable designation. The EPA requested a use attainability analysis

which supports this criterion for the Kanawha River. If the State has not yet provided this analysis, they should do so now as part of the triennial review. If the analysis has not been performed, the criteria should be revised to 5.0 mg/l.

Sections 8.15 Iron: The current chronic criterion for iron of 1.5 mg/l is less stringent than EPA s recommended aquatic life chronic criterion for iron of 1.0 mg/l (EPA s National Recommended Quality Criteria , December 1998 (63 FR 68354)). The regulations must either be changed to reflect EPA s number or the State must provide a rationale for the less stringent number.

Section 8.17 Manganese: The Category A criterion for manganese is much less stringent than the EPA recommended criterion. According to EPA s National Recommended Quality Criteria , December 1998 (63 FR 68354), the appropriate water quality criterion for manganese for drinking water is 50 ug/l (0.05 mg/l). The current water quality criterion of 1.0 mg/l is much less stringent than the EPA recommended criterion. West Virginia must either adopt the EPA recommended criterion or provide a scientifically valid rationale for the less stringent criterion.

ATTACHMENT I

Derivation of Edible Fish Tissue Body Burden Standard

1. Calculate the Risk Specific Dose (RSD):

$$RSD = \frac{\text{Cancer Risk Level}}{\text{Cancer Potency Factor}}$$

$$= \frac{1\times10^{-6}}{1.56\times10^{5}\ \text{(kg-day/mg)}} \quad \text{(46 CSR-1-8.2.a)} \quad \text{(EPA Region 3 Risk-based Concentration Table)}$$

$$= 6.4\times10^{-12}\ \text{(mg/kg-day)}$$

$$RSD = 0.0064\ \text{(pg/kg-day)}$$

2. Calculate the Body Burden Standard:

$$\textit{Body Burden Standard} = \frac{\text{Risk Specific Dose x Body Weight}}{\text{Fish Consumption Rate}}$$

$$= \frac{\text{RSD x BW}}{\text{FCR}}$$

$$= \frac{(0.0064\text{pg/kg-day})\ (70\text{kg})}{0.0065\ \text{kg/day}}$$

$$= 68.9\ \text{pg/kg}$$

$$\textit{Body Burden Standard} = 0.07\ \text{pg/g}$$

ATTACHMENT III

Calculation of Water Column Concentration from Fish Body Burden Standard

Definition of Terms:

POC = concentration of particulate organic carbon (kg/l)
DOC= concentration of dissolved organic carbon (kg/l)
K_{ow} = n-octanol water partition coefficient for the chemical
C_t = concentration of the chemical in the wet tissue either whole organism or specified tissue (ug/g)
C_l = lipid normalized concentration of the chemical in tissues of the biota (ug/g lipid)
C'_w = total concentration of chemical in the water (kg/l)
f_l = fraction lipid content in the organism
f_{fd} = fraction of the total chemical that is freely dissolved in the water
Baseline BAF = generalized BAF for a specific trophic level, based on total chemical concentration in the water column, and normalized to 100% lipid
BAF^{fd} = BAF (l/kg lipid) reported on the basis of the lipid normalized concentration of chemical in the biota (kg/kg) divided by the freely dissolved concentration of the chemical in the water (kg/l)
$BAF^{'l}$ = BAF (l/kg lipid) reported on the basis of the lipid normalized concentration of chemical in the biota (kg/kg lipid) divided by the total concentration of the chemical to the water (kg/l)

Data Required:

C_t = average concentration of 2,3,7,8 - TCDD from whole body of skin-on fillet samples
f_l = average percent lipids of whole body or skin-on fillet samples
DOC = average concentration of dissolved organic carbon at fish sampling location
POC = average concentration of particulate organic carbon at fish sampling location

Assume:

DOC = 2.74×10^{-6} kg/l (From STORET - Average of
POC = 1.08×10^{-6} kg/l all stations in West Virginia)
C_t = 0.07 pg/g (fish body burden equivalent to risk of 1×10^{-6})
f_l Trophic level 3 = 1.82% (from GLWQI)
f_l Trophic level 4 = 3.1% (from GLWQI)

Reference data for 2,3,7,8 - TCDD:

Log K_{ow} = 7.02
K_{ow} = 10,471,285.48
Baseline BAF for Trophic Level 3 = 9,360,000
Baseline BAF for Trophic Level 4 = 9,000,000

Calculate freely dissolved fraction of 2,3,7,8 - TCDD in water column:

$$f_{fd} = \frac{1}{1 + POC \times K_{ow} + DOC \times K_{ow}/10}$$

$f_{fd} = 6.58 \times 10^{-2}$ l/kg

Express Baseline BAF on the Basis of total 2,3,7,8 - TCDD:

Trophic Level 3:

$BAF^{t}_{l} = (9{,}360{,}000)\ (f_{fd})$
$= (9{,}360{,}000)\ (6.58 \times 10^{-2})$
$= 615{,}888$ l/kg

Trophic Level 4:

$BAF^{t}_{l} = (9{,}000{,}000)\ (f_{fd})$
$= (9{,}000{,}000)\ (6.58 \times 10^{-2})$
$= 592{,}200$ l/kg

Calculate instream concentration of Total 2,3,7,8 - TCDD:

$$C^{t}_{w} = \frac{C_l}{BAF} \qquad C_l = \frac{C_t}{f_l}$$

Trophic Level 3:

$C_l = \frac{7 \times 10^{-8} \text{ ug/g}}{0.0182}$

$= 3.85 \times 10^{-12}$ kg/kg

$C^{t}_{w} = \frac{3.85 \times 10^{-12} \text{ kg/kg}}{615{,}888 \text{ l/kg}}$

$= 0.0062$ pg/l

Trophic Level 4:

$C_l = \frac{7 \times 10^{-8} \text{ ug/g}}{0.031}$

$= 2.26 \times 10^{-12}$ kg/kg

$C^{t}_{w} = \frac{2.26 \times 10^{-12} \text{ kg/kg}}{592{,}200 \text{ l/kg}}$

$= 0.0038$ pg/l

ATTACHMENT IV

Calculation of Cost Estimate Differentials

Per American Association of Cost Engineers (AACE) standards (AACE International Recommended Practice No. 18R-97) the accuracy range of cost estimates in the study or feasibility stage (class 4) is +50% to-30%.

Define Project A: lower cost project
Project B: higher cost project

Projects A and B must be assumed to be equal (not different in cost) if:

(Project A) $1.5 \leq 0.7$ (Project B)

To determine whether the cost of Project B is equal to or greater than the cost of Project A plus an additional 10% of the cost of Project A, assume that variability applies to difference.

(Project A)(1.5)(1.1) $\leq$ 0.7 (Project B)
(Project A)(2.36) $\leq$ (Project B)

A cost differential of 236% is required for Project B to be +10% of Project A.

Example: Assume Project A = $100,000
+50(Project A) = $150,000-30(Project A-$70,000)
($150,000)(1.1) = $165,000

$165,000 = 0.7(Project B)
Project B = $235,714

RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 15, 2000

Edward M. Snyder, Chairman
Environmental Quality Board
1615 Washington Street
Charleston, West Virginia 25311

Dear Chairman Snyder:

On August 4, 2000 U.S. EPA announced its approval of the antidegradation implementation procedures for the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. 65 Fed. Reg. 47864. The WV Manufacturers' Association and the WV Chamber call this point to your attention since many of these state's programs have been referenced in support of provisions we support or have proposed for inclusion in the WV antidegradation implementation procedures.

Very truly yours,

Kathy G. Beckett
West Virginia Chamber of Commerce

Wayne Appleton

Wayne Appleton, Chairman
Water Team
West Virginia Manufacturers Association

/KGB
Enclosure
cc: Dr. Cameron Hackney
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Elizabeth M. Chatfield, Esquire

Stephen G. Roberts, President
WV Chamber of Commerce

Karen Price, President
West Virginia Manufacturers Association

(194)(i)(D)(*3*) and (263)(i)(C)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(132) * * *

(i) * * *

(B) Previously approved on May 3, 1984 and now deleted without replacement, Rule 425.

* * * * *

(184) * * *

(i) * * *

(D) San Diego County Air Pollution Control District.

* * * * *

(198) * * *

(i) * * *

(K) * * *

(*2*) Rule 359, adopted on June 28, 1994.

* * * * *

(220) * * *

(i) * * *

(B) Placer County Air Pollution Control District.

* * * * *

(225) * * *

(i) * * *

(C) El Dorado County Air Pollution Control District.

* * * * *

(263) * * *

(i) * * *

(C) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 464, adopted on July 23, 1998.

* * * * *

[FR Doc. 00–18641 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6846–3]

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submissions From the States of Michigan, Ohio, Indiana, and Illinois, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (i.e., March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submissions of the States of Michigan, Ohio, Indiana and Illinois. EPA's final action consists of approving those elements of the States' submissions that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of each State within the Great Lakes basin where a State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance. EPA is separately taking final action on the Guidance submissions of the States of Minnesota, New York, Pennsylvania and Wisconsin.

EFFECTIVE DATE: September 5, 2000.

ADDRESSES: The public docket for EPA's final actions with respect to the Guidance submissions of the States of Michigan, Ohio, Indiana, and Illinois is available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mery Jackson-Willis (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202–260–0312); or Mery Jackson-Willis, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 (312–353–3717).

SUPPLEMENTARY INFORMATION

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the States of Michigan, Ohio, Indiana and Illinois. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in the States identified above.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in the States identified above.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected. This table lists the types of entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by these final actions, you should examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the Part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA published the Guidance. *See* 60 FR 15366 (The term "Guidance" as used below refers to the regulation promulgated by EPA on March 23, 1995 and codified at 40 CFR Part 132). The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron*

and Steel Institute, et al. v. *EPA (AISI)*, 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance "insofar as it would eliminate mixing zones for [BCCs] and impose [WQBELs] upon internal facility waste streams." 115 F.3d at 985. On October 9, 1997, EPA published a notice revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second notice amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR Part 132 (found in Procedure 3.C. of Appendix F) and to remove language in the Pollutant Minimization Program provisions (Procedure 8.D. of Appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third notice withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the Part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner*, Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** notice making Part 132 effective in any State in the Great Lakes Basin that failed to make a submission to EPA by that date under 40 CFR Part 132. However, all of the Great Lakes States made complete submissions to EPA on or before the February deadline. On March 2, April 14, April 20 and April 28, 1998, EPA published in the **Federal Register** notices of its receipt of each of the States' Great Lakes Guidance submissions and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portions of those submissions. 63 FR 10221; 63 FR 18195; 63 FR 19490; 63 FR 23285.

40 CFR 132.5(f) provides that, once EPA completes its review of a State's submission, it must either publish notice of approval of the State's submission in the **Federal Register** or issue a letter notifying the State that EPA has determined that all or part of its submission is inconsistent with the CWA or the Guidance, and identify any changes needed to obtain EPA approval. If EPA issues a letter to the State making findings of inconsistencies, the State then has 90 days to make the necessary changes. If the State fails to make the necessary changes, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that will apply to discharges within the State.

On November 15, 1999, the National Wildlife Federation and the Lake Michigan Federation filed suit alleging that EPA had a non-discretionary duty to take action on the Great Lakes States' Guidance submissions. *National Wildlife Federation* v. *Browner*, Civ. No. 99–3025–HHK (D.D.C.). EPA negotiated a consent decree providing that EPA must sign **Federal Register** notices by July 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Pennsylvania; and **Federal Register** notices by September 29, and October 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of New York and Wisconsin, respectively. Today's **Federal Register** notice fulfills EPA's obligations under that Consent Decree with respect to the States of Michigan, Ohio, Indiana and Illinois. EPA is separately taking final action with respect to the States of Minnesota, New York, Pennsylvania and Wisconsin. EPA notes that each of the States' Guidance submissions may contain provisions that revise its NPDES program or water quality standards in areas or with respect to regulated entities not covered by the Guidance. EPA is not taking action at this time to either approve or disapprove any such provisions.

EPA has conducted its review of the States' submissions in accordance with the requirements of Section 118(c)(2) of the CWA and 40 CFR Part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

Where EPA has promulgated a final rule that identifies a provision of the Guidance that shall apply in a State, EPA explains below its reasons for concluding that the State failed to adopt requirements that are consistent with the Guidance. Additional explanation of EPA's conclusions are contained in EPA's correspondence with each State (identified in relevant sections below) where EPA initially identified inconsistencies in the States's submission. Notice of the availability of each of these letters was published in the **Federal Register** and EPA has considered all public comments received regarding any conclusions as to whether a State had adopted provisions consistent with the Guidance.

In this proceeding, EPA has reviewed the States' submissions to determine their consistency with 40 CFR Part 132. EPA has not reopened Part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of Part 132. To the extent any members of the public commented during this proceeding that any provision of Part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to those elements of the State submissions being approved by EPA, EPA is approving those provisions as amendments to each State's NPDES permitting program under Section 402 of the CWA and as revisions to each State's water quality standards under Section 303 of the CWA. Today's notice identifies those approved elements. Additional explanations of EPA's review of and conclusions regarding the States' submissions, including the specific State provisions that EPA is approving, are contained in the administrative record for today's actions in documents prepared for each State entitled "[particular State] Provisions Being Approved as Being Consistent With the Guidance," "Analysis of Whether [the particular State] Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps

Taken By [the particular State] in Response to EPA's 90-Day Letter."

C. Today's Final Actions

1. The State of Michigan

On June 30 and August 16, 1999, EPA issued letters notifying the Michigan Department of Environmental Quality (MDEQ) that, while the State of Michigan had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 30 and August 16, 1999, letters. 64 FR 49803. EPA has completed its review of the State of Michigan's response to, and all public comments on, the June 30 and August 16, 1999, letters, and has determined that, with one exception described below, Michigan has adopted requirements consistent with all aspects of the Guidance. Specifically, Michigan has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to: the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with one exception, the implementation procedures in Appendix F. As explained more fully below, Michigan has not adopted requirements consistent with the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's June 30, 1999, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, MDEQ provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which MDEQ commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its Memorandum of Agreement (MOA) or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Michigan Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Michigan Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Michigan in Response to EPA's 90-Day Letter" included in the record for this action.

EPA has determined that Michigan's provisions at R 323.1219(4) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Michigan's whole effluent toxicity requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132. The Guidance procedure for evaluating reasonable potential for whole effluent toxicity (WET) is based on comparing a projected 95th percentile WET value at a 95 percent confidence level with the acute and chronic WET criteria after accounting for any available dilution. This conservative approach is designed to ensure that WQBELs are imposed when there is a reasonable potential for toxicity, taking into account the effluent variability and the size of the data set, even if no toxicity has actually been observed.

In evaluating State reasonable potential procedures for WET, EPA looked for an equivalent level of protection to that provided by the Guidance procedure. In the case of a procedure to determine when a WQBEL is needed, one important consideration is whether the alternative procedure would indicate the need for a WQBEL in similar situations to those that would trigger a WQBEL under Section D of Procedure 6.

In most cases where there is quantifiable effluent data, EPA's procedure will project an effluent value greater than the maximum observed value to characterize the reasonable worst case effluent. Michigan's procedures for determining WET reasonable potential are based on comparisons of preliminary effluent limits to average effluent toxicity values (with further possible adjustment based on the frequency of failures), rather than comparisons of preliminary effluent limits to maximum effluent toxicity values multiplied by factors to account for effluent variability and size of the data set as required by Paragraph D of Procedure 6 of the Guidance. Michigan's use of the average effluent toxicity value will, except in highly unusual circumstances, be lower than the maximum toxicity value multiplied by the factors to account for effluent variability set forth in the Guidance. Indeed, in certain circumstances, Michigan's procedure would not require a reasonable potential finding even where testing has shown actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

EPA notes that Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Michigan's R. 323.1219(2) also provides that WQBELs shall be imposed whenever the WET reasonable potential procedures in Michigan's R. 323.1219(4) show reasonable potential. As discussed above, however, Michigan's WET reasonable potential rules are not consistent with the Guidance. Because R.323.1219(2) links establishment of WQBELs for WET to a finding of reasonable potential under procedures that EPA has determined are not consistent with Section D of Procedure 6 (i.e., the procedures in R. 323.1219(4)), R.323.1219(2) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of R. 323.1219 (2) and (4), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Michigan.

EPA understands that MDEQ intends to initiate rulemaking to revise its regulations to insure that the State's WET reasonable potential provisions are consistent with the Guidance. EPA will work closely with MDEQ to insure that its revised regulations will be consistent with the Guidance. MDEQ will then submit its revised regulations to EPA for approval pursuant to 40 CFR 123.62 as a revision to its NPDES program and, upon EPA approval of those revisions, EPA will revise its regulations so that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 will no longer apply to discharges into the Great Lakes System in the State of Michigan. EPA also notes

that, based upon Michigan's adoption of criteria consistent with the Guidance, EPA intends, in a separate action in the future, to remove Michigan from the list of States specified at 40 CFR 131.36 for which EPA has promulgated specific criteria under Section 304(a) of the Clean Water Act.

2. The State of Ohio

On June 30 and August 16, 1999, EPA issued letters notifying the Ohio Environmental Protection Agency (OEPA) that, while the State of Ohio had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its June 30 and August 16, 1999, letters. 64 FR 49803. EPA has completed its review of the State of Ohio's response to, and all public comments on, the June 30 and August 16, 1999, letters, and has determined that, with only one exception described below, Ohio has adopted requirements consistent with all aspects of the Guidance. Specifically, Ohio has adopted requirements consistent with and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with one exception, the implementation procedures in Appendix F. As explained more fully below, Ohio has not adopted requirements consistent with the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's June 30, 1999, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, OEPA provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which OEPA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Ohio Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Ohio Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Ohio in Response to EPA's 90-Day Letter."

EPA has determined that Ohio's procedure at OAC 3745–33–07(B) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Ohio's whole effluent toxicity requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132. Ohio's procedure is based on consideration of a wide range of available data, including the number of tests performed, the magnitude and frequency of toxicity exhibited by the effluent and available biological data. Ohio's procedure is not consistent with the Guidance because rather than provide safety factors to be applied to observed WET data as does Procedure 6, they apply factors that devalue observed WET test results and would not require a WQBEL even where WET test results show observed levels of unacceptable toxicity.

Specifically, where biological data are unavailable to corroborate effluent toxicity data, Ohio's procedures generally do not require establishment of a WQBEL unless the maximum observed toxicity value is at least three times greater than the expected toxicity limit, the average toxicity exceeds one-third the expected effluent limit, and more than 30 percent of the test results exceed a projected wasteload allocation. Where biological data are present to corroborate effluent data that a toxicity problem exists, Ohio's procedure would allow a permit writer to consider WET data at full value (*i.e.*, compare the maximum observed WET result to the expected toxicity limit), but it also requires the permit writer, in determining whether a WQBEL is needed, to weigh factors related to a minimum frequency of actual exceedances and a comparison of the average of WET test results to a percentage of the expected toxicity limit similar to those that must be considered when only WET data are available. Because these procedures devalue toxicity results and fail to require a limit even in cases of observed toxicity, Ohio's procedure would not require a reasonable potential finding even where testing has showed actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

As discussed above with respect to Michigan, Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Ohio's rules at OAC 3745–33–07(B)(2) provide that WQBELs shall be imposed whenever the WET reasonable potential procedures in Ohio's rules at OAC 3745–33–07(B) show reasonable potential. Because OAC 3745–33–07(B)(2) links establishment of WQBELs for WET to a finding of reasonable potential under procedures that EPA has determined are not consistent with Section D of Procedure 6 (*i.e.*, the procedures in OAC 3745–33–07(B)), OAC 3745–33–07(B)(2) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of OAC 3745–33–07(B), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Ohio.

3. The State of Indiana

On August 16, 1999, EPA issued a letter notifying the Indiana Department of Environmental Management (IDEM) that, while the State of Indiana had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the rules adopted by the State were not consistent with corresponding provisions of the Guidance. On September 14, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its August 16, 1999, letter. 64 FR 49803. EPA has completed its review of the State of Indiana's response to, and all public comments on, the August 16, 1999, letter, and has determined that, with the exceptions described below, Indiana has adopted requirements consistent with all aspects of the Guidance. Specifically, Indiana has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water

quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B–D; the antidegradation policy in Appendix E; and, with the exceptions described below, the implementation procedures in Appendix F. As explained more fully below, Indiana has not adopted requirements consistent with the criteria for granting variances set forth in Paragraph 1 of Section C of Procedure 2 in Appendix F, requirements for including WQBELs in permits set forth in Paragraph 2 of Section F of Procedure 5 in Appendix F, and the provisions for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity set forth in Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F.

EPA's August 16, 1999, letter concluded that some of the provisions that EPA is now approving were inconsistent with the Guidance because authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, IDEM provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which IDEM commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with exceptions identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Indiana Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Indiana Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Indiana in Response to EPA's 90-Day Letter."

EPA has determined that Indiana's provisions at 327 IAC 2–1.5–17(b), which allow IDEM to grant a variance from water quality standards if the permit applicant demonstrates that failure to grant the variance "will cause an undue hardship or burden upon the applicant," are inconsistent with the criteria for granting variances set forth at Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132. Specifically, the Guidance only allows variances based upon economic considerations if the failure to grant the variance "would result in substantial and widespread economic and social impact." EPA believes, and Indiana agrees, that it is possible that a failure to grant a variance could result in "an undue hardship or burden upon [a particular discharger]" without also causing "substantial and widespread economic and social impact." Consequently, Indiana's provisions allow variances to be issued that relax water quality standards, and consequently permit conditions to meet standards, in instances where such a loosening of applicable requirements would not be permitted by the Guidance. Therefore, these provisions of Indiana's submission are not consistent with the Guidance.

EPA, therefore, disapproves of 327 IAC 2–1.5–17(b), and has determined that Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana. EPA notes that Indiana's "undue hardship or burden upon the applicant" criterion for granting a variance, as applied to municipal dischargers, may often be consistent with the "substantial and widespread social and economic impact" criterion in Paragraph 1.f of Section C of Procedure 2 in Appendix F to 40 CFR Part 132. This is because an undue hardship on the discharger (*i.e.*, the community served by the municipal discharger) may also constitute widespread social and economic impact. Consequently, EPA believes that specifying that Paragraph 1 of Section C of Procedure 2 in Appendix F to 40 CFR Part 132 applies to discharges into the Great Lakes System in the State of Indiana may, as a practical matter, not have a significant effect on the granting of variances for municipalities in Indiana. In any case, under today's rule, Indiana may only grant variances that meet the criteria specified in Procedure 2 in Appendix F to 40 CFR Part 132.

EPA has further determined that Indiana's provisions at 327 IAC 5–3–4.1(b)(1), which prevent Indiana from including necessary WQBELs in permits simply because a variance application has been submitted, is inconsistent with Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 and with 40 CFR 122.44(d). Under those federal provisions, WQBELs must be included in NPDES permits whenever there is reasonable potential that a discharge will cause or contribute to causing nonattainment of an existing water quality standard. The mere filing of a variance application does not change a water quality standard. Consequently, 327 IAC 5–3–4.1(b)(1), which prevents Indiana from including WQBELs when there is reasonable potential for a discharge to cause or contribute to causing nonattainment of an existing water quality standard where a permittee has applied for a variance from that standard, is not consistent with the Guidance and 40 CFR 122.44(d).

EPA, therefore, disapproves of 327 IAC 5–3–4.1(b)(1), and has determined that Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana.

EPA also has determined that Indiana's provisions at 327 IAC 5–2–11.5(c)(1) for determining reasonable potential for a discharge to cause or contribute to an exceedance of Indiana's WET requirements are inconsistent with Section D of Procedure 6 in Appendix F to 40 CFR Part 132.

As described above with respect to Michigan, EPA's procedure, in most cases, will project an effluent value greater than the maximum observed value to characterize the reasonable worst case effluent. Indiana's procedure, on the other hand, uses the mean value of effluent data, further "discounted" by the fraction of tests exceeding the wasteload allocation. This both lessens the impact of observed toxicity on the calculation and fails to account for the reasonable possibility that effluent toxicity may exceed the level observed in the tests because sampling did not coincide with periods of maximum toxicity. An analysis of Indiana's procedure shows that those procedures often do not require a limit on WET where one would be required under the procedures in the Guidance. In fact, in some cases, Indiana's procedure would not require imposition of a WQBEL even where testing has showed actual, observed toxicity. This is clearly inconsistent with Section D of Procedure 6.

As discussed above with respect to Michigan and Ohio, Paragraph 1 of Section C of Procedure 6 requires that WQBELs be imposed whenever the WET reasonable potential procedures in Section D of Procedure 6 show that there is reasonable potential that a discharge will cause or contribute to causing an excursion above a State's numeric WET criterion or narrative criterion. Indiana's rules at 327 IAC 5–

2–11.5(c), which specify when the permitting authority must include a WQBEL for WET, limits the permitting authority to using the WET reasonable potential procedures in Indiana's rules at 327 IAC 5–2–11.5(c)(1). Because 327 IAC 5–2–11.5(c) links establishment of WQBELs for WET to the Indiana WET reasonable potential procedures that EPA has determined are not consistent with Section D of Procedure 6 (i.e., the procedures in 327 IAC 5–2–11.5(c)(1)), 327 IAC 5–2–11.5(c) is not consistent with Paragraph 1 of Section C of Procedure 6.

EPA, therefore, disapproves of 327 IAC 5–2–11.5(c), and has determined that Paragraph 1 of Section C, and Section D, of Procedure 6 in Appendix F to 40 CFR Part 132 shall apply for discharges into the Great Lakes System in the State of Indiana.

4. The State of Illinois

On November 12, 1999, EPA issued a letter notifying the Illinois Environmental Protection Agency (IEPA) that, while the State of Illinois had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the State's rules were not consistent with corresponding provisions of the Guidance. On December 9, 1999, EPA published in the **Federal Register** a notice of and solicitation of public comment on its November 12, 1999, letter. 64 FR 69019. EPA has completed its review of the State of Illinois' response to, and all public comments on, the November 12, 1999, letter, and has determined that, with one exception, Illinois has adopted requirements consistent with all aspects of the Guidance. Specifically, Illinois has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to, the definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of Part 132; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in Appendices B—D; the antidegradation policy in Appendix E; and, with one exception described below, the implementation procedures in Appendix F. As explained more fully below, Illinois has not adopted requirements consistent with the requirements governing total maximum daily loads in Procedure 3 in Appendix F.

EPA's November 12, 1999, letter, had concluded that some of the provisions that EPA is now approving were inconsistent with the Guidance because they authorized the State to act consistent with the Guidance, but provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. Subsequent to that letter, Illinois provided additional materials, including an Addendum to its Memorandum of Agreement with EPA regarding the State's approved NPDES program in which IEPA commits to always exercise its discretion under those provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. These materials have demonstrated to EPA that the State will implement its program (with one exception identified below) consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "Illinois Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether Illinois Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By Illinois in Response to EPA's 90-Day Letter."

EPA has determined that Procedure 3 in Appendix F to 40 CFR Part 132 shall apply with regard to development of total maximum daily loads (TMDLs) for the Great Lakes System in the State of Illinois because Illinois decided not to adopt TMDL provisions for the Great Lakes System. Illinois did not adopt such provisions because EPA has indicated that it will be developing a TMDL for Lake Michigan and so Illinois does not believe that the State should be required to develop any TMDLs for the Great Lakes System. Today's action ensures that the provisions of Procedure 3 in Appendix F will apply in developing TMDLs in the Great Lakes System in the State of Illinois, regardless of who develops the TMDL. EPA notes that this promulgation has no effect on the reasonable potential procedures at 35 Ill. Adm. Code 309.141(h)(4), which EPA approves as being consistent with the reasonable potential procedures in Procedure 5 in Appendix F to 40 CFR Part 132, and which therefore apply in the Great Lakes System in the State of Illinois for purposes of developing preliminary effluent limitations in making reasonable potential determinations.

As noted above, EPA, in this notice, is not taking action to approve or disapprove portions of the States' Guidance submissions pertaining to NPDES permitting and water quality standards issues that are not addressed by the Guidance. While EPA is not taking action under Section 118 with regard to the following issue, EPA nevertheless wishes to describe its understanding with regard to one aspect of Illinois' submission that is not addressed by the Guidance. Specifically, Illinois' rules at 35 Ill. Adm. Code 352.700(a)(2) provide that, when a WQBEL is below the level of quantification, "[t]he analytical method adopted by the [Illinois Pollution Control] Board and specified in the permit shall be the method used for compliance assessment including enforcement actions."

EPA is concerned about this language because EPA believes, as a matter of law, that any credible evidence (subject to generally applicable rules of evidence), not just evidence generated by use of an analytical method specified in a permit, can be used in an enforcement action to establish that a violation of an effluent limitation has occurred. IEPA has clarified that 35 Ill. Adm. Code 352.700(a)(2) is only a limitation on the types of evidence that IEPA may use in an enforcement action; it does not place limits on the types of evidence that the federal government or third parties can use in an enforcement action or citizen suit. IEPA also has clarified that it does not intend to include the language of 35 Ill. Adm. Code 352.700(a)(2) in NPDES permits. Finally, IEPA is considering revising its rules to address EPA's concerns. While EPA is not, at this time, taking action to either approve or disapprove 35 Ill. Adm. Code 352.700(a)(2) as a modification of Illinois NPDES program, EPA notes that revisions to State NPDES programs do not become effective until approved by EPA. 40 CFR 123.62(b)(4).

D. Public Comments

EPA received a large number of public comments in response to its **Federal Register** notices of its receipt of the States' Guidance submissions and of the availability of EPA's letters to the States of Michigan, Ohio, Indiana and Illinois regarding their Guidance submissions. EPA has responded to each of those comments in a document entitled "EPA Responses to Comments Regarding the Great Lakes Guidance Submissions of the States of Michigan, Ohio, Indiana and Illinois' that has been included as part of the record in this matter. The following is a summary of EPA's responses to the most significant of these comments.

Comment: A number of commenters asserted that EPA's regulatory

determinations are being made without affected parties having any chance to review the Agency's reasoning or to raise issues as to the validity of that reasoning, in violation of the Administrative Procedure Act and EPA's public participation regulations at 40 CFR 25.

Response: The final rule being promulgated today makes certain provisions of 40 CFR Part 132 applicable to discharges in certain States within the Great Lakes System. Those provisions were adopted after publication of a proposed rule for public comment. See 58 FR 20802 (April 16, 1993). EPA is not modifying those provisions, but merely making them effective in accordance with 40 CFR 132.5(f)(2). Therefore, the public had a full opportunity to comment on the contents of today's rule. Moreover, public comment was also received regarding EPA's review of the State submissions. EPA provided public notice of the availability of, and solicited comment on, the NPDES portions of these States' Guidance submissions in **Federal Register** notices dated March 2, 1998 and April 28, 1998. 63 FR 10221; 63 FR 23285. In **Federal Register** notices dated September 14, 1999, and December 9, 1999, EPA subsequently provided notice of the availability of letters to the States of Michigan, Ohio, Indiana and Illinois in which EPA provided (a) detailed explanations of the bases for its findings that certain States had not adopted provisions consistent with certain provisions of the Great Lakes Guidance and (b) its preliminary conclusions that, with the exception of those findings, the States had adopted provisions consistent with the Guidance. 64 FR 49803, 64 FR 69019. EPA also solicited comment on all aspects of those letters, and has considered and responded to all comments received before taking today's final actions. Consequently, EPA has complied with all applicable public participation requirements.

Comment: A number of commenters raised questions regarding the basis for EPA's decisions to approve a State's provisions pertaining to a specific element of the Guidance where the State's provisions, on their face, do not plainly require the State's permitting or water quality standards authority to act in a manner consistent with the Guidance.

Response: EPA believes that these commenters' view is both unreasonable and contrary to EPA regulations governing the Agency's review of the State submissions. EPA regulations required each State to submit to EPA not only the criteria, methodologies, policies and procedures developed pursuant to the Guidance but also "general information which will aid EPA in determining whether the criteria, methodologies, policies and procedures are consistent with" the Act and the Guidance, and "information on general policies which may affect their application and administration." 40 CFR 132.5(b)(1) and (4). Consistent with these regulations, EPA has not limited its review to solely the plain language of each State's criteria, methodologies, policies and procedures, but has considered the totality of the State's submission in determining whether it was consistent with the Guidance, including information regarding interpretation or implementation of a State's criteria, methodologies, policies and procedures.

As noted previously, the States were not required to adopt requirements that are identical to the Guidance. States' submissions can—and do—differ from the Guidance, and this difference is permissible provided the State's approach is consistent with (i.e., as protective as) the Guidance. Given the complexity of the States' submissions and EPA's review, it is not surprising that particular State provisions may be amenable to more than one interpretation or manner of application. Where a State's provision was either unclear or authorized the State to act consistent with the Guidance, but there was uncertainty as to whether the State would actually exercise its discretion consistent with the Guidance, EPA considered supplementary information to aid in determining the meaning and protectiveness of the State's provision vis-a-vis the Guidance. This information included, for example, States' legal interpretations of its criteria, methodologies, policies and procedures, or a State's position on how it would implement State law. For each of the States, clarification on the manner in which the State would exercise its discretion was provided on some issues in an addendum of the MOA with EPA governing its administration of the NPDES program. See 40 CFR 123.24. This MOA governs how each State will administer its NPDES program, and failure to comply with the terms of the MOA is grounds for EPA objection to a State permit and withdrawal of State's NPDES program. See 40 CFR 123.44(c)(3) and 123.63(a)(4).

Commenters suggest that EPA is required to ignore such supplementary information in its review and appear to believe that, simply because a State provision may be ambiguous or grants some flexibility to the State, EPA has no choice but to disapprove the provision as being inconsistent with the Guidance. Nothing in EPA's regulations or in the CWA compels such a cabined exercise of judgment by EPA. Where the totality of a State's submission demonstrates that the State will administer its program consistent with the Guidance, EPA believes that it is appropriate to approve the submission.

Comment: A commenter disagrees that Indiana's variance procedures, which allow Indiana to grant variances based upon a finding that compliance with the existing water quality standard would have an "undue hardship or burden upon the applicant," is not consistent with the Guidance requirement that variances only be granted where compliance with the existing standard "would result in widespread economic and social impact." According to the commenter, Indiana has the ability to obtain and consider information regarding societal impacts in deciding whether to grant a variance and so Indiana's provisions are consistent with the Guidance. The commenter also argues that, even if Indiana's provisions are not consistent with the Guidance, EPA can apply its "substantial and widespread" test in deciding whether to approve of any variance that Indiana decides to grant under its applicant-specific test.

Response: The fact that Indiana "has the ability to obtain and consider information regarding societal impacts" in deciding whether to grant a variance does not change the fact that Indiana law requires that variances be allowed in circumstances where the Guidance does not allow for variances to be granted: i.e., where the failure to grant the variance would have an "undue hardship or burden upon the applicant but not cause "widespread social and economic impact." Indiana's variance provisions, therefore, are not consistent with the Guidance.

With regard to the comment that EPA can apply the Guidance variance procedures in reviewing any variances that Indiana decides to grant, 40 CFR 132.4(a) requires that States "adopt requirements * * * that are consistent with * * * [t]he Implementation Procedures in Appendix F [to 40 CFR Part 132]." The affirmative obligation imposed on States by 40 CFR 132.4(a) adopt such requirements would be rendered meaningless if EPA simply relied upon its approval/disapproval authorities as a basis to approve a State's provisions where the State does not interpret or implement a State provision in a manner that would be consistent with the Guidance.

Comment: One commenter believes that Indiana's provisions prohibiting

from imposing necessary WQBELs in NPDES permits simply because a variance application is pending are consistent with the Guidance. According to the commenter, "EPA has no authority, based on "protectiveness," to demand that the State issue a limit that will later need to be withdrawn because a variance has been granted. Moreover, * * * [u]nder the EPA rule, the State would be fully authorized to issue a limit while a variance application is pending and, at the same time, issue a compliance schedule that applies to that limit, so that the limit would not take effect until after the variance application is either granted * * * or denied. That would achieve exactly the same end as the process that is currently contained in the Indiana rules."

Response: Paragraph 2 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132 and 40 CFR 122.44(d)(1) both require imposition of water quality based effluent limits whenever there is reasonable potential for a discharge to cause or contribute to causing nonattainment of existing water quality standards. Nothing in those provisions, or anywhere else in the Clean Water Act or in EPA's regulations, creates an exception to this requirement to account for the fact that existing water quality standards may eventually change. Consequently, to the extent that 327 IAC 5–3–4.1(b)(1) prohibits Indiana from including WQBELs where there is reasonable potential that a discharge will cause or contribute to an exceedance of a standard simply because someone has merely requested a change to Indiana's existing water quality standards (but the standard has not yet been modified by issuance of the variance), it is inconsistent with Paragraph F.2 of Procedure 5 and 40 CFR 122.44(d)(1).

The commenter is correct that Indiana might be able to accomplish the same result in certain situations by granting the permittee a compliance schedule. However, under the Guidance, any such compliance schedule would have to meet the requirements governing compliance schedules in Procedure 9 in Appendix F to 40 CFR Part 132 (Indiana's Great Lakes compliance schedule provisions, which EPA is approving as being consistent with Procedure 9, are at 327 IAC 5–2–12.1). 327 IAC 5–3–4.1(b)(1), which prohibits Indiana from including WQBELs when a variance application has been applied for, is not limited only to situations when the requirements governing compliance schedules in Procedure 9 and 327 IAC 5–2–12.1 are met. Thus, 327 IAC 5–3–4.1(b) is not consistent with the Guidance.

Comment: A number of commenters believe that EPA should disapprove Indiana's rule at 327 IAC 5–2–11.7, which the commenters assert allows Indiana to "downgrade" Indiana's historically held third tier, highest quality waters that were identified in the 1990 water quality standards approved by EPA as Outstanding State Resource Waters, which are Indiana's equivalent to Outstanding Natural Resource Waters (ONRW). These commenters also believe that EPA should disapprove Indiana's Guidance rules regarding mixing zones in Lake Michigan at 327 IAC 5–2–11.4(b)(2)(A) and (B), (b)4)(A)(iii) and (b)(4)(C), and (b)(5)-(7) because these sections allow a mixing zone in Lake Michigan contrary to the statewide ban on mixing zones in lakes at 327 IAC 2–1–4(c) of Indiana's EPA approved 1990 rules. The commenters believe that these changes constitute "downgrading" Indiana's standards for Lake Michigan.

Response: The term "downgrading" generally refers to a decision to modify a designated use where the current designated use cannot be attained for one of the reasons specified at 40 CFR 131.10(g). EPA's regulations at 40 CFR 131.10 place significant restrictions on a State's ability to engage in such "downgrading."

EPA's regulations at 40 CFR 131.12 and Appendix E to 40 CFR Part 132 describe various levels of antidegradation protections that must be afforded to water bodies. These various levels of protection, which are known as "Tier I," "Tier II" and "Tier III," are not "use designations," and so the restrictions placed on the States' ability to modify "designated uses" set forth at 40 CFR 131.10 do not apply to State decisions with regard to which "tier" of antidegradation protection should be afforded to particular water bodies. EPA further notes that EPA's regulations leave the question of whether a particular water body constitutes a "Tier III" water (or ONRW) to the States' discretion. Consequently, EPA does not agree that it should disapprove Indiana's antidegradation provisions.

With regard to the commenters' concerns regarding Indiana's mixing zone provisions, the availability of mixing zones does not represent a change or "downgrade" in use and thus is not subject to 40 CFR 131.10. Nevertheless, while States generally have discretion to change mixing zone requirements, the States' mixing zone requirements must still ensure attainment of designated uses and, in the case of requirements applicable to the Great Lakes System, must be consistent with the Guidance. EPA believes that Indiana's mixing zone requirements do insure attainment of designated uses and are consistent with the Guidance. Consequently, EPA is approving those provisions of Indiana's rules, notwithstanding the possibility that those provisions of Indiana's rules may have relaxed Indiana's previously adopted mixing zone provisions.

Comment: Citing a May 4, 1999, letter from EPA to Indiana, a number of commenters believe that EPA should disapprove certain exemptions in Indiana's antidegradation rule at 327 IAC 5–2–11.7(c).

Response: The Guidance specifies certain minimum requirements which all Great Lakes States must include in their antidegradation policies and implementation procedures that are specific to protecting the waters of the Great Lakes System. Specifically, the Guidance establishes minimum requirements for States' antidegradation policies which are largely identical to those of 40 CFR 131.12, and implementation requirements that are specific to BCCs. Indiana's policy and implementation procedures are consistent with the requirements identified in the Guidance. To the extent that Indiana's revised rules contain changes addressing other elements of the State's antidegradation policy not addressed by the Guidance (i.e., procedures addressing non-BCCs), those elements are outside the scope of this action and will be addressed in a separate proceeding.

Comment: EPA received numerous comments asserting that Section D of Procedure 6 in Appendix F, the WET reasonable potential procedure, was not valid because not all WET data sets appear to be lognormally distributed (as readily acknowledged by EPA). Based on this observation, the commenters conclude that Section D of Procedure 6 is scientifically indefensible and, therefore, EPA must accept the other procedures submitted by the States of Ohio, Michigan, and Indiana. These commenters further assert that EPA has no basis for disapproving these State procedures as not being consistent with the Guidance. (The same comments were made about the Illinois procedure even though it is based primarily on the Guidance procedure and is being approved by EPA. Accordingly, the discussion below does not relate to Illinois.) EPA believes that these commenters misunderstand the scope of the scientific defensibility provision of the Guidance. They also fail to refute EPA's conclusion that Ohio's,

Michigan's and Indiana's procedures are not consistent with the Guidance.

The Guidance procedure for using effluent data to calculate a projected effluent quality (PEQ) for determining when a WET limit is needed Section D of Procedure 6 estimates an upper bound effluent value (95th percentile) by multiplying the maximum observed effluent value (expressed as toxic units) by a factor designed to take into account long-term effluent variability and the number of data available to make the projection. The size of the multiplying factor is determined by the number of data points in the data set, the variability of the effluent, the assumed distribution of the data, and the chosen confidence level for capturing the true 95th percentile (95 percent in the case of Table F6–1). Except in rare cases where there are large amounts of data, the projected 95th percentile will be greater than maximum observed effluent value.

Some commenters contended that Section D of Procedure 6—which uses multiplying factors that are based on the assumption that data are lognormally distributed—is scientifically indefensible within the meaning of 40 CFR 132.4(h), and that the States are therefore free to adopt other approaches. Section 132.4(h) allows States to adopt alternative methodologies or procedures different from those contained in the Guidance where a State demonstrates that a methodology or procedure is not scientifically defensible. EPA included this flexibility to address pollutants identified in the future for which some of the methodologies or procedures may not be technically appropriate. 58 Fed. Reg. 20843 (April 16, 1993). See also, Supplemental Information Document for the Water Quality Guidance for the Great Lakes System (March 23, 1995) (SID) at 58–59. No party contends that new pollutants pose unique technical attributes that render application of the existing WET methodologies or procedures invalid. Rather, these commenters simply contend that certain aspects of Procedure 6 promulgated by EPA are technically unsound and overly conservative. However, Section 132.4(h) is not a vehicle for parties to challenge anew the Guidance itself. The CWA requires the States to adopt policies, standards and procedures that are consistent with the Guidance promulgated by EPA. CWA § 118(c)(2)(C). EPA is reviewing State submissions to determine their consistency with the Guidance but has not reopened any provision of the Guidance in our review. The public had a full opportunity to provide its views on Procedure 6 during the rulemaking establishing the Guidance, and the time period for challenging the Guidance has passed. See CWA § 509(b). Therefore, none of the comments provide any basis for allowing the States to establish alternative methodologies and procedures pursuant to 40 CFR 132.4(h) to address whole effluent toxicity.

Even if Section 132.4(h) were relevant, none of the States has actually proposed an alternative approach of projecting effluent toxicity that attempts to meet even the basic parameters of the Guidance. While the States have flexibility to adopt approaches that make different assumptions about the distribution of WET data than is assumed in Procedure 6, no one has presented EPA with an analysis identifying a different distribution or statistical method that fits WET data better, either in general or in a particular case. More fundamentally, however, the procedures submitted by Ohio, Michigan and Indiana do not address in any manner the underlying premise of Procedure 6—that effluent quality is variable and, therefore, a method for assessing WET data must account for the likelihood that the maximum value in a particular data set is less than the true maximum that is likely to be experienced by the environment as a result of the discharge. In evaluating the potential for a discharge to cause or contribute to an exceedance of water quality standards, EPA believes it prudent to employ a procedure that minimizes the likelihood of misclassifying a discharge as not needing an effluent limitation, given the potential in such circumstances for unacceptable adverse impacts on the aquatic resource. Because the purpose of the PEQ reasonable potential procedure is to extrapolate from typically small data sets a reasonable worst case effluent quality that could be expected over the life of a permit, using a conservative assumption is in keeping with the purpose of the procedure. The reasonable potential determination is intended to allow the permitting authority to make a decision that will protect water quality with a high degree of confidence in the face of uncertainty and with a relatively small data set.

Rather than providing alternative methods of accounting for the uncertainty associated with small data sets by using an alternative mechanism that more precisely predicts likely maximum toxicity levels (*e.g.*, alternative multipliers or "safety factors"), the Michigan and Indiana procedures make no attempt to extrapolate likely toxicity levels (i.e., they lack any safety factor whatsoever). Indeed, these States' procedures move in the opposite direction by averaging the observed effluent data in some fashion and applying either a mandatory or optional adjustment downward based on a "failure" rate. Ohio's procedure is more complex and less predictable, but it also provides for "discounting" observed WET data rather than applying a safety factor. Thus, not only do these procedures fail entirely to consider the potential of the discharge to cause or contribute to an exceedance taking into account long-term effluent variability and the fact that a small number of data sets may not capture the worst case effluent quality, they actually allow a finding of "no reasonable potential" where available data has indicated unacceptable toxicity. EPA does not consider these approaches to be either as protective as the Guidance, or in accordance with applicable national regulations (40 CFR 22.44(d)(1)).

EPA also received comments that EPA should find Ohio's weight-of-evidence approach for determining reasonable potential for WET as protective as the Guidance. These commenters support the Ohio approach as superior in considering all data regarding the toxicity of an effluent and note especially a feature of the Ohio procedure that they say would use biosurvey data as a substitute for the multiplier in Table F6–1 when considering WET data.

EPA does expect permitting authorities to consider all relevant information in determining whether reasonable potential exists. EPA believes that this is best accomplished by considering each line of evidence regarding the effect of an effluent on the environment separately and without differential weighting of data drawn from different sources. As discussed in the Technical Support Document for Water Quality-based Toxics Control (EPA/505/2–90–001, March 1991) (TSD) and reflected in paragraph 3 of Section F of Procedure 5 in Appendix F, the chemical-specific, bioassessment, and WET characterization approaches each have unique as well as overlapping attributes, sensitivities, and program applications, no single approach for detecting impact should be considered uniformly superior to any other approach (See Chapter 3.1.3, p. 49). Consistent with this principle, data showing an effect or potential for an effect is sufficient to require effluent limits and the results of one assessment technique should not be used to contradict or overrule the results of the other techniques that indicate the need for an effluent limit. This is especially appropriate when the task at hand is not only to identify existing problems but to

predict the possibility of future adverse impacts and impose effluent limits to prevent those adverse impacts from occurring.

EPA recognizes some merit in the position that biological data can reduce the uncertainties about the effect of the discharge and thus could serve a similar purpose as the multipliers or "safety factors" used in the Guidance procedure. Taken as a whole, however, the Ohio procedure has the significant shortcoming discussed above of "discounting" WET data. Specifically, where biological data are unavailable to corroborate effluent toxicity data, Ohio's procedure would require that the maximum observed toxicity be at least three times greater than the expected toxicity limit, that the average toxicity exceed one-third the expected effluent limit, and that more than more than 30 percent of the test results exceed a projected wasteload allocation before it would be likely that a limit will be imposed. Where biological data are present to corroborate effluent data, it is not clear, as the commenter asserts, that a limit would be required if the maximum observed effluent value exceeded the projected effluent limit. In this situation, Ohio's procedure still could require that the maximum observed effluent value be greater than the projected wasteload allocation, that the average of the effluent test results exceed half the expected effluent limit for acute toxicity and two-thirds the expected effluent limit for chronic toxicity, and that more than 30 percent of the effluent values exceed the expected toxicity limit before a limit is imposed. Thus, Ohio's procedures will not necessarily require a limit even in situations where the effluent toxicity is observed in excess of the expected toxicity limit. As discussed above, such a procedure is inconsistent with the Guidance.

Another set of comments asserted that EPA must examine a State's whole approach to addressing WET and determine whether it reduces effluent toxicity to a similar extent as EPA's approach, rather than simply focusing on whether the State's procedures will result in imposition of effluent limits for WET in all situations where the Great Lakes Guidance would require imposition of such limits.

It is unclear how the commenter believes EPA's analysis is deficient and why a different analysis would show a different result. Certainly, the procedure that determines whether or not a permit includes a WQBEL for a particular pollutant or parameter (the reasonable potential procedure) is a critical element for determining the level of protection that will be achieved when implementing a water quality standard. Where a reasonable potential procedure is not as protective as the Guidance, a State's WET program cannot be considered to achieve the same level of protection as the Guidance.

EPA also notes that in addition to the requirements of the Procedure 6 of the Guidance itself, Section 301(b)(1)(C) of the Clean Water Act requires "limitation[s] * * * necessary to meet any applicable water quality standard." Moreover, EPA's regulations implementing Section 301(b)(1)(C) at 40 CFR 122.44(d)(1)(iv) and (v) require that NPDES permits contain "effluent limits for whole effluent toxicity" or chemical-specific limits in lieu of WET limits, whenever there is reasonable potential that a discharge will cause or contribute to an in-stream excursion above a numeric criterion for WET or a narrative criterion of no toxics in toxic amounts. Therefore, the CWA and EPA's implementing regulations require permitting authorities to impose WQBELs for WET when there has been a reasonable potential finding, and EPA does not believe it would be consistent with the CWA and EPA regulations to approve an alternative approach that omits this fundamental requirement. EPA notes that, in appropriate cases, a permitting authority can include a compliance schedule for the WQBEL that would allow for additional monitoring and identification and reduction of toxicants, followed by a reassessment of the need for a limit or the identification of a specific toxicant that could be subject to a WQBEL rather than WET.

Some commenters contended that EPA's actions with respect to Indiana's, Michigan's and Ohio's WET reasonable potential procedures were not consistent with statements by EPA that permitting authorities retain the right to determine whether data is relevant and valid.

EPA agrees that permitting authorities have the right to exercise reasonable discretion to reject unrepresentative or invalid data in making reasonable potential determinations. EPA does not agree, and the commenter fails to explain why it believes, that EPA's actions with respect to Indiana's, Michigan's and Ohio's WET reasonable potential procedures conflict with that position. Section D of Procedure 6 is neutral with respect to the validity of particular pieces of WET data (*e.g.*, were the quality assurance/quality control requirements of the method correctly followed) or whether that data is representative of the discharge (*e.g.*, was the sample taken during normal operations of the facility). It is designed to work on the assumption that the permittee has submitted data the permitting authority agrees are valid and representative of the discharge. If the commenter is saying that States have the discretion to determine that valid, representative data that show effluent toxicity are irrelevant in determining whether a WET limit is needed, EPA disagrees.

PA is nonetheless aware that there has been considerable concern about the possibility that variability in WET test results could erroneously indicate toxicity. EPA recently addressed this issue in the document, "Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program" (EPA 833–R–00–003, June 2000). This document clarifies several issues regarding WET variability and reaffirms EPA's earlier guidance and recommendations published in the Technical Support Document for Water Quality-Based Toxics Control (TSD, USEPA 1991). The document discusses analysis of WET data that shows WET test method precision is comparable to chemical-specific method precision. Significantly, the document recommends that, rather than adjusting the reasonable potential procedures, WET test method variability be minimized by adhering to the EPA test methods (especially the quality assurance/quality control procedures), representative sample collection, and other recommendations provided in the document related to evaluating the validity of specific WET test results. The Federal Register notice announcing the availability of this document and the document itself may be viewed or downloaded on the Internet at http://www.epa.gov/owm/npdes.htm.

E. Consequences of Today's Action

As a result of today's action, the Guidance provisions specified in today's rule apply in the Great Lakes System in the States specified in the rule until such time as a State adopts requirements consistent with the specific Guidance provisions at issue, and EPA approves those State requirements and revises the rule so that the provisions no longer apply in that State.

II. "Good Cause" Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public

interest, the agency may issue a rule without publishing a notice of proposed rulemaking. EPA has determined that there is good cause for promulgating today's rule final without publishing a notice of proposed rulemaking because EPA finds it unnecessary and contrary to the public interest. Today's rule does not promulgate any new regulatory provisions. Rather, in accordance with the procedures in 40 CFR132.5(f), today's rule identifies the provisions of Part 132 promulgated previously by EPA that shall apply to discharges in certain States within the Great Lakes System. Those provisions have already been subject to a notice of proposed rulemaking, and publication of a new proposed rule is therefore unnecessary. See 58 FR 20802 (April 16, 1993). In addition, while EPA's approval/disapproval decisions described in this notice do not constitute rulemaking, EPA has nonetheless received substantial public comment on these decisions. See 63 FR 10221 (March 2, 1998) and 63 FR 23285 (April 28, 1998) (notices of receipt of State Guidance submissions and requests for comment); 64 FR 49803 (September 14, 1999), and 64 FR 69019 (December 9, 1999) (notices of letters identifying inconsistencies and requests for comment). EPA also believes the public interest is best served by fulfilling the CWA's requirements without further delay and publication of a notice of proposed rulemaking therefore would be contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described in Section II, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to Sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, because this action does not promulgate any new requirements, but only makes certain existing provisions of 40 CFR Part 132 effective in several States, it does not impose any new costs. The costs of Part 132 were considered by EPA when it promulgated that regulation. Therefore, today's rule does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in Sections 203 and 204 of UMRA, or significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective September 5, 2000.

List of Subjects in 40 CFR Part 132

Administrative practice and procedure, Great Lakes, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth above, EPA amends 40 CFR Part 132 as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Text is added to § 132.6 to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

(a) Effective September 5, 2000, the requirements of Paragraph C.1 of Procedure 2 in Appendix F of this Part and the requirements of paragraph F.2 of Procedure 5 in Appendix F of this Part shall apply to discharges within the Great Lakes System in the State of Indiana.

(b) Effective September 5, 2000, the requirements of Procedure 3 in Appendix F of this Part shall apply for purposes of developing total maximum daily loads in the Great Lakes System in the State of Illinois.

(c) Effective September 5, 2000, the requirements of Paragraphs C.1 and D of Procedure 6 in Appendix F of this Part shall apply to discharges within the Great Lakes System in the States of Indiana, Michigan and Ohio.

[FR Doc. 00–19792 Filed 8–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301027; FRL–6598–8]

RIN 2070–AB

Avermectin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for the combined residues of the insecticide and miticide avermectin (a mixture of avermectins B_{1a} and B_{1b} and its delta-8,9-isomer) in or on basil at 0.05 parts per million (ppm) for an additional 19-month period. This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under

CYTEC

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ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 16, 2000

VIA HAND DELIVERY

WV Environmental Quality Board
1615 Washington St., E.
Suite 301
Charleston, WV 25311-2126

Re: Comments on Proposed Amendments to Requirements Governing Water Quality Standards, 46 CSR 1

Dear Sir/Madam:

Cytec Industries Inc. is pleased to provide the following comments concerning the proposed amendments to Title 46, Chapter 1 of the Code of State Regulations, "Requirements Governing Water Quality Standards."

Introduction

Cytec Industries is a world leading specialty chemicals and materials company. The Cytec Willow Island, West Virginia facility, located on the Ohio River in Pleasants County is 15 miles north of Parkersburg and is one of Cytec's largest manufacturing plants. Cytec Willow Island has been in operation since 1948 and presently supplies global markets in paints and coatings, plastics, packaging and petroleum refining. The plant's primary products include materials such as:

- Ultra violet light stabilizers that reduce the harmful effects of the sun on plastic and painted products, outdoor furniture, toys, and stadium seats;
- Antioxidants that protect against the deterioration of coated and painted surfaces, plastics and textiles;
- Surfactants used in the manufacture of paper, adhesives, pharmaceuticals and general purpose cleaners; and
- Urethanes used in water-based coating systems for automotives.

West Virginia's chemical manufacturers provide a tremendous economic benefit to the State and its citizens. Cytec's West Virginia operations are no exception. Its Willow Island facility is one of the largest employers in Pleasants County. Almost 400 employees and contractors earn their livelihoods at the site. Each year, Cytec Willow Island purchases over $6 million in goods and services, primarily within the State of West Virginia. Based on operations and sales within the State, Cytec pays approximately $1.5 million in state and local taxes each year.

Cytec's corporate philosophy embraces a commitment to design, build and operate our facilities in a manner protective of the environment and safe for our employees and neighbors. On a corporate-wide basis, the company has reduced Toxic Release Inventory emissions by 91 percent since the initial reporting year. Cytec is a charter member of the American Chemistry Council's Responsible Care® Program and is committed to continuous progress toward the vision, industry-wide, of no accidents, injuries or harm to the environment.

Cytec's success and the benefits to the local economy that have flowed from such success did not come without hard work. It must remain competitive in a fiercely competitive global market challenged by low cost producers in countries such as China and Mexico. Overbroad and burdensome environmental regulation that is written in a manner that overshoots its mark restricts industrial development and competitiveness. It is not simply a reasoned approach that takes into consideration the economic impact of proposed legislative rules; it is the public policy and law of this State.

Summary of Comments

Cytec's substantive comments on the proposed amendments are summarized below.

1. There are limits on the Board's discretion in setting water quality standards. The State legislature specifically directs that the Board consider the reasonableness of its proposed standards with regard to their affect on the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development. The Board has not conducted the required economic analysis and its failure to abide by such prerequisites to the grant of authority results in conduct that is *ultra vires* – beyond its granted authority – and illegal.

2. The Board is mandated -- under its limited authority to set water quality standards and the West Virginia Administrative Procedures Act ("WVAPA") -- to conduct an economic analysis of its proposal and to support its analysis with factual findings and determinations set forth in the administrative record. It has failed its statutory obligations to do so.

3. The Board's noncompliance with the WVAPA revokes the Board's authority to proceed in the proposed rulemaking and the Board must return to the stakeholder process to correct rulemaking deficiencies. Such deficiencies include:

    a. the failure to prepare and file with the Secretary of State a Fiscal Note in meaningful compliance with W.Va. Code §29A-3-4(b);

    b. the failure to accompany its proposed amendments by a note of explanation as to the effect of such amendments as required by W.Va. Code §29A-3-1a(a);

    c. the failure to itemize the cost of implementing the rules as they relate to West Virginia and to persons affected by the rule as required by W.Va. Code §29A-3-4(b); and

d. the failure to afford public comment on all findings and determinations that are a condition precedent to this rule making as required by W.Va. Code §29A-3-5.

4. Cytec objects to the proposed trigger for antidegradation review of Tier 2 waters as too low, lacking scientific basis, and presenting an unjustifiable burden on regulated entities. We urge the Board to modify its proposal to a more reasonable definition of significant degradation of 10% of assimilative capacity.

5. Any promulgated procedure for intergovernmental coordination and socio-economic analysis must be streamlined in order to avoid inordinate delay of the approval and issuance of new permits and permit modifications. As the WVDEP is to manage intergovernmental coordination activity, we recommend that the Board simply leave the details of this portion of the implementation procedure to WVDEP, directing that WVDEP develop an intergovernmental coordination process. The proposed approval process for socio-economic analysis is so cumbersome that the practical impact will be to drive virtually all new economic development to friendlier permitting climates. The Board has grossly underestimated the procedural burden that its proposed regulations will have on the regulated community.

I. The West Virginia Legislature Has Circumscribed the Authority of the Board in Proposing or Amending Water Quality Standards.

A. The Board's Executive Rulemaking Authority to Issue Legislative Rules Setting Water Quality Standards Is Limited.

The Board's authority to promulgate legislative rules setting water quality standards is derived by statute and set forth in W. Va. Code §§ 22B-3-4(a) and (b). It is an authority that is specifically limited by the West Virginia Legislature; the Board is not unbounded in its discretion to set water quality standards. The legislative grant reads:

> ... [T]he board shall promulgate legislative rules setting standards of water quality applicable to both the surface and groundwaters of this state. ... [T]he board shall promulgate legislative rules setting water quality standards *in accordance with the provisions of article three, chapter twenty-nine-a [W. Va. Code §29A-3] of this code and the declaration of policy set forth in section two article eleven, chapter twenty-two [W. Va. Code §22-11-2] of this code.*
>
> W. Va. Code §§22B-3-4(a) and (b) (emphasis added)

As a condition of its authority to promulgate legislative rules setting standards of water quality, the Board is directed to comply with W.Va. Code §22-11-2, the State Declaration of Policy under the West Virginia Water Pollution Control Act ("WVWPCA"), and W.Va. Code §29A-3, the rule-making provisions under the State Administrative Procedures Act ("WVAPA"). A failure to abide by such prerequisites to the grant of authority results in conduct by the Board that is *ultra vires* – outside its granted authority – and illegal.

B. The West Virginia Legislature Has Specified Factors That The Board Must Address When It Proposes Regulations.

Compliance with West Virginia's Declaration of Policy regarding the setting of water quality standards is a substantive limitation on the authority of the Board to act in amending 46 CSR 1 "Requirements Governing Water Quality Standards." W.Va. Code §22-11-2 reads:

> It is declared to be the public policy of the state of West Virginia to maintain reasonable standard of purity and quality of the water of the state consistent with
>
> (1) public health and public enjoyment thereof;
> (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and
> (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.
>
> W.Va. Code §22-11-2(a)

Thus, a proper, and legal, exercise of authority in setting water quality standards mandates that the Board fully consider the "reasonableness" of its proposed standards with regard to their affect on "the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development." W.Va. Code §22-11-2(a)(3).

The Legislature's specific direction as to the scope and content of the Board's deliberation in setting water quality standards is a constraint that reflects the very sound public policy that the Board not only fully evaluate the potential economic consequences of action but also, that once evaluated, any proposed water quality standard be "reasonable" and so crafted as to not unduly interfere with continued economic development in the state.

C. Similarly, The Board's Authority to Promulgate a Legislative Rule Is Withdrawn when There is Non-Compliance with the State Administrative Procedures Act, W. Va. Code §§29A-3-1 to 17.

The Board's authority to set water quality standards is conditioned further on compliance with the State Administrative Procedures Act's rule-making requirements in Article 3.

W.Va. Code §§29A-3-1 and –2 state, respectively, that administrative rules are to be promulgated only in accordance with the article on rule making [Article 3] and that an administrative agency, such as the Board, has the power to promulgate "legislative

rules" only when there is compliance with the rule-making article of the WVAPA. W.Va.Code §29A-3-1 reads:

> In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, every rule and regulation (including any amendment of or rule to repeal any rule) shall be promulgated by an agency *only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.* (Emphasis added)

W.Va. Code §29A-3-2 makes clear that the Board's granted authority to act under W.Va. Code §22B-3-4 is revoked should it act in a manner inconsistent with the WVAPA rule-making requirements. It reads:

> (a) ... [E]very grant of rule-making authority to an executive or administrative officer, office or agency, heretofore provided, shall be construed and applied to be effective only:
> 1) ....
> 2) If exercised in accordance with the provisions hereof.
>
> (b) No executive or administrative agency shall be deemed to have power and authority to promulgate a legislative rule without compliance with this article unless: (1) The provisions of this code, heretofore or hereinafter enacted, granting such power and authority, expressly exempts its exercise from legislative rulemaking review prior to promulgation or (2) the grant of such power and authority is exempted from the application of this chapter by the express provisions of this chapter. *To the extent any such grant of power and authority, not so exempt, shall be deemed to exceed the limits and provisions of this article, such power and authority to promulgate legislative rules is hereby revoked.* (Emphasis added)

It is a striking feature of West Virginia administrative law that the failure to comply with its substantive requirements not only invalidates a rulemaking, *see* Chico Dairy Company, Store No. 22 v. West Virginia Human Rights Commission, 181 E. Va. 238, 245 (1989), but, through the express annulment of the agency's delegated authority, specifically renders its conduct illegal. Indeed, this revocation is manifest not only in W.Va. Code §29A-3-1 but also articulated twice in W.Va. Code §29A-3-2 and is an expression of the Legislature's very careful and limited delegation of its legislative powers.

II. Both the Limited Authority of the Board to Set Water Quality Standards and the State Administrative Procedures Act Mandate That it Evaluate The Economic Impact of Its

Proposed Rulemaking On The State and Its Residents And Support Its Analysis With Factual Findings and Determinations Set Forth In the Administrative Record.

The Board's authority to set water quality standards has been carefully circumscribed by the West Virginia Legislature. The Board is directed to establish "reasonable" standards consistent with, among other matters, "the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for health industrial development." *See* W. Va. Code §22B-3-4(b); W.Va. Code §22-11-2(a)(3). Consonant with this is the direction in Section §29A-3-4(b) of the WVAPA that "all proposed rules ... shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rule and regulations." The Legislature has deemed the fiscal note to a proposed legislative rule to be of such importance that non-compliance with the requirement voids the rule and revokes an agency's authority to act. *See* W.Va. Code §29A-3-2(a); §29A-3-4(b). The Board's statutory duty to evaluate and articulate the economic impact of its proposal may only meaningfully be satisfied by a thorough and detailed factual evaluation of the projected effect of the proposed regulation on "employment opportunities, ... agriculture and ... industrial development," as well as other activities of economic importance to West Virginia.

Such evaluation, findings and determinations, being conditions precedent to the Board's action, must be set forth in the administrative record and be subject to public notice and comment. W.Va. Code §29A-3-5 provides:

> If findings and determination are a condition precedent to the promulgation of such rule, then an opportunity for general public comment on the merits of the rule shall be afforded after such findings and determination are made. In such even, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as part of the findings and determinations of the agency when filed in the state register.

The public policy that an economic analysis of proposed regulation should inform decision-makers of the consequences of alternative actions is certainly not unique to West Virginia. At the federal level, for example, Executive Order 12866 (58 Fed. Reg. 51735), signed by President Clinton on September 30, 1993, articulates the following as among the guiding principles of regulation:

- Each agency shall assess both the costs and the benefits of the intended regulation and ... propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

- Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

- Each agency shall tailor its regulation to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including

small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

There is nothing unique to the federal or West Virginia's antidegradation program that would warrant setting aside such sound principles in rulemaking. On the contrary, USEPA has long found that antidegradation policies and procedures must be "carefully structured to minimize the adverse effects on economic development while protecting the water quality goals of the Act." USEPA Questions and Answers on Antidegradation at 2. Only through an assessment of the costs and benefits of the intended regulation, using best reasonably obtainable economic information, can the Board craft its amendments to the state water quality regulations to impose the least burden on West Virginia businesses consistent with obtaining regulatory objectives.

III. Because the Board Has Failed to Meaningfully Evaluate and Factually Detail the Full Economic Impact of The Proposal, the Board Lacks The Authority to Promulgate The Proposed Legislative Rule.

The Fiscal Note prepared by the Board in support of its proposed amendments is woefully inadequate and cannot be considered in any respect as meaningful compliance with the Board's duty to assess the economic impact of its proposal on the state economy.

Given the comprehensive and overreaching nature of the proposed amendments to the state antidegradation policy, *see* 46 CSR § 1-4, as well as the proposed antidegradation procedures (proposed Appendix F), the absence of analysis is astounding. Indeed, the Board's brief comments in the Fiscal Note concerning "overall economic impact" are limited to identifying a few of the *administrative* burdens imposed by the proposal; no analysis is provided at all regarding the proposal's likely widespread economic affects. Thus, the Board states: "conducting antidegradation reviews ... will increase the workload of offices within WVDEP" ... and "may require training or hiring of additional staff." Concerning economic impacts to industry, the Board intones that the proposed antidegradation requirements "may result in additional requirements for new and expanding industries" and "may include providing information about the existence of non-degrading or less-degrading alternatives to the proposed activity as well as documentation of the social and economic importance of the proposed activity." Even with regard to these references to administrative burden, the Board curiously finds that "none of the economic impacts described ... can be accurately quantified at this time." Finally, in addressing the economic impact on citizens and the public at large, the Board resorts to the platitudinous observation that "responsible management of the state's water resources should result in positive economic impacts to the citizens of West Virginia." This presupposes, of course, that the Board's proposal constitutes "responsible management of the state's water resources" and is remarkable in its self-affirmation and circular logic. But indeed, what can one conclude from this statement regarding the economic consequences of the Board's proposed rulemaking? The Board itself finds that "[q]uantification of these impacts is not possible at this time."

Irrespective of what one's views are on the merits of the proposal, the facile and empty analysis of economic impacts evidenced by the Fiscal Note is bad governance and conduct unworthy of a delegated agency. It is also, not surprisingly, a violation of the State Administrative Procedures Act, and, through the Board's persistence in this rule proposal, an illegality in contravention of the Board's limited authority to promulgate water quality standards.

What is the scope of the mandated economic analysis? Dr. Richard E. Schuler, Director of the Cornell Institute for Public Affairs, has at our request prepared a White Paper entitled "Scope of Economic Impact Analysis for Environmental Antidegradation Standards" appended as Attachment A and incorporated herein (hereinafter "White Paper at __). Dr. Schuler observes that "there are three major components to an economic impact analysis of proposed new environmental antidegradation standards" or, indeed, any proposed environmental regulation. White Paper at 1. First, a baseline must be established from which projected impacts may be measured. Such a baseline would include, for example, total sales and employment for each category of business and industry in West Virginia subject or potentially subject to the proposal, directly or indirectly. Such data is tabulated by the U.S. Bureau of Economic Analysis every five years pursuant to standard industrial classification or SIC code. Second, the direct economic and environmental impacts of business expansion or changed production techniques are estimated in order that the full initial direct costs of new regulation can be determined. Third, an analysis of interconnected economic activities within the state must be analyzed. As Dr. Schuler finds, "[o]nly in this way can the full short-run direct and long term indirect consequences of environmental policy be assessed," id., and the benefits of the proposal weighed against its costs.

The Board's determination to propose a "significant degradation" trigger for antidegradation review of Tier 2 waters -- 5% of ambient concentration of any parameter or a reduction of assimilative capacity by more than 5% -- is noteworthy in that it appears to be the most stringent in the country. The trigger threshold is critical in evaluating the potential impact of the proposal because it marks the entry point of a proposed project into the burdensome antidegradation review. Any economic analysis would assess the impact of such more stringent provisions as they give rise to the potential for local industry to become less competitive with industry in other states. Thus, according to Dr. Schuler:

> [T]he estimation of initial impacts in West Virginia to some extent hinges on the nature of regulations and the cost of compliance in competing states. Whether the direct economic impact of the regulation would fall primarily on the profitability of existing firms, or that the expansion might be diverted to other regions with the accompanying in-state loss of potential sales and employment, or both, could be inferred from these cost comparisons.
>
> White Paper at 2.

A determination to adopt a standard concerning surface water discharges that is more stringent than that imposed in neighboring states cannot but place West Virginia's industry at a competitive disadvantage with the potential for significant direct and indirect economic impacts. A refusal to assess the costs and the benefits of such a proposal – and a failure to

set forth for public comment a reasoned determination that the benefits justify the economic harm – is the height of regulatory arrogance.

More so, it is conduct outside the granted authority to set water quality standards and illegal under the law of West Virginia.

IV. The Board's Non-Compliance with the West Virginia Administrative Procedures Act Has Stripped it of Its Authority to Proceed in this Rule Making.

On several counts, the Board has failed to comply with the WVAPA. Its authority to proceed with its proposed amendments to the Requirements Governing Water Quality Standards is therefore deemed revoked. *See* W. Va. Code §29A-3-2(a); §29A-3-2(b). Further, each failure to comply is fatal to the present rule proposal and renders any final action on the proposal void as a matter of law. *See* §29A-3-1 ("every rule and regulation (including any amendment of or rule to repeal any other rule) ... shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.)

A. The Board Has Failed to Accompany Its Proposed Amendment by a Note of Explanation as to the Effect of Such Amendment Pursuant to WVAPA §29A-3-1a(a).

The Board has failed to satisfy WVAPA requirements concerning the filing of proposed amendments to existing rules. The WVAPA expressly requires that the Board explain the effect of its amendments. The Board has merely, and in the briefest manner, identified proposed changes. With regard to the most controversial portion of the proposal, the Antidegradation Implementation Procedures at Appendix F, a full twenty pages of regulatory requirements having far-reaching consequences for West Virginia, the Board's "explanation" is limited to: "Added procedures for implementing the Antidegradation Policy in Section 4 of the rule."

Such gross noncompliance with the WVAPA cannot be taken lightly for the failure of the Board to explain in detail the basis for its proposal cloaks its action in obscurity and forces upon stakeholders, interested parties and the Legislative Committee a presumption that the Board is acting consistent with the WVWPCA Declaration of Policy. The citizens of West Virginia, and its law, require more.

B. The Board Has Failed to "Itemize the Cost of Implementing the Rules as They Relate to this State and to Persons Affected by the Rules and Regulations" as Required by WVAPA §29A-3-4(b).

As noted above, the Fiscal Note filed with the Secretary of State fails in any meaningful way to assess the economic impact of its proposed rule making. Not only is this a violation of the Board's limited authority to set water quality standards under W. Va. Code §§ 22B-3-4(a) and (b), it is also an express violation of the WVAPA.

WVAPA § 29A-3-4(b) not only requires the conduct and detailing of an economic assessment but that the "objectives of the rules shall be clearly and separately stated in the fiscal note by the agency issued the proposed rules."" Id. This is parallel with the requirement of WVAPA § 29A-3-1a(a) to accompany any amendment of existing rules with a "note of explanation." The Board has failed egregiously on both counts.

C. The Board Has Failed to Afford Public Comment on Findings and Determinations that Are a Condition Precedent to this Rule-Making As Required by WVAPA §29A-3-5.

WVAPA §29A-3-5 requires that the general public be afforded an opportunity to comment on the merits of a rule proposal after all findings and determinations that are a condition precedent to the promulgation of such rule are made.

The West Virginia Legislature plainly has imposed upon the Board the duty to engage in an economic analysis of its proposed rulemaking in order that a reasoned determination may be made that the benefits justify the costs. Such duty can only be discharged by means of a factual analysis of potential direct and indirect economic consequences of the proposal, as observed by Dr. Schuler in his White Paper. Such "findings and determinations" must be set forth in the administrative record, as required by WVAPA §29A-3-5. This requirement is not only the lifeblood of the WVAPA public notice provision; it also ensures that the citizens of West Virginia are served by a regulatory system that protects and improves their health, safety, environment and improves the performance of the state economy without imposing unacceptable or unreasonable costs.

V. Comment on Specific Provisions of the Proposed Amendments

Cytec adopts and incorporates herein the comments of the West Virginia Manufacturers Association to the proposed amendments to the Requirements Governing Water Quality Standards, 46 CSR 1. Cytec further has the following additional comments.

A. The proposed "trigger" for antidegradation review of Tier 2 waters is too low, lacks scientific basis, and presents an unjustifiable burden on those engaged in regulated activities.

EPA's antidegradation policy, codified at 40 CFR 131.12, provides a great deal of flexibility to states in implementing Tier 2 requirements. EPA espouses the use of a "significance" evaluation for Tier 2 waters that allows State's and regulated entities to focus resources where they may result in the greatest environmental protection. *See* 63 Fed Reg. 36742, 36783 (July 7, 1998) (ANPRM Water Quality Standards Proposed Rule). The Board's proposal provides a "presumptive" trigger of significant degradation for any activity that would degrade the ambient concentration of any pollutant by more than 5 percent at critical flow conditions or that would reduce the assimilative capacity by more than 5 percent. *See* Proposed Appendix F, 46-1-4C.2.a.1.A. Any such activity would warrant further antidegradation review under the Board's proposal.

The Board's proposed significant degradation trigger would render West Virginia the most conservative of all states to have addressed this issue in their antidegradation implementation procedures. We believe the stringency of the proposal would subject all new and expanded activities to burdensome and extensive antidegradation review. At a minimum, therefore, we believe the proposal fails to consider the limited resources of the WVDEP and other entities that may be engaged in antidegradation reviews as well as the costs and delay of regulated entities in conducting a reasonable less-degrading or non-degrading alternatives analysis and socio-economic justification. By means of its proposed trigger, the Board has failed to tailor its rulemaking to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities) consistent with obtaining the regulatory objectives. "Antidegradation is not a 'no growth' rule." USEPA Economic Guidance for Water Quality Standards at 5-1. Plainly, small new or expanded proposed activities of benefit to the people of West Virginia that pose no meaningful or significant degradation to receiving waters will not go forward because the very low "presumptive" trigger of significance subjects the project to unwarranted administrative burden.

Surprisingly, the Board has failed in all respects to support scientifically its proposed presumptive significance trigger as necessary to achieve the antidegradation policy goals to maintain and protect existing water uses and the level of water quality necessary to preserve such uses. *See* CSR §46-1-4. This is particularly so with regard to the proposed trigger of 5% of the ambient concentration of a chemical parameter. In many, many instances, it simply will not be arguable that a 5% increase in the ambient concentration of a particular chemical parameter presents any threat to water quality. We urge the Board to modify its proposal to a more reasonable definition of significant degradation of 10% of assimilative capacity.

B. **The procedure for intergovernmental coordination and socio-economic analysis must be sufficiently streamlined.**

While we do not believe it was the intent of the Board to propose a slow and burdensome permitting process, we are greatly concerned that the proposed options for intergovernmental coordination and socio-economic analysis will inordinately delay the approval and issuance of new permits and permit modifications. Option 2 proposed by the Board, which would create a non-bureaucratic entity called the "Intergovernmental Coordination Panel," would be an administrative disaster and should be discarded.

We believe the Board fails to appreciate the extent of harm that is caused by a regulatory system that blocks environmentally sound and economically beneficial projects with a prolonged permitting process. For such projects, permitting time is money. If it takes six to eighteen months to get a permit in West Virginia due to a burdensome antidegradation permitting process, and it takes only four to six months to get the same permit in another state, almost all permittees will take their projects elsewhere. West Virginia is already among the slowest permit issuers in the United States and these proposed regulations would make it completely impractical for anyone who has an option to seek permits in West Virginia in the future.

Since the WVDEP is to manage the intergovernmental coordination activity, we believe it more appropriate for the Board to defer to DEP to establish appropriate procedures in a manner that coincides and does not inordinately delay the agency's review and approval of a proposed activity. Thus, we urge the Board to simply leave this detailed section out of the Appendix F implementation procedure and provide that WVDEP shall develop an intergovernmental coordination process that is consistent with environmental protection and a reasonable review period.

Very truly yours,

CYTEC INDUSTRIES INC.

Halcott P. Foss
Plant Manager

Attachment

August 11, 2000

Appendix A

Scope of Economic Impact Analysis
for Environmental Antidegradation Standards
by

Richard E. Schuler, Ph.D., P.E.
Professor of Economics
Professor of Civil and Environmental Engineering
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Sound long term policy prescriptions for the environment require the execution of a long run analysis involving the estimate of both direct and indirect consequences. Since many of these indirect impacts flow through economic behavioral linkages, both a direct and indirect assessment of economic impacts is essential.

There are three major components to an economic impact analysis of proposed environmental standards, such as those recently proposed by the West Virginia Environmental Quality Board regarding antidegradation of state surface and groundwaters.

> First, the "starting points" for assessment must be identified, both with regard to economic activity as well as the current quality of the environmental media at issue. Such baseline measures of economic activity would include total sales and employment for each category of business and industry in West Virginia (the U.S. Bureau of Economic Analysis tabulates these data every five years by its standard industrial classifications or SIC codes). Also required in setting an initial baseline are the associated levels of emissions (from permit records and Toxic Release Inventory report, for example) and water quality in West Virginia.
>
> Second, the direct economic and environmental impacts of business expansion or changed production techniques must be estimated so that the full initial direct costs of new regulations can be assessed.
>
> Third, the web of interconnected economic activities within the state should be analyzed, together with the related direct and indirect environmental linkages.

Only in this way can the full short-run direct and long term indirect consequences of environmental policy be assessed.[1]

[1] See Kopp, Krupnick and Toman (1997) for a state of the art survey of cost-benefit analyses.

While it is relatively straight-forward to perform an economic impact analysis of an antidegradation regulation on a single firm's proposed change in production technique or of a proposed plant expansion, performing a generic assessment of the impact of this regulatory change for the entire state depends upon assumptions about future growth and business composition in West Virginia. Only when such anticipated future economic and social changes in West Virginia are projected forward, can it be determined what steps may have to be taken in order to comply with those antidegradation provisions and what the consequent compliance costs may be throughout the state. One option is to develop a range of low, moderate and high economic growth scenarios, and to study the economic consequences that the antidegradation requirements impose on each scenario.

Having decided upon reasonable scenarios, the next step in the statewide analysis is to determine at what future date and locations this projected growth will be inhibited because of the new antidegradation requirements. At this point firms would face a number of choices: either not to expand or to alter production techniques and/or install treatment facilities so water quality is not impaired further.

Approximations of these short-term direct costs to each industry category can be developed as follows: first, if as an example, the current types and amounts of surface water emissions from steel mills are known per unit of sales (from baseline data), then the additional emissions per dollar of expanded output can be projected. Second, the added costs to steel mills of reducing these projected added emissions through the installation of treatment equipment or changed production techniques, including the cost of any delay related to gaining the necessary regulatory approvals, need to be estimated. These unit costs might be inferred from historic compliance responses in West Virginia; although, in 1993 the U.S. Department of Commerce tabulated nationwide environmental compliance costs by SIC. Multiplying these unit costs of compliance by the projected output expansion would yield the total direct cost for steel mills in West Virginia. This process would be repeated, industry by industry, for all business categories projected to exceed the antidegradation limits, in order to develop the total direct economic impact on the state.

Having estimated the added production cost consequences of the regulation, further effects could be inferred by comparing the total added cost of production by steel mills in West Virginia with the added costs in other competitive states. The estimation of initial impacts in West Virginia to some extent hinges on the nature of regulations and the cost of compliance in competing states. Whether the direct economic impact of the regulation would fall primarily on the profitability of existing firms, or that the expansion might be diverted to other regions with the accompanying in-state loss of potential sales and employment, or both, could be inferred from these cost comparisons.

The long-run economic impacts of regulations can frequently be counter-intuitive, that is, sometimes costs may be lower in the long run after all firms are in compliance.

Furthermore, without tracing the indirect environmental impacts , the consequences of policy may not be well understood; indeed they can be perverse (e.g. policies whose direct impacts would improve the environment may actually increase its long run degradation). One example of this perversity is the much acclaimed mandatory automobile fleet fuel efficiency standards. While in the short run, these regulations did lead to substantial reductions in fuel consumption, in the long run, because they reduced the cost of driving per mile and because consumers' demand for driving is price-elastic, the miles driven increased by a greater percentage than the efficiency increase, leading to more, not less, gasoline consumption. As an illustration of how long-run economic impacts might have further environmental implications, continue with the steel mill example. If facilities in West Virginia provided many castings for manufacturers of water pollution control equipment whose plants were also located in West Virginia, the antidegradation measures, by driving up the cost of castings, might also increase the cost of pollution control equipment, thereby reducing the sales of that equipment and tending to reduce the pace of environmental improvement (in other states, if not in West Virginia).

To estimate the full, long run economic impact of surface water antidegradation regulations, a useful tool is an input-output (IO) model of a state's economy. Such a model provides current economic data on each business and industry category in the state (individual firm-level data are disguised by lumping them in statewide totals), and is available from the Bureau of Economic Analysis. For each industry classification, its total sales, both within and outside the state, are listed together with the total wage bill and total dollar purchases of goods and services from every other business classification located in the state, plus total purchases from outside the state. In this way, a type of "recipe" is provided for how each of the state's business categories combines purchases from itself and from all other business categories, plus workers, to produce its output. In this way, the impact of a change in demand for the output of any single business category can be traced through the rest of the state's (and out-of-state's) economy to assess the long run economic impact on every business category and its employment. These long run effects are triggered by the previously described short run direct economic impacts on the cost of production of implementing anti-degradation measures. These measures drive up the costs of the states' products which are translated into price increases, and using estimates of each business's sales responsiveness to price (what economists call the price elasticity of demand), the industry-by-industry estimates of demand decreases are developed to trigger the input-output, long term economic impact analysis.[2]

Some regions have also developed environmental impact estimates, industry-by-industry, to append to these economic input-output models.[3] Think of environmental degradation as the using-up of other production inputs, so air and water are considered in the same way as are workers and the purchases of coal and scrap metal as important inputs into the steel industry. Also included in this expanded input-output model is the industry of "pollution

[2] See the study by Meyburg, Schuler and Saphores (1994) as an example of this type of impact analysis.
[3] See the early analysis by Leontief (1970), as an example.

reduction", which includes the purchases of abatement equipment, as well reduced production by heavily polluting industries. It is with this type of complete input-output model, including environmental impacts, that the true long-run complex interactions between changed environmental regulations and the economy can be traced. Further recent advances in economic methods called computable general equilibrium models (CGE) allow the added consideration of how firms may adjust the composition of their production techniques to altered environmental regulations, and the CGE would substitute for the input-output models.[4]

This is the state of the art in terms of integrated economic/environmental assessments. Unfortunately, even U.S. EPA performs only the direct impact type analysis; although members of its staff are trained in developing the longer-term projections, as are many consulting firms. Other important considerations are not included in these models that may be relevant but whose quantification at this stage is more speculative. Examples include cases of the introduction of green-methods into a businesses' procedures which forces a re-thinking from scratch of production techniques that results in improved efficiency.[5] In this case, it is argued that new environmental regulations may in the long run cause businesses to become more efficient, resulting in lower costs and improved competitiveness. Other statistical studies across metropolitan areas in the U.S. suggest that regions with higher quality environments have, on average, higher per capita levels of production,[6] but it is not clear to what extent this association is due to wide variations in the composition of businesses and industries from area to area. As an example, computer software and finance are associated with high per capita incomes, but these businesses are inherently less polluting than most manufacturing and process industries. Finally, some studies suggest there exists a U-shaped relationship between per capita income and environmental quality.[7] As an example, in its early stages, economic growth leads to severe environmental degradation, but as the economy continues to expand, through evolving preferences and attention to the environment, its environmental quality will once again rise as the economy continues to expand. Depending where a locality is along this curve, massive immediate attempts to improve the environment by imposing costly measures on existing businesses, it is inferred, might actually harm the environment in the short run by reducing per capita incomes: although, such environmental measures maybe part of the natural progression of development.

However, all of these recent studies, while suggestive, are speculative. The best way to proceed is to develop industry-by-industry cost impact estimates, as described initially. Over time, as reliable estimates of these direct economic impacts are developed, these estimates should be flowed through an input-output model (or CGE) of the state's economy (preferably with environmental use and reduction sectors included). In this way,

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[4] As an example, see Hazilla and Kopp (1990).
[5] See Porter, M. and van der Linde (1995).
[6] Larsen, S. (2000).
[7] Grossman, G. and Krueger, A. (1994).

a far richer and more detailed understanding can be gained of how the economic impacts work their way through the economy, and of the direct and indirect environmental consequences of those initial environmental measures.

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Experience:
Professor Schuler currently directs the Cornell Institute for Public Affairs, a cross disciplinary professional program with four core faculty members that enrolls 55 candidates for the MPA degree. His teaching and research at Cornell have emphasized the location, management, pricing and environmental and regional economic consequences of public infrastructure and utilities. He holds a joint faculty appointment as Professor of Economics in the College of Arts & Sciences and Professor of Civil and Environmental Engineering in the College of Engineering since 1972. He organized and directed for six years both the Cornell Waste Management Institute and the affiliated New York State Solid Waste Combustion Institute, interdisciplinary programs of research, outreach and teaching that were funded at $5 million.

A registered professional engineer, Dr. Schuler, while on leave from Cornell, served as a Commissioner and Deputy Chairman of the New York State Public Service Commission from 1981 to 1983 where he was instrumental in implementing structural changes in the regulation of utilities. Prior to that, Dr. Schuler was Director of the New York State Public Service Commission's Office of Research. Before returning to graduate school, he was senior fuels and energy economist with Battelle Memorial Institute for two years, and from 1959 to 1968 he was an engineer and manager with the Pennsylvania Power and Light Company

Research:
Dr. Schuler is a frequent contributor to scholarly journals with articles in the American Economic Review, Transportation, Journal of Economic Theory, Journal of Regional Science, and Journal of Industrial Economics, among others. His book, The Future of Electrical Energy: A Regional Perspective of an Industry in Transition, co-authored with Sid Saltzman, was published in October 1986.

His current research includes conceptual analyses of efficient size and complexity of institutions; the role of infrastructure in supporting modern societies; developing voluntary international accords to reduce greenhouse gases; optimal pricing structures over space and time for solid waste disposal, telecommunication systems, and natural gas pipelines; analyses of alternative organizations and practices for the electric utility industry in the United States under evolving technologies, originally funded by the National Science Foundation; and an exploration of the lagged adjustment of price differences in oligopolistic (formerly regulated) markets. He currently is on the executive committee for the NSF-sponsored Institute for Civil Infrastructure Systems and he serves on the editorial board of the Journal of Industrial Ecology.

Practice:
Dr. Schuler has been a visiting scholar at the Center for Operations Research and Econometrics at the Catholique Universite de Louvain, Belgium, a visiting professor at the Fuqua School of Business at Duke University, and a visiting Fellow at Princeton University. He has served as a consultant to numerous government and regulatory agencies and to private industries on long-range planning, pricing, economic forecasting, and regulatory issues, and he is a member of the National Institute of Standards and Technology's advisory panel for Building and Fire Research. He has explored the economic consequences of permitting heavy trucks to operate on New York highways and the opportunities for public-private partnerships in transportation, both supported by the New York State Department of Transportation. Dr. Schuler has also worked with the World Bank on infrastructure planning and implementing economic and environmental regulations for the energy sector in the Philippines and Thailand, and he has delivered two lecture series to faculty from throughout Czechoslovakia at Charles IV University in Prague, on implementing a market economy while instituting proper environmental regulatory oversight. He has testified before the U.S. Senate several times on revising electric utility regulation, and he chaired U.S. Congress, Office of Technology Assessment advisory panels on "Increasing Competition in the Electric Utility Industry" and on "Life Attainment, License Renewal and Decommissioning of Nuclear Power Plants." He served on the Cornell Board of Trustees as a member of their executive committee for four years, and he is currently a board member of the New York State Independent System Operator (responsible for overseeing transmission operation and electricity markets in a deregulated environment). The Washington Monthly named him one of twelve "stars of state government" in 1982.

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August 16, 2000

Dr. Edward M. Snyder, Chair
West Virginia Environmental Quality Board
1615 Washington Street, East
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Re: 46 CSR § 1 - Water Quality Standards
Comments on Proposed Rule

Dear Dr. Snyder:

On behalf of Century Aluminum of West Virginia, Inc. ("CAWV"), I offer the following comments on the proposed changes to 46 CSR § 1 - "Requirements Governing Water Quality Standards." The Environmental Quality Board (the "Board") proposes to make numerous changes to its water quality standards. CAWV will comment only on those provisions which are most important to it.

I. Adoption of Dissolved Aluminum Criteria

CAWV commends the Board for its efforts over the last three years to revise its aluminum criteria. In September 1996, the West Virginia Division of Environmental Protection ("DEP") made a presentation to the Board regarding the problems it perceived with the Board's aluminum criteria which were in effect at the time. DEP presented data demonstrating that 87.6 percent of all total aluminum samples collected from State streams exceeded the Board's chronic aluminum criterion of 87 μg/l, and 28.5 percent of the stream samples exceeded the Board's acute aluminum

criterion of 750 μg/l. DEP demonstrated that although the aluminum criteria often were exceeded, the majority of the streams support large, diverse, and healthy populations of aquatic life.

During the 1997 triennial review, the Board reevaluated its aluminum criteria. Based on that review, the Board determined that EPA's recommended chronic aluminum criterion was technically deficient and should be removed from the state water quality standards.

The Board formed an informal work group that has continued to assess the aluminum criteria over the past three years. At the same time, DEP further studied the aluminum concentrations and aquatic life communities in West Virginia's streams. The study indicated that many streams in the State with total aluminum concentrations in excess of 87 μg/l support healthy benthic communities. In addition, the study indicated that most of the streams with total aluminum concentrations in excess of 87 μg/l had nondetectable or very low concentrations of dissolved aluminum.

On June 22, 1999, EPA Region III notified the Board that it was disapproving the Board's deletion of the chronic aluminum criterion. EPA stated that the Board had failed to provide EPA with a scientific rationale to support the deletion of the chronic criterion. EPA requested that the Board take one of the following actions: (1) readopt the chronic criterion of 87 μg/l total aluminum, or (2) adopt an alternative chronic criterion that is scientifically defensible.[1]

The Board has elected to adopt alternative aluminum criteria which are scientifically defensible in place of the technically deficient total recoverable aluminum criteria. CAWV supports this decision. On January 10, 2000, the West Virginia Manufacturers Association provided the Board

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[1]CAWV disagrees with EPA's disapproval of the deletion of the chronic aluminum criterion and believes that the Board's actions were scientifically justified. However, EPA did not provide the Board with the option to provide the scientific rationale for the deletion of the chronic criterion.

with a detailed draft rationale document supporting the adoption of dissolved aluminum criteria. CAWV participated in the preparation of that document and supports the information contained therein. For brevity, CAWV will not restate that information, but instead incorporates it by reference. The supporting information set forth in the draft rationale documents includes the following:

- The *Ambient Aquatic Life Water Quality Criteria for Aluminum* (the "Criteria Document") prepared by EPA in 1988 is scientifically flawed and should be rejected. In fact, EPA failed to follow its own guidance document, (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses* (1985)) for setting aquatic life criteria when it established the chronic aluminum criterion of 87 μg/l. If EPA had followed its guidance document, the chronic aluminum criterion would be equal to the acute criterion of 750 μg/l.

- EPA determined in the Criteria Document that aluminum toxicity to aquatic life is due to soluble forms of aluminum. Accordingly, EPA established its recommended aluminum criteria of 750 μg/l acute and 87 μg/l chronic as soluble concentrations, not as total recoverable concentrations. Accordingly, EPA did not intend for its criteria to measure aluminum which is not dissolved or cannot be converted to a dissolved -- or bioavailable -- form.. Prior to the changes now proposed by the Board, West Virginia's aluminum criteria were set as total recoverable aluminum concentrations. Because of this, West Virginia's aluminum criteria were more stringent than recommended by EPA.

- Studies conducted by the National Acid Precipitation Assessment Program (NAPAP) document that the form and bioavailability of aluminum in the water column combined with the chemical properties of surface waters (e.g., pH, acid neutralizing capacity) determine aluminum toxicity.

These reports also outline that the single most important chemical parameter that determines the toxicity of aluminum is pH.

- A recent comprehensive literature review conducted by Gensemer, et al. (1999), confirms that bioavailable aluminum acts as a gill toxicant to adult fish, and that this toxicity is manifested where the water column pH is low and the monomeric forms of aluminum are present. Gensemer's review provides more than adequate documentation that the dissolved form of aluminum, particularly the monomeric forms, determines aluminum toxicity.

The literature also indicates that the 87 μg/l chronic aluminum criterion is overly conservative, even when expressed as a dissolved concentration. However, this issue can be addressed by the Board in future reviews of the water quality standards as more information becomes available to identify a better numeric standards for the chronic aluminum criterion. In the interim, CAWV supports the proposed chronic and acute aluminum criterion expressed as dissolved concentrations.

II. Antidegradation

CAWV also acknowledges the incredible investment of time the Board has expended on its antidegradation implementation procedures. The work by the Board and its stakeholder group has resulted in a document which is primarily a good work product. It is not entirely favorable to industry, nor should it be. This is evidence of a generally successful, albeit painful, stakeholder process.

However, there are several issues where the stakeholders could not reach consensus. These issues are narrow, yet are critical. If revisions are not made to these areas of the current proposed rule, then the rule will place West Virginia industries at a serious disadvantage and is likely to have serious effects on the ability of industry to expand in the State.

A. **The definition of significant degradation must be revised.**

Section 4.C.2.a. sets forth a definition of significant degradation for Tier 2 waters. This provision must be revised to be scientifically defensible and reasonable.

First, the decision to use ambient water quality in part to determine significant degradation is not scientifically defensible. Whenever possible, water quality decisions should be made by taking water quality standards into consideration. Ambient conditions simply looks at existing water quality. Assimilative capacity, on the other hand, compares existing stream quality to water quality standards prior to making water quality decisions. Assimilative capacity is related to ambient water quality; it is a refinement which allows better scientific decisions to be made regarding which discharges should be allowed.

Simply put, it is a better environmental decision to allow minor discharges into a stream which has little or no concentration of a pollutant than it is to allow such a discharge into a stream with a moderate concentration of a pollutant. Why? A stream with a moderate concentration of a pollutant is closer to the water quality standard than a stream which has little or no concentration of a pollutant. We have heard that West Virginia should not encourage a race to the bottom. The Board's combination of assimilative capacity and ambient concentrations for the determination of significant degradation encourages instead a race to the middle. Whereas assimilative capacity only allows discharges into streams with the lowest concentrations of pollutants, the use of ambient concentrations encourages discharges to streams with concentrations approaching the water quality standards. Only discharges on streams with moderate concentrations have any possibility meeting the exception for insignificant degradation. Clearly, this is not scientifically defensible.

CAWV also believes that the Board should adopt a significance threshold of ten percent of assimilative capacity rather than 5 percent. This level corresponds to the most conservative significance threshold in any of the States near West Virginia.

Second, CAWV is concerned with EPA's desire to expand the antidegradation review to the renewal of existing NPDES permits. This is an oxymoron and is not consistent with EPA's actions in other States and Regions. If a discharge already exists, then its continued presence cannot alter "existing" water quality at the time of permit renewal. The inclusion of an antidegradation review for permit renewals would be overly burdensome for DEP, which is understaffed to meet its current responsibilities for NPDES permit renewals.

Finally, the parties successfully reached consensus on Tier 2.5 language, acknowledging the need to provide additional protection to certain special streams. However, DEP's first draft list of Tier 2.5 streams included virtually every stream in the State. Clearly, the category of "special streams" cannot be all inclusive, effectively negating all other categories. Thus, the language defining Tier 2.5 streams in the main text of the rule needs refined. CAWV recommends that the language in Section 4.1.c. of the main text of the proposed rule be revised as follows:

> 4.1.c. Tier 2.5 Protection. In waters which constitute a water of special concern no activities which result in the reduction of ambient water quality shall be allowed. Waters of special concern may include:
>
> 4.1.c.1. ~~All~~ Federally designated rivers under the "Wild and Scenic Rivers Act" ~~Public Law 95-542 as amended,~~ 16 U.S.C. §§1271 et seq.
>
> 4.1.c.2. ~~All~~ naturally reproducing trout streams.
>
> 4.1.c.3. ~~All~~ streams and other bodies of water in State and National Forests and Recreation Areas.
>
> 4.1.c.4. National Rivers. Rivers designated under the "National Parks and Recreation Act of 1978." ~~Public Law 95-625, as amended,~~ 16 U.S.C. §§1 et seq.

4.1.c.5. Waters of special concern shall be identified and listed according to the nomination and redesignation procedures set forth in Appendix F of this rule.

Century's concerns regarding the antidegradation procedures are specific. However, these specific concerns must be resolved to secure a sound antidegradation policy. With the exception of these concerns, the rule will be painful to the regulated community, but it is workable. Century urges the Board to resolve these concerns to allow the antidegradation procedures to be functional for the regulated community.

III. Natural background

In response to EPA comments, the Board proposes to revise the natural background provision in the water quality standards. CAWV does not support this change. The previous language in the rule has served its purpose well, and as stated by DEP in previous Board meetings, the natural background provision has only been utilized a few times in the entire time it has been present in the rule.

EPA has previously stated to the Board that its comments were intended to require the Board to formalize the process for determining how natural background is determined. To CAWV's knowledge, EPA has not asserted that West Virginia's past methods of determining natural background have been inadequate. However, the Board has proposed a method of determining natural background which is entirely separate from what has been done in the past by DEP, and which is considerably more cumbersome and time consuming than necessary to accomplish the goal.

CAWV understands that EPA has provided the Board with the provisions from the Alaska water quality standards as a model for how natural background language might be drafted.

However, as pointed out in the WVMA comments, a formal procedure for determining background concentrations has already been prepared by DEP. This procedure is set forth in Appendix B to the West Virginia Voluntary Remediation and Redevelopment Act Guidance Manual (December 1999). Section B.4 describes appropriate statistical methods to be used for determining background concentrations and whether site concentrations fall within background ranges. CAWV recommends that the Board incorporate these statistical methods in lieu of the detailed procedure set forth in the proposed rule.

IV. Conclusion

The Board has been placed in the difficult position of expending considerable time and resources over the past two years to address EPA's disapprovals of provisions in the water quality standards. EPA's disapprovals have been detailed and cumbersome for the Board and practically without exception have been inconsistent with EPA's position on other State's water quality standards. CAWV urges the Board to reconsider its stance with EPA and to evaluate whether a more proactive approach can be taken to preclude such inconsistent actions by EPA in the future.

Overall, the Board has made some positive changes to its water quality standards program. CAWV appreciates the opportunity to comment on the proposed rule and looks forward to working with the Board during future reviews of the water quality standards.

Very truly yours,

Leonard Knee

WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION
P. O. Box 3780
CHARLESTON, WEST VIRGINIA 25337

August 16, 2000

RECEIVED
AUG 16
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Clerk
West Virginia Environmental Quality Board
1615 Washington Street, East
Charleston, WV 25311

VIA TELEFAX AND First Class Mail

Re: Triennial Review Comments

Dear Ms. Carte:

Enclosed please find the Comments of the West Virginia Municipal Water Quality Association regarding the Triennial Review of the Environmental Quality Board.

Thanks for your kind assistance in this matter.

Yours very truly,

WEST VIRGINIA MUNICIPAL
WATER QUALITY ASSOCIATION

James L. Green
Secretary

JLG/bar
Enclosure

Telephone: (304) 344-8603 **Facsimile: (304) 344-8604**

ENVIRONMENTAL QUALITY BOARD
Charleston, West Virginia

In Re: Triennial Review of Water Quality Standards

AND NOW, comes the **West Virginia Municipal Water Quality Association**, and respectfully offers to the Board the following comments regarding the Triennial Review of West Virginia Water Quality Standards, 46 CSR 1:

I. Introduction

The West Virginia Municipal Water Quality Association (MWQA) is an active coalition of 25 members, including municipal and PSD publicly owned treatment works (POTWs) located throughout West Virginia. Our membership includes the largest and smallest facilities in the state, with treated flows ranging between 0.4 MGD to 17 MGD. Our customers and constituents include hundreds of thousands of West Virginia home owners and small and medium sized West Virginia businesses.

The MWQA is a science and technology based organization that works in partnership with the West Virginia Municipal League and the West Virginia Rural Water Association to protect and promote the delivery of affordable and high-quality public infrastructure services to the citizens of West Virginia. However, the comments below are those of the MWQA only, and do not necessarily represent the position of any other organization regarding these issues.

The MWQA was represented on the Antidegradation Stakeholders Committee by James L. Green, PE, the General Manager of the Morgantown Utility Board. The MWQA thanks the Board for the opportunity to participate in these important discussions. Our membership is always ready and able to contribute its special expertise to the Board to advance the causes of clean water and modern public infrastructure in West Virginia.

II. Definitions: High Quality Waters § 46-1-2.12

The definition of high quality waters is vague and confusing. The reference to "national water quality goal uses" is, for all practical/empirical purposes, meaningless. The most appropriate and useful benchmark for antidegradation purposes are the standards adopted by the Board to protect the state-designated uses of West Virginia waters. Accordingly, we recommend that this definition be written as follows:

> "High Quality Waters" are those waters *with* water quality *that* is equal to or better than the *applicable state water quality criteria*.

III. Definitions: Naturally Occurring § 46-1-2.15(b)

There are a multitude of naturally occurring non-point sources that contribute pollutant loading into our waters. A few examples of this phenomenon include: sediment from natural erosion, nutrients (nitrogen and phosphorus) from soil organic matter, plant residue and/or geologic deposition, and pathogens from the State's abundant wildlife populations. These naturally occurring background conditions are not the consequence of water use by any person. Accordingly, the general non-point source exemption included in sub-paragraph 2.15(b) is inconsistent with the preceding sub-paragraph. The MWQA suggests that 2.15(b) be rewritten:

> 2.15(b): Those water quality values which exist unaffected by the discharge, or direct or indirect deposit, of any solid, liquid or gaseous substance from any point source or non-point source *that occurs as a consequence of human activity.*

IV. Definitions: Trading § 46-1-2.25

The trading definition is incomplete and confusing. Fundamentally, we question the authority of the Board to require a net benefit from a trade. We believe that the Board may require only a simple offset. Also, while the definition requires a net water quality benefit resulting from a trade, the benefit requirement (trading ratio) is not defined. Before meaningful comment may be offered on the trading program, and in order to facilitate appropriate development of a trading program by the regulating Agency, the Board must announce the benefit (if any) that must be achieved in a trade.

The MWQA also objects to the limitation that "unused permitted capacity cannot be traded." Again, we question the Board's authority and basis for this limitation. This provision will remove a strong motivation for treatment facilities to achieve the best effluent results possible and potentially diminishes the value of the public investments that have been made in POTW facilities.

V. Antidegradation Policy § 46-1-4.1.b

This section is unnecessarily dense, poorly written and difficult to understand. While we are still considering the appropriate treatment of "existing" versus "designated" uses, we suggest that the second sentence of this paragraph be rewritten to be both more technically precise and easier to read:

> ..... If limited degradation is allowed, it shall not result in injury *to* or interference with existing stream water uses, or be in violation of *applicable water quality criteria.*

VI. Category A § 46-1-6.2; § 46-1-7.2.a.2

The MWQA supports the protection of the public water supply as provided in these Rules. To achieve this goal, it is essential that the Board apply the criteria precisely. Those streams that do not provide public water supply as defined in the Rules should not receive Category A designation. The well justified public expense of the Category A protection efforts should be reserved for those waters that actually provide water for consumption by our citizens.

VII. Appendix F: Antidegradation Implementation Procedures

A. Applicability § 46-1-4A

1. The MWQA strongly supports the proposed limitation of antidegradation procedures to new and expanded facilities. The EPA position to the contrary, as described during the oral comment session, is untenable, unnecessary and nonsensical.

The purpose of the antidegradation policy is to maintain existing uses and corresponding water quality standards. If, as the EPA suggests, the procedure was to be extended to existing facilities, what would be the base line condition against which the degradation would be measured? Assuming the operational facility is permitted and meeting its discharge limits, what purpose would be served by an antidegradation review? The EPA is cavalierly advocating the expenditure of our precious public (and private) resources without showing a corresponding benefit to be gained by extending the procedures to existing facilities.

Finally, it is important to note that EPA's own antidegradation regulations do not require existing facilities to be subject to the procedures. We know of no other state in Region III or the rest of the nation that has elected to or has been required to so extend the procedures. It is also important to recall that the Clean Water Act explicitly limits the scope of the EPA review of our rules to their equivalency with the federal statute and regulations. The EPA comment to expand the procedure to existing facilities is therefore a suggestion, not a mandate. It should be rejected by the Board in favor of the proposal offered by the stakeholder group.

2. The expansion of public sewer service into unserved areas has long been a critical issue in West Virginia. If the antidegradation procedures are applied to expanding publicly operated treatment works, they will impose yet another hurdle to impede our progress of extending public infrastructure to underdeveloped areas of our state. POTWs do not create one drop of pollution. Instead, they collect and clean pollution discharged from many different sources, including homes, schools, and businesses. As proposed, this Rule will promote the continued operation of undesirable septic systems, subdivision package plants, and straight pipes discharging directly into our waters. We must encourage and support the expansion of POTW service in order to better protect our waters. Accordingly, POTWs in West Virginia should be exempt from the antidegradation procedure when expanding an existing facility.

It is no easy task to expand West Virginia municipal facilities to unserved areas. Morgantown has recently accomplished this by extending sewer service to the Cheat Lake area. However, it took an extraordinary effort by the utility staff, one of the largest in the state, to get the project off the ground. For example, Morgantown spent almost $150,000 in its planning and regulatory (PSC) process. Most difficult was the effort to overcome the aversion to change held by current and prospective customers. If antidegradation procedures are applied to expanding POTWs, they will create another roadblock against the efficient and desirable consolidation and expansion of municipal sewer service. As a result, that service will remain fragmented, inefficient and limited. Instead of improving the water quality in our state, implementation of this proposal upon expanding POTWs will frustrate the improvement of the quality of our water.

Please note that we do not contest the application of antidegradation procedure to new POTWs. Our participation in this procedure when bringing a new facility on line may yield positive results for water quality in our state.

B. Review Procedures § 46-1-4B.1.d

This proposed rule should be clarified to allow publication of the public notice regarding the antidegradation review with (in the same advertisement as) publication of the public notice for the issue/modification of the NPDES permit for the subject facility. Allowing joint notice is more efficient, will impose less of a burden on the interested public, and will save publication costs that must be paid by the permittee (public and private).

C. Tier 2 Procedures § 46-1-4C.2a.1.A

The proposed 5% Tier 2 threshold is unreasonable and based upon nothing more than inclination and a majority vote. This threshold is far too important to be settled upon without any scientific analysis or estimate of its impact upon our state. Because of its potential impact, every effort must be made to set a meaningful, effective and science-based standard. Instead, this recommendation was arrived at as a result of inclination, compromise and conjecture. We believe that this is a reckless way to set such an important policy.

If the Board chooses to announce a threshold for Tier II review at this time, we suggest that it use 25% of the assimilative capacity as the threshold figure. This is a very stringent standard when considering that currently a discharger can use the full remaining assimilative capacity of a stream. In other words, the 25% standard will immediately reduce available loading by 75%. This standard, which has been used in Virginia for years, is an appropriate starting point for this program. If the Board finds that this threshold is not sufficient to adequately protect our waters, it may promulgate a more restrictive threshold at a later date. This conservative approach is appropriate because, in the absence of a well researched and science-based standard, it is far better to begin with a higher threshold. To bluster into the 5% threshold risks the economic well being of and quality of life in our cities and towns for a speculative gain in water quality. The Board should begin with a less burdensome approach, measure the results, and adjust the threshold based on those results.

The proposed 5% standard is far more restrictive than those used by all of our neighboring states. This is particularly remarkable when considering that our water quality is generally better than that of other states in this region. We do not support a race to the bottom in our regulatory standards. However, we must acknowledge that we compete with our neighbors for commercial and residential development. If we choose to make it more expensive and difficult to construct new facilities in our state, we should do so only if we reasonably and reliably expect that we will get some certain environmental benefit from the more restrictive regulations. Because this has not been proven, we encourage the Board not to support the 5% threshold standard.

Application of the 5% threshold also makes no practical sense. With this low threshold, DEP will be conducting numerous Tier 2 reviews for facilities that cannot stay under the 5% level. This will be a major, intrusive delay for public and private facilities that rely upon the agency for permitting support and guidance. If we set the threshold at 25%, the DEP will be able to focus on the major increases in pollutant parameters. This is exactly where we should be allocating our limited public resources. Once we are certain that the DEP can handle the administration of the 25% level, then a lower threshold may be considered if the potential benefits to water quality warrant such an effort.

D. Tier 2 Procedures § 46-1-4C.2a.2.B

The fecal coliform threshold in this Rule should match the relevant state water quality standard for this parameter. The water quality standard, as announced in Appendix E, § 8.12, allows for more than 400/100 ml in 10% of the daily samples taken during the month. The Tier 2 threshold should be amended to match this standard.

E. Tier 2 Procedures § 46-1-4C.2.a.2.E

This Rule requires an antidegradation review when there is an "increase" in permit levels. We strongly disagree with this proposal. As proposed in an earlier Rule, antidegradation review should apply only when a new facility is built or an existing facility expands. The review should not be required simply because permit levels are changed. This issue is critically important now, as the DEP continues to move to a new water-quality based permit system that is more consistent with EPA's national regulatory scheme. This ongoing and fundamental shift in our water quality regulatory scheme will inevitably result in many changes in permit limits. These changes should not trigger an antidegradation review. To do so would be self-defeating as it would overwhelm the Agency as it is executing this paradigm shift in water quality management. Review is also inappropriate and unnecessary for POTWs that do not intentionally change the composition of their discharge in response to less stringent permit limits. For these reasons this Rule should be removed or at least deferred until the DEP completes the reorganization of its regulatory scheme. In the alternative, the MWQA suggests that the Rule should be:

> [Tier 2 requirements will not apply in the case of] Reissuance of an individual NPDES permit where no *new or expanded discharge* will occur.

F. Tier 2 Procedures § 46-1-4C.2.a.2.F

As discussed above, antidegradation review should only apply when there is a new or expanding facility. Interim treatment process changes should not trigger a review. To do so would entangle the Agency with the detailed management of the many treatment facilities in the state, discourage the facility operator from refining and improving the treatment process, and frustrate the efforts of the POTW community to field efficient and modern treatment processes.

G. Tier 2 Procedures § 46-1-4C.2.a.2.H

Typo/syntax error: The last three words of this section should be changed from "will be used" to "were considered".

H. Tier 2 Procedures § 46-1-4C.2.a.2.L

As proposed, this Rule would be an impediment to the extensive efforts taking place throughout the state to reorganize and improve the management of storm water and urban wet weather discharges from combined sewer overflows (CSO). The proposal requires that there is a "net decrease in the overall pollutant loading discharged to the combined receiving waters" when executing a CSO elimination or reduction project before a review exemption is allowed.

However, there are occasions when a CSO discharge transfer between Tier 2 waters without a net decrease is desirable. This is the case where the water receiving increased flow is less sensitive than the water from which the flow has been removed. More fundamentally, CSO communities throughout the state are making great efforts to comply with federal and state CSO guidance and permit requirements. Our communities are in the early stages of modeling and controlling CSO flows. The imposition of antidegradation review requirements upon CSO improvement efforts adds nothing useful to this already expensive and difficult work. Accordingly, the MWQA suggests that the Board delete the net decrease exemption prerequisite. The new sentence would be:

> *This exemption would include Combined Sewer Overflow elimination or reduction projects affecting one or more water bodies.*

I. Tier 2.5 Nomination Procedures § 46-1-4D.6

The nominator must be required to state the basis for the nomination of the water to be one of special concern. Absent this statement, it is impossible to begin or sustain a meaningful dialog regarding the nomination. As a practical consideration, if the Board does not specifically mandate that the nominator must proffer detailed and comprehensive information to support the nomination, the EQB (or other State agencies) will be required to collect the requisite information.

J. Tier 2.5 Nomination Procedures § 46-1-4D.6.a

As written, notice is provided only to those located upon the nominated segments. However, designation of a water as Tier 2.5 or 3 may have a significant impact upon upstream locations/communities. Accordingly, we suggest that the notice provisions be expanded to include those upstream locations. The rewritten portion of the Rule would be:

> .... the Board shall notify each locality in which the water or segment lies *and each locality upstream of the water segment that may be affected by the proposed designation. The Board shall also* provide individual notice to property owners on the nominated segment *and to property owners upstream of the nominated segment who may be affected by the proposed designation.*

K. Tier 3 Review Procedures § 46-1-4E.1.a

The one month and 5% thresholds included in this section are too restrictive to allow for effective rebuilding and testing of treatment processes and rehabilitation of other critical public infrastructure (such as bridge repairs). The required analysis of the long term benefits resulting from the temporary change in water quality is sufficient to protect and improve water quality. Accordingly, the Rules should allow more maneuver room for the party constructing/implementing the improvement. This Rule should be rewritten as:

> .... Activities with durations less than *a period of a few months* and which result in less than a *25%* change in ambient concentration may be deemed to have temporary and limited effects...

VIII. **Appendix E**

A. Copper Appendix E, § 8.10

The current federal human health criterion (Category A) standard is 1,300 MG/L. Absent a valid reason for the more stringent standard, the current EPA value should be adopted as the state standard.

B. Copper Appendix E, § 8.10.1; § 8.10.2

The aquatic life four-day and one-hour concentration limits were recently updated by the Commonwealth of Virginia. The MWQA has previously requested that the Board take this opportunity to consider and adopt the updated science that is available as a result of the Virginia study. Because most of our member POTWs have copper limits included in their permits (and are thus spending public money to comply with an outdated standard), we urge the Board to examine this important issue during this review.

C. Lead Appendix E, § 8.16; § 8.16.1; § 8.16.2

Again, there is current and sound science available to update the lead standard. We have made this information available to the Board. Because most of our member POTWs have lead limits included in their permits (and are thus spending public money to comply with an outdated standard), we urge the Board to examine this important issue during this review.

The Municipal Water Quality Association appreciates the opportunity to submit these comments and to assist in the important work of the Board. However, we are concerned that the Board has allotted itself an unreasonably short one-day review period with which to consider all of the written comments that have or will be submitted regarding the triennial review. We hope that every effort will be made to afford our views meaningful consideration.

Please feel free to contact the undersigned at 304-292-8443, or Paul Calamita, MWQA Counsel, at 804-775-1099, if the Board or its Staff has questions or requests regarding the issues discussed above.

Respectfully submitted,

WEST VIRGINIA MUNICIPAL
WATER QUALITY ASSOCIATION

James L. Green, P.E.
Secretary

Office of Water Resources
1201 Greenbrier Street
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West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael C. Castle
Director

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AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 16, 2000

Environmental Quality Board
1615 Washington Street, E.
Charleston, West Virginia 25311-2126

RE: Proposed Revisions to the Code of State Regulations, Title 46 Series 1, *Requirements Governing Water Quality Standards*

Dear Board Members:

The West Virginia Division of Environmental Protection (DEP) and its Office of Water Resources OWR) appreciate the opportunity to comment on the Environmental Quality Board's (EQB or Board) proposed changes to 46 CSR Series 1 submitted for public comment on July 3, 2000.

As you are aware, the OWR also forwarded comments by letter dated March 31, 2000, relating to the Board's triennial review of water quality standards. The DEP understands that due to various factors, the Board's current proposed rule changes are more limited in scope, and DEP will focus its comments only to those changes currently proposed by the Board. The DEP understands that remaining triennial review issues will be evaluated and addressed by the Board at a later time. At that time, the DEP may submit further written comments in addition to the OWR's March 31, 2000, comments.

The DEP offers the following comments, presented by section number, for the Board's consideration:

Reference Section 2.1

a) For greater consistency with nationally accepted terminology the OWR suggests substituting the term "runoff" for "discharge" area as it relates to nonpoint sources.

b) Revise incorrect reference from CSR to CFR.

c) Suggest adding to "EPA approved", the phrase "or other methods accepted by the Chief".

Reference Section 2.21 – Since this definition was formerly proposed as part of Appendix F Implementation, and is now located in the general definitions section, the phrase "For the purposes of this implementation procedure" in the last sentence should be deleted.

Reference Section 2.25 – Term "permitting" should more appropriately be "permitted."

Reference Section 4.1.b.

The DEP, as a participant in the Anti-degradation Stakeholder Committee ("ASC"), believes it was the intent of the ASC that the reference to "the Board and the Chief" in the second paragraph be the "Director," and suggest that the sentence be revised accordingly.

Further, the last two sentences added to this paragraph were submitted to the Board as "consensus" language by the ASC:

> The Director shall assure that BMPs are sufficient to satisfy the requirements of the Water Quality Standards. If BMPs are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards or shall require the activity causing the nonpoint source pollution to cease.

These two proposed sentences were discussed very early in the ASC's deliberations and were never revisited by the committee members prior to the Board's final hearing on the matter on June 30, 2000.

The DEP was an ASC participant and is the implementing agency for the water quality standards, and understands the importance of that role. Further, it stands by the stakeholder process as a valuable means of developing balanced environmental rules and policies. After careful review of these sentences, however, the DEP has serious concerns regarding (1) whether the language actually reflects the intent of the ASC, and (2) whether the language, as currently drafted, sets forth new law that is either impossible or impractical to implement.

BMPs are defined in 47 CSR 10, in part, as a "schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the waters of the State." In the context of West Virginia's NPDES program, BMPs are actions or procedures to prevent or minimize the potential for the release of toxic pollutants or hazardous substances in significant amounts to surface water.

Nonpoint source "best management practices" or BMPs have historically been designed to reduce or minimize the impacts of particular activities on waters of the state. While BMPs may in some instances prevent any impact to waters, BMPs have never been designed to meet water quality standards. On the contrary, BMPs are generally understood to be measures or practices that minimize pollutants to waters where it would be impossible or impractical to meet water quality standards. Mandating that nonpoint sources either meet water quality standards or be ordered to cease—as mandated by the proposed two sentences—is unprecedented.

Over the years, the OWR has worked cooperatively with other agencies, such as state and federal forestry and agricultural agencies, resulting in the development or implementation of various BMPs to control and minimize releases of pollutants from these activities. The DEP favors a continued relationship with these agencies to encourage the modification and updating of any BMPs associated with nonpoint source activities. It will be difficult if not impossible for the DEP to continue its current nonpoint source program, including its cooperative work with other agencies, if it is mandated to shut down nonpoint source activities that cannot meet water quality standards.

The DEP does not believe that nonpoint sources will be able to meet water quality standards by simply updating or improving BMPs. For example, BMPs for highway construction are generally designed to minimize runoff for a 25-year rain event. More significant rain events, or continued rain events in saturated, wet weather conditions, would likely result in runoff of sediments, and associated contaminants such as aluminum or iron. The proposed two sentences would mandate that the Director shut the activity down because it could not assure that the activity would meet water quality standards in such conditions. Moreover, one could argue that the activity must be shut down because it could not assure that it would meet water quality standards even during less-than-25-year rain events, since the BMPs for such events minimize runoff but do not prevent it.

Like highway construction, a 25-year rain event is often used for BMPs for coal mining. Construction stormwater NPDES permits are centered around BMPs to minimize runoff from 10-year, 24-hour storm event. The NRCS handbook for erosion and sediment control uses a 2-year, 24-hour storm event for BMP design.

Applying the proposed two sentences to haul roads could also prove difficult. Like highway construction activities, BMPs for such activities are generally designed to minimize but not prevent runoff into surface waters, and it is difficult to determine how, or whether, the Director could assure that the runoff from the activity would meet water quality standards. In implementing the proposed sentences, then, the Director may be required to order that such haul road activities cease, which could in turn have a far-reaching impact on the many nonpoint source activities that depend on the use of haul roads, such as logging, mining, gas exploration and well maintenance, and agriculture.

Applying the two sentences to agricultural activities could be difficult. For example, use of buffer strips between farm fields and surface waters is a commonly employed BMP to reduce or minimize runoff of pollutants into waters. A buffer strip for cropland would normally be adequate to control a 10-year, 24-hour storm event. Larger storm events would not be controlled by such a buffer strip, and smaller storm events, although controlled, would not necessarily meet water quality standards. Further, a re-developed buffer strip BMP to meet water quality standards (if such a BMP is possible) may be so large as to render many farm fields unusable. In that case, the DEP would be required to order that those farming activities cease.

In addition to the mandate that the Director order non-compliant nonpoint source activities to cease, the proposed sentences can also be read to require the Director to undertake a new program to evaluate and develop BMPs that may or may not end up being used at a site. The fiscal impact of this requirement would be substantial; DEP and OWR currently have no available staff or funding for such an undertaking. Further, to the extent the goal of that new program was the development of BMPs that would meet water quality standards, it is unlikely that the new program could be successful, as BMPs are generally understood to be measures taken where one cannot meet water quality standards.

Based upon the examples above, and its closer examination of the proposed two sentences, the DEP is very concerned that the proposed language is impracticable and perhaps unadvisable to implement as a new nonpoint source regulation. The DEP therefore urges the Board to fully consider whether the two sentences should be included in the rule. If the Board determines that the language should remain, the DEP urges consideration of the following revisions to 4.1.b. to address at least some of the concerns set forth above:

> BMPs that have been implemented, applied, or installed at a specific site should be evaluated to determine whether the BMPs are sufficient to reduce or minimize impacts to water quality. Where appropriate, the Director may require application or implementation of BMPs sufficient to prevent violations of water quality standards. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Director may require that more appropriate BMPs be developed and applied or, alternatively, may require that the activity causing the pollution cease.

If the proposed two sentences remain in the Board's proposed rule, the DEP requests that the full impact of this new rule on DEP, including all of the expenses that accompany development of a new DEP program, be explained in the fiscal note for the rule.

Additionally, aside from the two sentences discussed above, the DEP suggests that the second paragraph of 4.1.b. is misplaced in the policy. The DEP suggests deleting the initial phrase "In addition" and placing the entire remaining paragraph at the beginning of the policy in 4.1.

Reference Section 5.2.i. – OWR recognizes the proposed change to reflect the Board's definition under Section 2.11 here and in other areas of the rule. However, as the "Clean Water Act" Terminology is generally more commonly

used and its meaning more clearly understood, the OWR suggests that the Board more simply define the Clean Water Act in 2.11 and eliminate all references to the "Federal Act."

Reference Section 5.2.k.

a) Section 5.2.a. is included here, but it is unclear what demonstration is to be made in relation to this section. The DEP therefore suggests that the Board consider deleting this reference.

b) Section 5.2.c. is proposed to be deleted. The DEP believes, however, that demonstrations can and should be shown to determine that human health criteria is not exceeded outside of any established mixing zone. The DEP therefore suggests that the Board consider maintaining the reference to 5.2.c. in the rule.

c) OWR suggests that demonstrations can and should also be required for any zones established under 5.2.d., f, and g, and suggests that the Board consider adding these references.

Reference Section 7.2.c.4.

a) Note that the first sentence of the first paragraph is an incomplete sentence. OWR suggests that the Board intended to say "may establish" instead of "has established."

b) The Board may want to consider revising or deleting the first sentence of the first paragraph, as it appears that the second sentence adequately covers the intent.

c) It appears that the sixth and eighth sentences in the first paragraph are somewhat redundant and could be combined.

d) The term "continuing" in the last sentence of the second paragraph should be "continued."

e) The Agency questions the intent behind the phrase "'prevailing highest quality". It is unclear whether this means the highest level measured during an annual season or the lowest (presumably best or highest quality) applicable to the majority of parameters. Additionally, it is unclear how this language will apply to parameters such as pH, temperature, and Dissolved Oxygen. Further, the Board should describe the minimum number of samples required during the annual season sampling and who determines if a shorter time period is acceptable.

f) The DEP would like to call to the attention of the EQB that historically the OWR has applied the language in 7.2.c.4 when making decisions regarding a stream's health for 305(b) reporting or 303(d) listing activities. For example, occasionally natural sulfur bearing springs, or photosynthetic activity may cause pH violations (either above or below standard) in a stream. The Agency would not report these apparent violations of water quality standards as true violations relying on the former language in 7.2.c.4 (Where lesser quality is due to natural conditions.....the naturally occurring values shall be the applicable criteria). The new expanded language targets point source activity and eliminates OWR's ability to qualify a stream's data when natural geologic or biologic conditions prevent a stream from attaining water quality standards. In that regard, the OWR encourages the Board to add the following language to the end of paragraph one of 7.2.c.4: *"Provided, that the Chief may still consider natural background concentrations when making decisions regarding a streams health for 305(b) reporting and 303(d) listing purposes, absent a formal criteria change by the Board".*

Reference Section 7.2.c.4.A. – The DEP suggests revising "proposed discharge point" to read "any proposed discharge point(s)."

Reference Section 8.1. – Since Tables 2 and 3 are now clearly designated as part of Appendix E, DEP suggests making the Appendix E criteria tables "Table 1". Otherwise, change Tables 2 and 3 to 1 and 2 of a separate Appendix. Note also that each Appendix E page should also reflect "Table 1" if this is added.

Reference Section 8.1.a.

a) A comma should be inserted after the word "dissolved."

b) As noted in prior comments to the Board, the reference to the amended date of 6/15/90 in 40 CFR 136 may be inaccurate or outdated. A brief review of the contents in July 1, 1999, issue of 40 CFR 136 reveals at least the following amended dates relating to various pollutants beyond the 6/15/90 reference:

8/15/90	8/2/95	2/2/99
10/8/91	8/28/95	3/4/99
9/11/92	10/16/95	5/14/99
1/31/94	9/15/97	6/8/99
4/4/95	9/21/98	

OWR suggests that the Board include appropriate language to allow for revisions to this section of the Code of Federal Regulations.

c) OWR does not see the necessity of the reference to the NPDES program and therefore suggests eliminating all of the language within the parentheses at the end of this section.

Reference Section 8.1.c. – See comments in 8.1. above. (Will need to add "Table 1" if change is made).

Reference Section 8.4. - See comments in 8.1. above. (Will need to add "Table 1" if change is made).

Reference Section 8.17 – The DEP suggests adding the word "herein" as otherwise proposed in other similar areas throughout the rule.

Reference Section 8.22.1. – Now that references have been eliminated regarding fish body burden, the DEP suggests that the Board further clarify this section. Additional clarification by the Board on the following questions, for example, would assist the DEP in implementation:

a) How are background stream levels to be established where the level is below the method detection limit (MDL)? Note in Appeal No.'s 599 and 602 the Board's decision was that zero cannot be assumed. One solution to the matter would be for the Board to re-adopt language from the former 46 CSR 1-8.5 (effective date July 1998), "Implementation procedures for parameters with water quality criteria which are lower than the detection limit".

b) As the Board also ruled in Appeal No.'s 599 and 602 that "no authority exists for the utilization of practical quantitation levels (PQLs), why are PQLs in lieu of MDLs suggested to be used in this section? Suggest that if this section remains, reference to PQL be changed to the MDL.

Reference Sections 8.24 & 8.24.1 – The DEP remains concerned over the elimination of any criteria for phenolic materials due to the potential for taste and odor producers amongst the numerous and varied compounds making up this class of pollutants. The DEP therefore emphasizes the need for evaluation by the Board, when it completes its triennial review, of EPA's recommended national criteria for organoleptic effects.

Reference footnote "d" – Suggest the following change to the proposed language:

"The early life stages equation ... that no early life stages of fish occur in the affected water(s)."

COMMENTS ON APPENDIX F

Note that references to EPA's comments in the following comments relate to the document forwarded to the EQB by Mary Kuo of EPA Region III, via e-mail, on June 29, 2000.

Reference Section 4B.1. – OWR concurs with EPA's comments referenced as 4A.3.

Reference Section 4B.1.a. – OWR concurs with EPA's suggestion to move 4B.1.c. However, note that in 4B.1.c. EPA suggested deletion of certain language. As this language came directly from Section 4.4. of EPA's Water Quality Standards Handbook, the OWR suggests leaving the language of 4B.1.c. as proposed with only the move to 4B.1.a.

Reference Section 4B.2.a. - The DEP suggests adding the word "further" degradation of water quality in the first sentence as impaired streams are clearly in a degraded state at the time of review. Otherwise the DEP also generally concurs with the EPA comments regarding other proposed changes to this section.

Reference Section 4C.2.a.2.B. – In an effort to quell concerns over this waiver and exclusion, the OWR offers the following language: "Fecal Coliform – any new or expanded activity resulting in a discharge provided that necessary and appropriate treatment (disinfection) or control is required and the fecal coliform concentrations are established as 200/100ml monthly average and 400/100 ml daily maximum.

Reference Section 4C.2.a.2.D. – The Board may need to add a reference to Table 1 (see comment in 8.1.).

Reference Section 4C.2.a.2.I. – Section 4C.2.a.2.I. of the proposed anti-degradation rules exempts United States Army Corps of Engineers nationwide permits (NWP)from the requirement of an anti-degradation review under Tier 2 with the exception of NWP #21 and NWP #26. First, NWP #26 has recently expired. The activities that it covered are now addressed by separate nationwide permits. Although the state has denied certification for those new nationwide, conditional certification may be provided in the near future.

Second, the DEP suggests that the Board re-consider, or fully explain the basis for, excluding certain nationwide permits from this exemption. Presumably, the United States Army Corps of Engineers, with EPA oversight, developed its NWPs in compliance with its laws and regulations. Likewise, the DEP, with public participation and EPA oversight, certified many of those NWPs, including NWP Nos. 21 and 26. The DEP suggests that NWP Nos. 21 and 26 should be treated like other NWPs with regard to Tier 2 review.

The DEP is also concerned about the increased workload that this provision will cause, not only in regard to those previously covered NWP #26 but also by the language in this section implying that all individual § 401 certifications required for either individual § 404 or nationwide permits are also subject to anti-degradation review. The OWR currently reviews, certifies or denies an average of 80 individual permits each year. Reviews on that many permits will result in a significant burden on existing resources. This fact should be included in the Board's fiscal note for this rule.

SOCIAL AND ECONOMIC IMPORTANCE REVIEW, 4C.6 –4C.8, OPTION 1

The Board has included two options in its proposed rule for reviewing the social and economic importance of a proposed activity. The DEP has concerns about both options, and points out that both options will require the addition of staff, training, and expertise that cannot be supported through current funding. This fact should be included in the Board's fiscal note for this rule.

In addition, in reviewing social and economic importance, federal regulations require "intergovernmental coordination" pursuant to the state's Continuing Planning Process, or CPP. See 40 CFR 131.12. Because the DEP is in the process of up-dating its CPP, and in order to avoid future conflicts between the CPP and Appendix F, the DEP suggests the following language be added to the final social and economic review provisions included in Appendix F: "The intergovernmental coordination requirements in section 46-1-4.1.b. will be accomplished either by providing notice to the agencies listed in Appendix F1 or by providing notice consistent with the state's CPP." If Option 1 is selected, this language could be added to 4C.7.a.

The DEP offers the following additional comments relating to proposed Option 1:

Reference Section 4C.6.c. & d. (Option 1)

a) Although use of the term "agency" is understood to be the Division of Environmental Protection (DEP), this term is not defined. If used, "agency" should be defined in Section 2. Otherwise either Director or DEP should be used if Option 1 is chosen.

b) OWR recommends that the second paragraph be separately delineated as Section 4C.6.d. and then 4C.6.d. be changed to 4C.6.e.

Reference Section 4C.6.d. (Option 1)

a) The DEP suggests revising "If a preliminary determination" to "If the preliminary determination."

b) The DEP is concerned that as a result of striking the language as proposed, the OWR may need to pursue multiple public notices for a single application, which would have a significant impact on its ability to process applications within 180 days as required. Additionally, if the DEP has preliminarily determined that there is no social or economic importance to the proposal, there would be no "proposed draft permit" to submit for public notice. As a result, it would be impossible for the OWR to comply with Section 4C.7.c. (requiring notice that the activity has been determined to comply with the anti-degradation rule).

c) The Board has proposed language (albeit incomplete as described above) describing what to do if a preliminary determination does not show importance. It is recommended that the rule also contain language to describe what the next step would be if the preliminary determination is positive. This should be added as Section 4C.6.e.

Reference Section 4C.7.a. (Option 1) – Reference to Appendix F should be F-1 or conversely revise the Appendix itself to F1.

SOCIAL AND ECONOMIC IMPORTANCE REVIEW, 4C.6 –4C.8, OPTION 2

The DEP cannot support Option 2 because of the delays it would likely cause in the current permitting process. Even if monetary resources were available to implement this option (which they are not), including the cost of employing a panel to undertake these reviews, the OWR believes that delays would be inherent in this process, which would involve a multi-agency panel that would presumably only meet on a periodic basis.

In the event this option is selected by the Board, however, the DEP offers the following specific comments:

Reference Section 4C.6.c. (Option 2) -

a) Since this option does not require a preliminary determination by the Director at this juncture, there appears to be no cause to incorporate the second sentence, therefore, this sentence should be deleted.

b) See comment b) in Section 4C.6.c. (Option 1) relating to the need to separately delineate the second paragraph.

Reference Section 4C.7.a. (Option 2) – If this option is chosen, the reference to Appendix F should be revised to read Appendix F-1.

Reference Section 4C.7.b. (Option 2) – In the second sentence, the DEP suggests that the phrase "reviewing agency" should be "reviewing panel."

Reference Section 4C.7.c. (Option 2)

a) This section refers to a "preliminary decision" by the Director. Should the term "decision" be "determination" consistent with that of the Option 1 proposal in 4C.6.d.? Conversely should the term in 4C.6.d. be "decision" or "determination?" OWR urges consistency in either event. Note also that the word "determination" is used to describe the results of the proposed "panel's" review, therefore, it may be more appropriate to use "decision" by the Director in whichever Option is chosen.

b) No direction is offered in Option 2 if the "preliminary decision" is negative. Therefore, a separate section describing this process would also be needed.

Reference Section 4-1-4D

a) The reference to Section 2.20 here is inappropriate. OWR suggests that the appropriate reference is to Section 2.27.

b) Additionally, the OWR suggests that "waters of special concern" be defined in Section 2 as are "high quality waters" and "outstanding National Resource Waters."

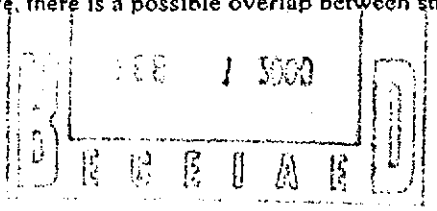
Reference Section 4D.5. and 5.b. – The Board should review the taped record of the results of the ASC recommendation on March 14, 2000, to determine whether the intent of listing the factor in 4D.5.b. was meant to be used in place of the 5% level referenced in 4D.5. or actually added to enhance the review in addition to the 5% cap. A review of the minutes does not clearly reflect the outcome on this item. If the taped results do not reflect this issue, a re-evaluation is suggested to be undertaken as the originally proposed language began with the word "Generally" in which case the currently proposed factor in 4D.5.b. would have specific meaning. However, with the elimination of the word "Generally" by the ASC, 4D.5.b. now has little if any significance as a factor and should be deleted.

Reference Section 4D.6. – The OWR supports the proposal to nominate waters for additional inclusion where warranted. The OWR suggests, however, that complete and accurate lists need to be developed for waters currently described by the categories of waters identified in Section 4.1.c. of the rule.

Of particular concern has been the inability to obtain a complete and accurate listing of "all naturally reproducing trout streams" which the OWR recommends be separately defined in Section 2 from "trout waters" for clarity.

Additionally, as pointed out in the OWR's March 31, 2000, comments letter, re-wording of Section 4.1.c.3. may be warranted. Currently, Section 4.1.c.3. can be interpreted as including public hunting or fishing areas, roadside rest areas or other similar areas used by the public.

Also, although principally relating to Tier 2 waters, Appendix 'A' which does include some "naturally-reproducing trout streams" is not believed to be a complete listing of all "trout waters." In addition to the issue of whether Appendix A is complete and accurate, there is a possible overlap between streams referenced in Section



4.1.b.2.B.-Tier 2 (WV High Quality Streams) and those specified in Tier 2.5 under 4.1.c. If overlap occurs, neither the anti-degradation policy nor Appendix F specify which category applies. Accordingly, the OWR requests that the EQB consider updating Appendix 'A', obtain an accurate and complete listing of "naturally reproducing trout streams", determine any overlap in Tier 2 and 2.5 listings and/or otherwise clarify which protection level is to apply, and finally establish a process for review and maintenance of any lists to allow for efficient use by agency staff as well as ensuring the accurate protection of the appropriate waters at their designated levels.

Reference Section 4D.6.b.9. – Since the nomination process is principally a Board related function, this section should more appropriately read "other factors determined by the Board or The Director, when applicable."

Reference Section 46-1-4E. – The DEP suggests that reference to Section 2.11 here should instead be 2.14. Also, OWR concurs with EPA comments except that the phase "lowering of the water quality in a waterbody" should be "degrading the water quality in any state water" and in addition leave "designated as an outstanding National Resource Water".

Reference Section 4E.1.a. – Section 4E.1.a.2. appears now to be an inappropriate factor and should be deleted. (Refer to comments made in Section 4D.5.)

Reference Section 4E.1.a.4. – The DEP suggests deleting the word "contaminated" and making "sediments" singular.

Reference Section 4E.2.

a) Again, the reference here to "agency" is not defined. (See comments in 4C.6.c. (Option 1) above).

b) The Board should consider language similar to this section immediately subsequent to Section 4D.5.f. relating to Tier 2.5 decisions.

Reference Section 4E.3. – Again, OWR concurs with EPA's comments except that it suggests changing "lowering of water quality in a waterbody" to "degrading water quality in any state water."

Reference Section 4E.4.b.2. – The second sentence should more appropriately be stated as: "Inclusion of this determination is only necessary as a result of a review under 4E.1."

Reference Section 4E.6.b.9. – See comments on 4D.6.b.9. above.

Again, the Division of Environmental Protection and its Office of Water Resources appreciate the opportunity to comment on the proposed rule changes relating to water quality standards. Should you have any questions, please contact me at (304)558-2107 or Mr. Randy Sovic at (304)558-0375.

Very truly yours,

Allyn G. Turner
Chief, Office of Water Resources

AGT/rsr

cc: Michael C. Castle, Director, DEP
EPA Region III
Randy Sovic, OWR

Comments of the
INDEPENDENT OIL & GAS ASSOCIATION OF WEST VIRGINIA
and the
WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION
regarding
TRIENNIAL REVIEW OF WATER QUALITY STANDARDS
46 C.S.R. 1

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ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

I. INTRODUCTION

The West Virginia Oil and Natural Gas Association (WVONGA) is one of the oldest trade associations in West Virginia, serving the entire oil and natural gas industry. WVONGA members are engaged in exploration, production, transmission, storage, sales and distribution, while its allied members and associate members are involved in numerous supporting businesses. WVONGA members operate in virtually every county in West Virginia, employing thousands of people across the state. WVONGA participates in a broad range of economic, environmental, legal and regulatory issues.

Formed in 1959, the Independent Oil & Gas Association of West Virginia (IOGA) is a statewide nonprofit trade association that represents oil and natural gas producers and the companies and individuals who support production activities. IOGA, the state's largest oil and gas association, has more than 380 company members who are active not only in West Virginia, but also in 20 other states. IOGA was formed to promote and protect a strong, competitive and capable independent natural gas and oil producing industry in West Virginia.

WVONGA and IOGA have a history of engaging in a constructive dialogue with the Environmental Quality Board (Board) on issues of importance to the oil and gas industry. The 2000 triennial review of West Virginia's water quality standards presents several changes that could have a significant effect on our industry. We believe the standards that are ultimately adopted should

respect the need for both environmental protection and economic development in West Virginia.

Significant comments have been provided to the Board by the West Virginia Manufacturers Association and the West Virginia Chamber of Commerce. We join in those comments, but offer our own to highlight issues that are unique to the oil and gas industry.

II. COMMENTS ON ANTIDEGRADATION IMPLEMENTATION POLICY

A. Clarification of Nonpoint Status.

Section 4A.2 states that nonpoint source activities are not subject to antidegradation review if they are subject to best management practices (BMPs). The activities that are encompassed by the term "nonpoint source" is not clear,[1] but oil and gas production activities have traditionally been seen as nonpoint activities. The most recent stormwater general permit for industrial facilities exempts oil and gas exploration and production from its scope, because the Office of Oil and Gas has BMPs that result in control of storm water discharges. EPA also recognizes the nonpoint nature of gas and oil exploration and development. For example, the draft Total Maximum Daily Load for the Little Kanawha River watershed that was issued in July, 2000 includes oil and gas access roads and well drilling among the nonpoint sources.

There really is no question that oil and gas exploration and development is nonpoint source activity, and that it is subject to mandatory BMPs issued by the Office of Oil and Gas. Unfortunately, that is not as clear as it might be in the Board's standards, because the definition of "nonpoint source" found in proposed Section 2.16 might be construed too narrowly. We believe that a

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[1]Oil and gas operations are often not subject to NPDES permitting requirements. Site preparation, pipeline laying, access road construction and other activities are regulated by the Office of Oil and Gas. Other activities are subject to general permits (both NPDES and non-NPDES permits) approved by the Office of Water Resources and administered by the Office of Oil and Gas.

nonpoint source is any activity for which a Clean Water Act permit is not required for discharges to surface waters.[2] Therefore, we suggest that "nonpoint source" be defined in proposed Section 2.16 as "any activity for which an individual permit or individual water quality certification is not required under Sections 402 or 401 of the Federal Act."

Where a permit of some kind is required for oil and gas activities it is usually a general permit. We understand that such activities will not be considered "significant degradation," and only significant degradation requires socio-economic review in Tier 2 waters.

B. Elimination of Tier 2.5.

Tier 2.5 should be eliminated, and Tier 2.5 streams reclassified as Tier 2. Given the extensive review required for Tier 2 waters, there is no need for Tier 2.5. As written, Tier 2.5 is as restrictive as Tier 3, outstanding natural resource waters. Tier 2.5 streams have effectively been converted into Tier 3 streams, with no further discharges (i.e. development) allowed for point sources. To the extent oil and gas operations are not deemed nonpoint sources, this could have a tremendous negative effect on the oil and gas industry.

Tier 2.5 streams would still be protected if they are redesignated as Tier 2 streams. The Corps of Engineers nationwide permits for stream crossings would apply to all streams that were not outstanding natural resource waters and those permits are issued in accordance with the state's 401 certifications. Furthermore, the socio-economic review could be adjusted for naturally-reproducing

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[2]While the definition of "point source" is found in the Clean Water Act at 33 U.S.C. 1362 and in the NPDES regulations at 40 C.F.R. §122.2, there is no definition of "nonpoint source" that corresponds to the definition of that term in the West Virginia water quality standards. See 46 C.S.R. 1-2.16. Furthermore, the definition of point source in 40 C.F.R. §122.2 refers to §122.3, which contains exemptions from NPDES permitting that are not found in 122.2. The scope of nonpoint activities is much broader than is initially apparent form a review of the definition of point source.

trout streams and other waterbodies of special concern to take into consideration their unique characteristics.

If the Board is stating that no activity can cause any degradation of any Tier 2.5 stream (e.g., no culvert could be established in a Tier 2.5 stream), we must strenuously object. Oil and gas production often takes place near trout streams, or streams in state and national forests, and roads are occasionally constructed through or above such streams. The degradation involved is limited, if it occurs at all, and the activities are subject to Section 404 permits and BMPs. One way the Board may resolve this problem is to change Section 4D.5 to allow activities that will be temporary **or** have limited effects. It could them specify that activities with "limited effects" include those which are exempted from antidegradation review in Section 4C. In the alternative, it could administratively determine that construction of stream crossings has a temporary effect on the stream, and that the changes left in place after the construction of the stream crossing are not permanent changes contemplated by the antidegradation regulations. In either event, the Board must allow activity in and around Tier 2.5 streams if it is going to keep that designation.

C. Identifying Tier 2.5 and Tier 3 Waters.

The proposed antidegradation implementation policy establishes procedures for nominating streams for inclusion in Tier 2.5 and Tier 3. The best option would be to get rid of Tier 2.5 and place all streams in Tier 2 except for outstanding national resource waters. However, if Tier 2.5 will remain, no stream should be added to that category unless it has been through review by the Board. In light of the Board's nomination procedures, we believe the broad categories of Tier 2.5 waters found in Section 4.1.c of the rule are the types of streams from which Tier 2.5 streams can be nominated, and are not already Tier 2.5 streams. We request confirmation of this interpretation.

D. Determining Significant Degradation

We do not agree with the Board that significant degradation should be determined on the basis of 5% of the lesser of assimilative capacity or ambient concentration. For reasons more fully explained in the comments of the WVMA, such a definition of significance causes an excessively large number of activities to be subject to socioeconomic review. The cost of performing such reviews is prohibitive, and would adversely affect oil and gas production and exploration activities. We urge the Board to reconsider the rule, and use a significance threshold of 10% of assimilative capacity.

III. OTHER TRIENNIAL REVIEW COMMENTS

A. Natural Background.

The Board has proposed to change, and in the process complicate, the "natural background" exception found in Section 7.2.c.4. The current provision is the essence of common sense - if natural levels of a substance such as aluminum are present in a greater concentration than the water quality criteria for that substance, then the natural level should become the standard. EPA has objected to this natural background criterion on the grounds that the standards do not provide any means of calculating the natural level.

The Board responded to EPA's concerns by providing that the "natural levels" would be established by development of site-specific criteria. We believe that is cumbersome process that would eliminate flexibility that is inherent in the current standard. What the Board should have done was to adopt a method of calculating the natural level, and hence the water quality standard. The

Division of Environmental Protection Office Water Resources could then use that method in determining permit limits and for other purposes.

The Board's approach results in a process that would extend at least one year, and probably more, before the natural level of "contaminants" in a stream can become the standard. If the Board were to adopt a method for calculating the standard, and let the Office of Water Resources or other permitting agency apply it, the process would be much more efficient. This method of setting the criteria would be no different than the current water quality standards, which frequently use calculations based on stream hardness to determine criteria. For example, zinc criteria are calculated on a case-by-case basis after determining the hardness of the stream. If the Board can allow stream-by-stream determination of a standard in that situation, it should be able to do the same with regard to natural backgrounds.

Another problem with the natural background exception is that it only applies to aquatic life uses, and not to others such as human health or water contact recreation. The reason for this is unclear. If natural levels of a substance such as iron are already high, public water intakes will already be set up to remove iron. In any event, regardless of the uses that are assigned to a stream, the natural quality should be the criteria that is assigned for protection of that use.

B. Water Quality Criteria

We appreciate the Boards' proposal for changing the criteria for aluminum to the dissolved state, as it more accurately reflects the harmful form of aluminum. We look forward to adoption of new criteria for iron that also represents the environmental effects of that metal.

III. CONCLUSION

The Independent Oil & Gas Association and the West Virginia Oil and Natural Gas Association appreciate this opportunity to comment on changes to the water quality standards found at 46 C.S.R. 1. We hope that our comments will be given careful consideration.

Michael Herron
Independent Oil & Gas Association of West Virginia

Raymond Joseph
West Virginia Oil and Natural Gas Association

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AIR QUALITY BOARD

UNION CARBIDE

UNION CARBIDE CORPORATION
South Charleston Plant
P.O. Box 8004, Building 82
South Charleston, WV 25303

To: Environmental Quality Board
1655 Washington Street
Charleston, West Virginia 25311

August 16, 2000

From: James B. Williams, UCC Water Issues Manager

Subject: Union Carbide Comments to EQB Proposed Water Quality Antidegradation Regulations

Union Carbide Corporation (UCC) wishes to thank the Environmental Quality Board (EQB) for its efforts to prepare a complete and effective set of regulations concerning the prevention of harmful degradation of the water quality of the waters of West Virginia. UCC agrees that the water quality of West Virginia's waterbodies needs to be protected to prevent degradations that could limit existing and designated uses of said waterbodies.

UCC believes that the antidegradation regulations should provide a balance among the environmental, human health, social and economic concerns that will be impacted by the regulations. With this in mind, UCC provides the following comments to several very important portions of the regulations that UCC strongly supports or that UCC believes should be improved or modified. Note: The pages attached to this letter provide discussions in support of the recommendations.

1. Maintain the statement that "the antidegradation implementation procedures herein are intended to apply to new and expanded regulated activities that have the potential to affect existing water quality".

2. State that with respect to activities that are covered by NPDES permits, that "new and expanded regulated activities" are those new and expanded activities which trigger the need for a new or modified NPDES permit.

3. We support the Tier 2 review exemptions under 4C.2.a.2.

4. Expand the Tier 2 review exemption for pH discharges (4C.2.a.2.C) to allow for the potential acceptance of discharges greater than 9.0 standard units if the receiving waterbody has a water quality standard that provides for the potential for the toleration of a pH greater than 9.0 standard units due to photosynthesis in the waterbody. (Refer to the Appendix E 8.23 pH requirements).

5. Expand the Tier 2 review exemption for "groundwater remediation efforts" (4C.2.a.2.M) to include any site groundwater and/or soil remediation efforts where the combination of discharges of existing nonpoint sources and new point sources to the waterbody does not constitute a presumed significant degradation per 4C.2.a.1.A.

6. The Tier 2 definition of what is "presumed to pose significant degradation" (4C.2.a.1.A) should only consider the reduction of "the assimilative capacity".

7. The Tier 2 definition of what is "presumed to pose significant degradation" (4C.2.a.1.A) should use a reduction in the "assimilative capacity" in the range similar to those used by surrounding states.

8. Require that the before the EQB can designate any waterbodies, or waterbody segments, as Tier 2.5 or 3, the EQB must provide the public an opportunity to comment on the proposed designations (4D.6 and 4E.6).

9. Also attached are some miscellaneous comments for your consideration.

10. UCC also recommends that the EQB should (1) conduct a socio-economic analysis of the proposed regulations to assure that the social and economic impacts of the regulations are not excessive as compared to the environmental and human health benefits and (2) conduct an analysis of the staffing and fiscal requirements to assure that the impacted regulatory agencies understand what impacts the regulations will have on their agencies.

Once again, UCC appreciates all your efforts.

James B. Williams

Attachments
Antidegradation Comments

Reasoning Behind Recommendations

1. **Maintain the statement that "the antidegradation implementation procedures herein are intended to apply to new and expanded regulated activities that have the potential to affect existing water quality".**

UCC believes that this statement exempting existing activities should be maintained in the regulation since such activities are already covered by wastewater regulations that protect water quality. For example --

> Point source discharges are required to have NPDES permits that are based on an extensive list of requirements such as technology-based standards, water quality based standards, whole effluent toxicity. and best management practices.
>
> Facilities containing significant amounts of oil are required to have Spill Prevention, Control and Countermeasure (SPCC) Plans.
>
> Construction activities disturbing significant acreage are required to have Stormwater Pollution Prevention Plans (SPPP) which incorporate best management practices.

The bottom line is that existing activities are already well regulated and monitored.

2. **State that with respect to activities that are covered by NPDES permits, that "new and expanded regulated activities" are those new and expanded activities which trigger the need for a new or modified NPDES permit.**

UCC considers it reasonable to declare that "new and expanded regulated activities" are those for which new or modified NPDES permits are required since those are the activities that could really impact the waterbody. Facilities, such as UCC's, have many operations ("activities") occurring within their confines, which are frequently modified to support business demands. However, the majority of such modifications do not require modifications to NPDES permits since the discharges to the waterbody will continue to meet permit requirements.

NPDES permit requirements are based on several considerations including compliance with water quality standards. It would seem reasonable not to force the implementation of the Appendix F – Antidegradation Implementation Procedures to changes within the facilities if the changes do not force the need to modify the NPDES permit since water quality standard considerations are already built into the permit conditions.

3. **We support the Tier 2 review exemptions under 4C.2.a.2.**

It is evident that the EQB and stakeholders were very thorough in carefully considering the applicable exemptions found in Appendix F Antidegradation Implementation Procedures. We fully support the language in 4C.2.a.2. Exemptions from further Tier 2 review requirements with the appropriate qualifying language for: (a) temperature, (b) fecal coliform, (c) pH, (d) dissolved oxygen, (e) reissuance of existing permits where no new increase in permitted levels will occur (with Director discretion for individual circumstances), (f) addition of water/wastewater treatment chemicals, (g) treatment of zebra mussels or asiatic clams, (h) ammonia treatment, (i) nationwide Corps of Engineers permits, (j) general permits, (k) emergency conditions, (l) new or expanded sanitary sewer systems needed for public health, (m) groundwater remediation, and (n) trading.

Each of these exemptions has been carefully considered by the EQB, and there are logical and practical reasons for each one of these exemptions. For example:

> Some of these parameters do not lend themselves well to a quantification of % change (e.g. how to effectively calculate a % change for pH, which is log-based), and alternate restrictions based on water quality standards are more appropriate.

The workload on the DEP OWR Permits Branch would be greatly increased with little benefit. These existing facilities are already highly regulated and covered under NPDES Permits, Best Management Practice (BMP) and Spill Prevention Controls and Countermeasures (SPCC Plans), and a host of existing regulations and management practices.

We fully reject EPA's draft comments on eliminating these exemptions. Based on the deliberate and measured rationale for each of these exemptions, all portions of 4C.2.a.2 (A-N) are integral to an effective antidegradation policy and should be maintained.

4. **Expand the Tier 2 review exemption for pH discharges (4C.2.a.2.C) to allow for the potential acceptance of discharges greater than 9.0 standard units if the receiving waterbody has a water quality standard that provides for the potential for the toleration of a pH greater than 9.0 standard units due to photosynthesis in the waterbody.**

There are water quality standards (refer to the Appendix E 8.23 pH requirements) that indicate that some waterbodies can tolerate a pH greater than 9.0 standard units if photosynthesis generates the condition. Thus there are situations where the discharge could be slightly greater than 9.0 but less then what would be present in the waterbody because of photosynthesis and the discharge could have a buffer capacity that would prevent the waterbody downstream of the discharge point from having an increased pH.

The water quality of the waterbody with respect to pH is not degraded; thus a Tier 2 review is not warranted. The discharger would simply have to demonstrate that the above situation would indeed occur to be granted the pH Tier 2 review exemption.

5. **Expand the Tier 2 review exemption for "groundwater remediation efforts" (4C.2.a.2.M) to include any site remediation efforts where the combination of discharges of existing nonpoint sources and new point sources to the waterbody does not constitute a presumed significant degradation per 4C.2.a.1.A.**

Consider the following situation.

> There is an existing contaminated site where there has been some discharge of a pollutant of concern from the site into the waterbody from a nonpoint source. As part of the remediation effort at the site, some of the groundwater is treated and discharged to the waterbody via a point source discharge covered by a NPDES permit.
>
> The remediation effort reduces the amount of the pollutant entering the waterbody from the nonpoint source by such an amount that when one combines the current rate of discharge of the pollutant from the nonpoint source with the amount discharged from the remediation point source, the total amount is less than the amount which would "constitute a presumed significant degradation" of the waterbody triggering the need to conduct a Tier 2 review.

It would seem logical under these situations to provide an Tier 2 review exemption since the net effect of the remediation effort is to create improvement of, no change in, or insignificant degradation of the water quality. While this may appear to be more liberal than the "trading" exemption since a net improvement in water quality is not always needed, such an exemption would encourage the use of alternative remediation schemes that address the entire environmental situation (groundwater/soil/water) while at the same time not causing presumed significant degradation of the waterbody.

6. **The Tier 2 definition of what is "presumed to pose significant degradation" (4C.2.a.1.A) should only consider the reduction of "the assimilative capacity".**

UCC believes that incremental change in assimilative capacity is the appropriate benchmark for conducting antidegradation reviews. It is a reasonable approach since it takes into consideration the ability of the waterbody to receive changes in the amounts of pollutants it receives while still maintaining its ability to support both existing and

designated uses. Such an approach will prevent the introduction of pollutants to the waterbody unless the waterbody has the ability to adequately manage the pollutants.

UCC believes that using incremental change in ambient concentration is not a reasonable approach since it does not take into consideration the full assimilative capacity of the waterbody. As an example:

> A waterbody has a water quality standard of 50 ppm for a pollutant of concern but has a current ambient concentration of 10 ppm. Using the proposed 5% assimilative capacity increment, the concentration of the pollutant would be allowed to increase by 2 ppm without being considered as causing presumed significant degradation. Using the proposed 5% of ambient concentration increment, the concentration of the pollutant would be allowed to increase by only 0.5 ppm without be considered as causing presumed significant degradation.

Note the "significant increase" is determined under low flow conditions in WV, providing an added level of protection. Further, many compounds are biodegradable and concentrations would decrease over time (part of the assimilative capacity).

Per this example, only ¼ of the incremental assimilative capacity of the waterbody that would be considered insignificant based on assimilation would be allowed by the ambient concentration criteria without triggering the extensive and expensive Tier 2 reviews. UCC does not understand why the already fairly tight constraint of 2 ppm based on assimilative capacity consumption should be tightened even more when the water quality standard is still being amply complied with. In light of 46CSR§46-1-1.1. ("It is declared to be the public policy of the State of West Virginia to maintain **reasonable standards** of purity and quality of the water of the State") [Emphasis added], the assimilative capacity is the appropriate benchmark.

7. The Tier 2 definition of what is "presumed to pose significant degradation" (4C.2.a.1.A) should use a reduction in the "assimilative capacity" in the range similar to those used by surrounding states.

UCC notices that the proposed incremental change in assimilative capacity which is presumed to pose significant degradation is distinctly less than similar criteria used by surrounding states as shown below.

State	% Change
West Virginia	5
Maryland	10
Ohio	10
Kentucky	20
Virginia	25

UCC knows that West Virginia does not have to follow the other states in setting its standards. However, the EQB should reevaluate this assimilative capacity criteria based on the following standard.

> "It is declared to be the public policy of the State of West Virginia to maintain **reasonable standards** of purity and quality of the water of the State consistent with: 1) public health and public enjoyment thereof; 2) the propagation and protection of animal, bird, fish, and other aquatic and plant life**; and 3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development...**" [46CSR§46-1-1.1; emphasis added]

It would seem reasonable to believe that the surrounding States also have the balance between the protection of human health and environment and the expansion of commerce and development in mind when establishing their incremental assimilative capacity criteria. Thus, it is recommended that the EQB reconsider its criteria in light of what water quality experts in other state agencies have chosen.

8. Require that the before the EQB can designate any waterbodies, or waterbody segments, as Tier 2.5 or 3, the EQB must provide the public an opportunity to comment on the proposed designations (4D.6 and 4E.6).

The Tier 2.5 and 3 requirements are extremely restrictive as to the allowance for new discharges into those designated waterbodies. Any activity that "will result in degradation of ambient water quality conditions" of Tier 2.5 designated waterbodies and any activity that "would result in a permanent new or expanded point or nonpoint discharge of pollutants" into a Tier 3 designated waterbody would be prohibited.

These requirements could effectively stop the growth of commerce and population in the areas surrounding such designated waterbodies depending on what pollutants of concern would be covered by the essentially no discharge of pollutants requirement. Such restrictions will have a major impact on the general public and commerce and, as such, those parties should have an opportunity to express their opinions on whether or not Tier 2.5 or 3 designations should be applied to any and all waterbodies and segments thereof.

9. Miscellaneous Comments

46-1-2. Definitions

2.1 "Ambient Concentration" should reference 40 CFR 136, not 40 CSR 136.
2.8 "Persistent" definition states a pollutant that "degrades slowly". This is rather subjective and not quantifiable. Any further guidance or quantitative rate for this?
2.25 "Trading". Request that the last sentence "Unused permitting capacity cannot be traded" be struck from the regulations.
2.27 "Trout waters". There are trout waters listed on Appendix A that do not meet the definition of 2.27. Recommend that the Appendix A list be revised to match the definition.

Appendix E – Water Quality Standards

8.24.1 through 8.24.7 (Phenolic Materials). Please review the proposed limits for those parameters found in Column A and C. It appears that perhaps the values for those two columns were inadvertently switched, as Column A limits (for human health/public drinking water) should always be lower than that for Column C limits (water contact recreation).

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WRITTEN COMMENTS OF THE WEST VIRGINIA COAL ASSOCIATION AND WEST VIRGINIA MINING AND RECLAMATION ASSOCIATION ON THE ENVIRONMENTAL QUALITY BOARD'S PROPOSED ANTIDEGRADATION IMPLEMENTATION PROCEDURES

These comments are submitted on behalf of the West Virginia Coal Association and the West Virginia Mining and Reclamation Association ("Associations").

The Associations feel that the proposed definition of "significant degradation" as well as the expansive definition of a Tier 2.5 stream are both overly protective of water quality, especially in consideration of surrounding state's antidegradation policies. The Associations specifically support the written comments provided by the West Virginia Chamber of Commerce and the West Virginia Manufacturers Association regarding those matters.

In addition, on June 1, 2000, the Associations submitted a letter to this Board regarding the arbitrary and capricious exclusion of Nationwide Permit #21 and #26 from proposed §4C.2.A.2.L of Appendix F. The Coal Association renews this objection and resubmits the June 1, 2000 letter. The June 1, 2000 letter is attached.

Finally, the Associations feel strongly about the need to have an exemption for storm water outfalls (i.e. precipitation induced discharge outlets). The coal industry currently has approximately 18,000 outfalls covered by NPDES permits, an overwhelming majority of which are precipitation induced discharges. The coal industry is unique in this manner, as precipitation induced discharge outlets are added and removed frequently as mining operations expand in increments or shut down. In addition, many of these precipitation induced discharge outlets drain to intermittent streams or lower flow streams whose critical flow conditions (if it is the 7Q10) will probably be zero flow (and hence zero remaining assimilative capacity at critical flow conditions), thus triggering the need for socioeconomic evaluations nearly every time a precipitation induced discharge outlet is added. This will result in:

(a) An enormous regulatory burden for industry in terms of timing and cost.

(b) An enormous burden on the magnitude of regulatory agencies participating in the socioeconomic evaluations, as the number of technical and socioeconomic evaluations as the number of technical and socioeconomic evaluations needing reviewed will increase substantially.

(c) A loss of credibility for the antidegradation process since regulatory scrutiny will center on the effects of minor storm water outlets (precipitation induced discharge outlets) that in all likelihood will not be discharging during critical flow (i.e. possibly defined at 7Q10) conditions.

(d) Unworkable technical analyses since it is unknown at this time as to whether technical models exist that could evaluate (i) which storm water outlets will be discharging during a precipitation event at critical flow

conditions (not all storm water outlets will discharge during a precipitation event), (ii) what the volumes of storm water discharging would be and, (iii) what the effects of such storm water outlets would be on the quality and quantity of flow in the receiving stream.

(e) An economic disadvantage for the State of West Virginia coal industry as other states such as Ohio have exempted storm water and coal industry general NPDES permits (i.e. including permitting of precipitation induced discharges) from the antidegradation procedures (See Chapter 3745-1-05(D)(1)(i) and 3745-1-05(D)(1)(j) of the State of Ohio Administrative Code). Since the State of West Virginia does not have general permits for precipitation induced discharges for the coal industry, not having an exemption addressing precipitation induced discharges would mean the State of West Virginia would have no exemption while other states would have mechanisms for exempting such discharges during the antidegradation process.

The Associations have supported, and continue to support, a responsible antidegradation implementation procedure. However, the implementation procedure currently being proposed is unnecessarily burdensome and more restrictive than both surrounding states' policies and United States Environmental Protection Agency guidance. For these and the above-referenced reasons, the West Virginia Coal Association and the West Virginia Mining and Reclamation Association provide these written comments.

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MEMBER OF LEX MUNDI,
THE WORLD'S LEADING ASSOCIATION
OF INDEPENDENT LAW FIRMS

June 1, 2000

HAND DELIVERY

Dr. Edward Snyder, Co-Chairman
West Virginia Environmental Quality Board
1655 Washington Street East
Charleston, West Virginia 25311

Dr. Donald C. Tartar, Co-Chairman
West Virginia Environmental Quality Board
1655 Washington Street East
Charleston, West Virginia 25311

Re: Antidegradation Implementation

Dear Gentlemen:

This letter is submitted on behalf of the West Virginia Coal Association and the West Virginia Mining and Reclamation Association ("Associations.") The Associations have been actively participating in the antidegradation implementation stakeholder process and enthusiastically support the stakeholder process.

Because the Associations represent only a portion of the interests represented by the "industry point source," the Associations have made an effort to join the other interested industry point sources in one voice. More often than not, the Associations have wholeheartedly supported the "singular voice" of the industry point source stakeholder.

In the efforts of compromise and candor during the negotiation and development of the antidegradation implementation procedure, the two Associations have agreed to join the "unified" voice of the point source industry even when the Associations do not necessarily agree with such voice. The Associations fully understand that certain levels of "give and take" are necessary to reach a consensus during a stakeholder process. The Associations

appreciate that all interested stakeholders have, at certain times, throughout the development process agreed to certain provisions which they do not fully support.

However, there is at least one issue which, in the efforts of compromise, the point source industry as a whole supported but which the two Coal Association opposed at the time of the stakeholder vote and continues to hold an objection. On or about January 24, 2000, the stakeholder group unanimously voted to accept the proposed language in §4C.2.a.2.L of Appendix F. The stakeholders voted to exempt the following activity from requiring a socio-economic review:

> Those activities that qualify for coverage under a Nationwide Corps of Engineers Permit, or any subsequent reissuance of the same Nationwide Permit (or subsequent Nationwide Permit that regulates those activities) for which state water quality certification has been granted or conditionally approved. Provided that Nationwide Permit #21 (Surface Coal Mining Activities) and Nationwide Permit #26 (Headwaters and Isolated Waters Discharges) or any subsequent reissuance of those permits (or subsequent Nationwide Permits that regulate those activities) shall not be exempted from Tier 2 Review requirements.

(Emphasis added.) The Associations wholly support the first sentence of §4C.2.a.2.L. However, there is no legal - or other - rationale for the second sentence of this proposed provision, and the Coal Associations vigorously opposes the random exemption of Nationwide Permit Nos. 21 and 26 from the general exception of all Nationwide Permits.

Nationwide Permits "are a type of general permit issued by the Chief of [the United States Army Corps of] Engineers and are designed to regulate with little, if any, delay or paperwork certain activities having minimal impacts." 33 C.F.R. §330 .1(b) (emphasis added.) The United States Congress has specifically defined and authorized the issuance of general permits on State, regional, or nationwide basis:

> In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary [of the United States Army, acting through the Corps of Engineers] may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are

> similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

Clean Water Act §404(e)(1), codified at 33 U.S.C. §1344(e)(1) (emphasis added.)

Thus, the United States Congress has authorized the issuance of Nationwide Permits for such activities which "will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment." As of January 2000, the United States Army Corps of Engineers has authorized at least thirty-nine activities to be eligible for nationwide permits because such activities have only minimal adverse effects on the environment. Accordingly, the antidegradation stakeholder group acted appropriately to exempt activities covered under Nationwide Permits form further antidegradation review because such activities, by definition, have only minimal adverse effects on the environment.

It is completely arbitrary and capricious, however, that the stakeholder group has now randomly excluded Nationwide Permit Nos. 21 and 26 from the general exemption from antidegradation review. At the time stakeholder group discussed Nationwide Permits, it was conceded that the stakeholder group was not in a position of having the expertise to predict the outcome of the mountaintop mining litigation. Since Nationwide Permit Nos. 21 and 26 were issues of discussion in the ongoing federal litigation, the stakeholder group decided not to take up these permits. It is now the case that all pending litigation concerning Nationwide Permit Nos. 21 and 26 have been resolved and settled. Accordingly, the stakeholder recommendation to exclude Nationwide Permit Nos. 21 and 26 from proposed §4C2.a.2.L because of ongoing litigation is no longer relevant.

Like Permit Nos 1-20, 22-25, and 27-39, the Chief Engineer of the United States Army Corps of Engineers has determined that activities regulated under Nationwide Permit Nos. 21 and 26 have only minimal adverse effects on the environment. Regardless of the rationale behind excluding the two Nationwide Permits, the stakeholder group is not the proper forum to "pick and choose" which Nationwide Permits certain stakeholders like or dislike. ALL Nationwide Permits, including Nationwide Permit Nos. 21 and 26, have undergone extensive review by the United States Army Corps of Engineers, and it is now inappropriate and illegal to summarily exclude certain Nationwide Permits regulating certain activities which HAVE BEEN DECLARED to have a minimal effect on the environment.

As previously mentioned, both the West Virginia Coal Association and the West Virginia Mining and Reclamation Association authorized support of proposed §4C2.a.2.L through the point source industry stakeholder because both Associations wanted to assure that the entire document was reviewed and considered by the stakeholder group. The Associations did not want "to hold the process hostage" demanding exclusion of the second sentence of proposed §4C2.a.2.L. Rather, the Associations supported, and continue to support, the continuation of the collegiate debate amongst stakeholders. However, neither the West Virginia Coal Association nor the West Virginia Mining and Reclamation Association can stand silent regarding this issue.

The West Virginia Coal Association and the West Virginia Mining and Reclamation Association appreciate the Board's tireless efforts regarding this and all other water quality-related matters, and we thank you for your consideration of this matter. Should we be able to provide any additional information or support, please feel free to contact us.

Very truly yours,

Scott D. Goldman
On behalf of West Virginia Coal Association, and
West Virginia Mining and Reclamation Association

cc: Mr. William B. Raney
President - West Virginia Coal Association
Mr. Chris Hamilton
Vice President - West Virginia Coal Association
Mr. Benjamin C. Greene
President - West Virginia Mining & Reclamation Association
Elizabeth M. Chatfield, Esquire
Technical Advisor - WV Environmental Quality Board

Public Service Commission of West Virginia

Cassius H. Toon, Staff Attorney

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August 14, 2000

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AUG 15
ENVIRONMENTAL QUALITY BOARD
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Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, WV 25311-2126

RE: Comments on DEP's Proposed Anti-Degradation Rules

Gentlemen/Ladies:

The Commission Staff has reviewed the proposed changes in the Requirements Governing Water Quality Standards. Our evaluation prompts us to adopt the attached comments regarding the preferred role of this Commission in implementing the Antidegradation Policy of the rules.

If we may be of further assistance, please do not hesitate to contact me.

Yours very truly,

Cassius H. Toon
Staff Attorney

CHT/jb
Attachment

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COMMENTS OF THE
STAFF OF THE
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

The Staff of the Public Service Commission (PSC) of West Virginia appreciates the opportunity to address the proposed changes in the Requirements Governing Water Quality Standards. These comments pertain only to the preferred role of the PSC Staff in implementing the Antidegradation Policy of the rules.

In Appendix F of the proposed rules two options have been presented for the role that agencies listed on the Intergovernmental Coordination (Appendix F1) will take in evaluating whether a proposed activity is necessary to accommodate an important economic or social development of an area (4C.6 - 4C.8 Appendix F). Our understanding of Option 1 is that the Division of Environmental Protection (DEP) will issue a draft permit based upon its own evaluation of the social or economic factors. A copy of the draft permit will then be forwarded to each of the Intergovernmental Coordination Agencies. Then each agency can file comments on the draft permit if it chooses to do so. Under Option 2 we understand that the DEP will establish an intergovernmental coordination panel which would provide recommendations to the Director of the DEP prior to the issuance of a draft permit.

The Staff of the PSC would only be interested in permits for the public utilities that the PSC regulates. Therefore, we do not see the need to be involved in all permits. If possible we want to be excluded from participating under either option for non-utilities.

Based upon our understanding of the two options in 4C.6 - 4C.8, our preference would be Option 1. At this time we envision that we would most likely only participate under Option 1 when a preliminary determination has been made on the social or economic importance that a utility project may have, and such a determination would be contrary to our view of the proposed activity.

Option 2 would appear to be a less productive way of gaining input from the affected agencies or at least from the Staff of the PSC.

It occurs to the Staff of the PSC that the determination of the social and economic importance of a utility project is very similar to the PSC's determination of need in granting a certificate of convenience and necessity under §24-2-11. The DEP should consider allowing the PSC make the determination of social and economic importance for utility projects. The DEP could issue a permit for such utility projects contingent on such a finding of social or economic importance by the PSC in the utility's certificate case for the project.

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8/1/00

WVEQB
ATTN: Dr Snyder & Dr Torker
1615 Washington St East Suite 301
Charleston WV 25311-2126

Dear Sirs,

Please accept the following comments on the Antidegradation Policy. I care deeply about WV's riverst streams and this policy should protect them.

First, I ask that you remove the grandfather clause near the beginning of the documents. All permits should go through some type of review, not just new & expanded ones. Some of our worst polluters are old facilities.

Cumulative impacts should be given consideration in this document.

No de minimus values. Our goal should be 0% pollution.

Exemptions should be removed from this document. Let reviews determine this.

8/1/00

Finelly I request that reasonable alternatives to corporate polluting of our weterways be explored & implemented even if they are not the cheapest alternatives.

Thanks for your attention to my concerns Being a active WestVirginian who enjoys all the benefits of our clean water, federal laws & policies are important to keeping our state clean.

Sincerely,
Roschello Turner

WEST VIRGINIA RIVERS COALITION

801 N. Randolph Avenue • Elkins, West Virginia 26241 • (304) 637-7201 • www.wvrivers.org

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August 15, 2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter:

Please accept these comments on behalf of the West Virginia Rivers Coalition regarding the proposed changes to 46 CSR 1, the *Requirements Governing Water Quality Standards,* dated July 3, 2000.

1. We strongly support the proposed change at Section 7.2.d.9. reclassifying the designated use of the Blackwater River below Davis from a warm water fishery (Category B1) to a trout water (Category B2). As you know, this river segment is recognized as a "High Quality Water" as defined under Title 46-1-2.9; that it meets the criteria for "Trout Waters" as defined under Title 46-1-2-19 as "streams or stream segments which sustain year-round trout populations"; and, as a trout water, this stream segment supports existing uses as defined in 40 CFR Section 131.3 of the Clean Water Act. We believe your decision to redesignate the Lower Blackwater as a cold water stream is appropriate and will aid in protecting the natural characteristics and uses of this waterway.

2. We are greatly concerned about the interplay of criterion and antidegradation procedures regarding manganese. Given the changes in the water quality standards during the 2000 Legislative Session (see Sections 6.2 and 6.2.d); combined with the proposed changes in Sections 2.17, 8.17.1 and Appendix F Section 4C.2.a; a loophole has been created potentially allowing large amounts of manganese to enter our waterways undetected. It also appears that the only time a proposed discharge of manganese would trigger an antidegradation review in high quality streams is when the proposed discharge is within five miles of a known public water supply (Category A). This leaves many people who use our streams in danger of high manganese levels. These people stand to be totally unaware that this situation is even occurring if the discharge is a few miles upstream and in another county where the public notice would have been publicized. We request that the standards be adjusted to close this loophole to make sure that public water supplies that serve under the fewer than 20 people and our high quality streams are adequately considered and protected.

3. We regret the Board's decision to remove the fish body burden criteria for Chlordane, DDT, Aldrin, Dieldrin, Endrin, Toxaphene, PCB and Dioxin from Section 8.22.2. We are particularly concerned about dioxin because it accumulates in the body, and minute incremental exposures can, over time, create substantial problems. We believe that fish tissue samples are the best way to detect the presence and levels of dioxin that might not be detectable otherwise. We urge the Board to utilize the Risk-Based Table which has been well researched by EPA and has been utilized by the Brownfields program in our state.

4. We request that wording in paragraph one, last sentence of the June 29, 2000 cover letter from the West Virginia Bureau of the Environment to the Secretary of State's office be omitted in the final submission to the Secretary of States office. Such language is not required by law, nor is it accurate. This rule is in fact needed and appropriate as it is an antidegradation implementation policy is required for states by federal regulations. Additionally, this rule is not more stringent than parallel federal regulations concerning the designation of stream uses. There are no such regulations, although there is guidance for states to utilize.

As this letter is not written or submitted by the Board, we ask that the language of the statement of circumstances be altered to assure the inclusion of accurate information in this regard.

5. Please note that our comments on the proposed antidegradation implementation procedures are reflected in the August 11, 2000 letter submitted to you by members of the West Virginians for Clean Water Campaign.

Thank you very much for the opportunity to provide comments.

Sincerely,

Pamela C. Moe-Merritt

Pamela C. Moe-Merritt
Conservation Director

United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
Post Office Box 1278
Elkins, West Virginia 26241

August 11, 2000

West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, West Virginia 25311-2126

Dear Board Members:

On July 6, 2000, the U. S. Fish and Wildlife Service (Service) received Public Notice from the West Virginia Environmental Quality Board (WVEQB) announcing an opportunity to provide comments on proposed changes to West Virginia Requirements Governing Water Quality Standards. The following constitutes the comments and recommendations by the Service and are submitted in accordance with the provisions of Section 404 of the Clean Water Act (33 U. S. C., Section 1344, as amended), the Fish and Wildlife Coordination Act (48 STAT. 401, as amended; 16 U. S. C. 661 et seq.) And the Endangered Species Act (87 STAT. 884, as amended; 16 U. S. C. 1531 et seq.).

Antidegradation Implementation Procedure

46-1-4A—As proposed, the Implementation Procedures "....are only intended to apply to **new and expanded** regulated activities that have the potential to affect existing water quality."(emphasis added). The Service has reviewed antidegradation regulations and guidance, and we find no rationale that supports this limited application. Federal antidegradation regulations state that "...the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and **existing** point sources..."(40 CFR SECT. 131.12(a)(2))(emphasis added). The Service recommends that the Implementation Procedure apply to all existing, expanding and new sources.

4C.2.a.1.A— The proposed Implementation Procedures provide antidegradation review in Tier 2 waters only if the "...proposed activity would degrade the ambient concentration of any parameter of concern by more than 5% at critical flow conditions or reduce the assimilative capacity by more than 5%...." The antidegradation review is to intended to identify the extent of degradation that would be allowed if it "... is necessary to accommodate important economic or social development in the area in which the waters are located"(CFR 40 Section 131.12(2)). If after a socio-economic review it is determined that degradation is allowed, "...the State shall assure water quality adequate to protect existing uses fully"(CFR 40 Section 131.12(2)). Defining

degradation, a priori, is contrary to the Antidegradation Policy and is not scientifically supportable. The Service recommends that a de minimus value not be included in the Implementation Procedures.

Appendix E

Aluminum—It is proposed to add a chronic value of 87 ug/l, provide for use of dissolved concentration rather than total concentration for measurement of both acute and chronic criteria, and to adopt a conversion factor of one for implementation of the dissolved concentrations. In 1996, the West Virginia Division of Environmental Protection, Office of Water Resources (OWR) raised concerns that many streams in West Virginia were not meeting their designated uses because of violations of aluminum criteria. OWR believed that the aluminum criteria excursions were a result of natural background conditions and/or non-point sources, and requested re-examination of the aluminum criteria. In 1998, the WVEQB removed the aluminum chronic criterion from the water quality standards. Although EPA found the rationale provided by West Virginia to be insufficient to allow removal of the chronic criterion, they deferred action on the removal in order to allow the State additional time to collect data to support their action. West Virginia did not provide data to support the chronic criterion removal, and in 1999 EPA disapproved the removal. Recent work by Dr. William Sharpe at Pennsylvania State University supports the aluminum chronic criterion value of 87ug/l and the Service supports the reinstatement of that value.

On January 22, 1998, the Service provided comments to the WVEQB regarding the use of dissolved metals concentrations for the application of metals aquatic life criteria in the Water Quality Standards (attached). The Service does not support the use of dissolved aluminum criteria.

If you have any questions or require additional information, please contact me, or Dan Ramsey of my staff, at 304-636-6586 or at the letterhead address.

Sincerely,

Jeffrey K. Towner

Jeffrey K. Towner
Field Supervisor

Proj-a

United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
Post Office Box 1278
Elkins, West Virginia 26241

January 22, 1998

Ms. Libby Chatfield
West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, West Virginia 25311-2126

Dear Ms. Chatfield:

The U.S. Fish and Wildlife Service received the West Virginia Environmental Quality Board notice regarding the January 28, 1998, inter-agency committee meeting to review the use of dissolved metals concentrations for the application of metals aquatic life criteria in the Water Quality Standards rule (46 CSR 1). Service representatives will be unable to attend that particular meeting. However, we offer these initial comments, pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. et seq.). We respectively request an opportunity to attend any future meeting that may be held to discuss this issue.

Those who favor adoption of dissolved metal criteria, generally argue that 1) use of total metal criteria are too conservative, 2) adoption of dissolved criteria will not compromise environmental protection, and 3) use of total recoverable metal criteria is not scientifically and technically supportable. We believe that water quality criteria should be scientifically and technically supportable, but that environmental protection should take precedence over discharger relief. To that end, a complete understanding of the uncertainties and ecological risks is needed before any assumptions or safeguards are labeled as over-conservative.

The rationale for adoption of dissolved metal criteria is from an October 1, 1993 memo from the U.S. Environmental Protection Agency (EPA), Acting Assistant Administrator for Water, Martha G. Prothro, to the EPA Regional Water Management Division Directors. In the memo, EPA recommended the use of dissolved criteria, but did not make the recommendation without some qualifications. Ms. Prothro stated:

> [t]he ambient water quality criteria are neither designed nor intended to protect sediments, or to prevent effects due to food webs containing sediment dwelling organisms. A risk manager, however, may consider sediments and food chain effects and may decide to take a conservative approach for metals, considering

> that metals are very persistent chemicals...Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. However, since consideration of sediment impacts is not incorporated into criteria methodology, the degree of conservatism inherent in the total recoverable approach is unknown.

The memo also stated that particulate metal can contribute to metal toxicity, although that contribution is less than dissolved metal. Therefore, while use of dissolved criteria may result in a closer approximation to the toxic fraction, the use of dissolved criteria will underestimate toxicity when toxicity due to particulate metals is important. It is unknown to what degree particulate metal toxicity affects unionid mussels, but given the fact that they are sediment-dwelling, filter-feeding organisms, it is safe to assume that particulate metal toxicity may adversely affect unionid mussels to some degree.

Endangered mussels are known to inhabit several waters of the State. Since the use of dissolved criteria with a translator will most certainly result in increased metal loading, the Service requests that use of the total recoverable metals approach be retained in waters where federally listed species are an existing use, because of the greater uncertainty surrounding the level of protection afforded by the dissolved approach.

In addition, an in-depth analysis of the toxicity of certain metals to unionid mussels was recently completed by the Service as part of a biological opinion prepared for EPA on the Great Lakes Water Quality Guidance. A risk assessment of the Guidance's metals criteria was part of the opinion. The Service reviewed studies of metal toxicity to unionid mussels and calculated metals criteria that would protect mussels.

A comparison of the current WV Water Quality Standards to the criteria protective of unionid mussels shows that for certain metals, the West Virginia Standards are not protective (see attached table). We are presently searching for additional metal toxicity data for unionids.

To summarize, the degree of protection afforded to unionid mussels by dissolved criteria is unknown, because it is not known to what degree unionid mussels are adversely affected by particulate metals. This uncertainty is reason enough to continue the use of the total recoverable method in waters where unionid mussels are an existing use. Where important benthic organisms reside, the use of the total recoverable approach is conservative, but not overly conservative. In addition, there is strong evidence that some of the criteria, whether expressed as a total recoverable or dissolved, are not protective of unionids. Expressing these non-protective criteria as dissolved dramatically increases the risk to unionid mussels. We also recommend that the State investigate the feasibility of adopting site-specific metals criteria that will be protective of unionid mussels.

In order to avoid adverse effects to federally-listed mussel species, we recommend that the WV Environmental Quality Board maintain the expression of metals criteria as total recoverable in waters where those unionid mussels occur. If EPA intends to approve the dissolved approach, state-wide adverse affects to listed species may result. Given the likelihood of adverse affects,

formal consultation with the Service under the provisions of Section 7(a)(2) of the Endangered Species Act will be required before the dissolved approach is approved. Prior to initiating the consultation process, EPA must assess impacts on listed species and provide that information to the Service.

If you have questions or require additional information, please contact Dan Ramsey (Environmental Contaminants) or myself (Endangered Species) of this office at 304-636-6586.

Sincerely,

William A Tolin

William A. Tolin
Acting Supervisor

WEIRTON
STEEL CORPORATION

David L. Robertson
Executive Vice President
Human Resources & Corporate Law
304-797-2252 / FAX 304-797-3419

Via Facsimile and U.S. Mail

August 16, 2000

Environmental Quality Board
1615 Washington Street, East
Charleston, WV 25311-2126

Dear Members of the Board:

Weirton Steel Corporation ("WSC") is pleased to submit the following comments on the proposed amendments to Requirements Governing Water Quality Standards, 46 CSR 1, filed with the Secretary of State on July 3, 2000. As we believe the Environmental Quality Board is aware, based upon our participation in past water quality rulemakings, WSC has a strong interest in the water quality regulations of the Board and endeavors to consistently provide thoughtful and constructive input to the Board for its deliberations concerning changes to its rules. These comments are offered for that purpose. The references below are to specific sections of the proposed rule.

Section 7.2.d.16.2

This section provides an exception to the water quality standards that would otherwise apply to a segment of Harmon Creek, a tributary of the Ohio River. WSC discharges treated wastewater into Harmon Creek, via Outlet 004, 2.2 miles upstream of the point where Harmon Creek flows into the Ohio River. The Environmental Quality Board has previously adopted a socio-economic variance for this stretch of Harmon Creek, allowing certain alternate water quality criteria to be applied upon the condition that WSC provide certain reports to the Office of Water Resources relating to the quality of the discharge from Outlet 004 (over and above the monitoring required under the facility's WV/NPDES permit), along with an engineering analysis of alternatives for further reducing concentrations of pollutants in the Outlet 004 discharge and a report of WSC's efforts to improve the quality of this discharge. The reports that have been filed pursuant to this variance documenting the water quality at Outlet 004 and in Harmon Creek demonstrate that WSC is making progress towards reducing pollutant concentrations in its discharge and improving the water quality in Harmon Creek. Despite these improvements, there continues to be a need for the variance for a limited number of parameters.

We believe that the criteria for granting a socio-economic variance for this segment of Harmon Creek are perhaps more clearly demonstrated today than they have been previously. As I noted in my statement to this Board at a public hearing held on the proposed rule on August 3, 2000, the assault by foreign steelmakers on our domestic steel industry through the dumping of illegally priced steel imports on U.S. markets continues and illegal imports for the year 2000 are projected to again approach record levels. WSC has provided the Board with the financial and socioeconomic analysis necessary to demonstrate eligibility for the extension of this variance and has met with the Board and its staff on several occasions. We have also discussed the extension of the variance with representatives of the Office of Water Resources (OWR). We greatly appreciate the time that has been given by the Board and its staff to this variance, which is critical to the continued operation of our mill. We urge the Board to adopt the variance as proposed. We understand that the OWR has no objection to the extension of the variances as set forth in the proposed rule.

Section 7.2.c.4

The current language of the rule provides that naturally occurring values of substances "shall be the applicable criteria." We understand that this provision has been in the Water Quality Standards since at least 1980. Apparently, the U.S. Environmental Protection Agency has decided, after over 15 years of approving the Board's water quality standards with this language included, that this language is not acceptable. In an attempt to respond to EPA's objections, the Board has substituted an extensive procedure that requires a full development of a site specific criterion before the "background" exemption from otherwise applicable water quality criteria can be applied. As we know from experience, such a change to a water quality standard may take one to two years to accomplish. Does this mean that, in the meantime, a facility which is discharging at levels above the water quality criterion, but below the natural background concentrations of a parameter, could be deemed in violation of its permit during the entire time required to make the demonstration set forth in the proposed rule? We believe this is an unreasonable result. WSC supports the comments of the West Virginia Manufacturers Association with respect to this proposed change and endorses the alternative suggested by the WVMA.

Section 46-1-4 and Antidegradation Implementation Procedures (Appendix F)

As stated at the August 3, 2000 public hearing, WSC has grave concerns about the potential effect of the proposed antidegradation implementation procedures on economic development in West Virginia. In order to remain competitive, WSC must constantly assess new and innovative projects for improving production efficiency and for generating products that are responsive to customer needs and market demand. To achieve these goals, it may be necessary to upgrade the technology employed at our mill, as well as make modifications to our production processes. Indeed, even at the present time, WSC is facing significant capital expenditures with regard to ironmaking. We are currently reviewing new technologies and considering alternatives in making these investments. The time frame within which these changes can be accomplished

is critical to WSC's ability to participate effectively in today's extremely competitive marketplace. The proposed implementation procedures would be a **significant** impediment in our ability to address these concerns.

In Attachment 1 to these comments, we have attempted to apply the proposed antidegradation implementation procedures to determine what impact this proposed rule would have on the permitting of a mini-mill in West Virginia. As indicated on the attachment, a number of assumptions are necessary in order to make these calculations. One of these assumptions is that the Ohio River would be designated a Tier 2.5 "water of special concern." Although we believe such a designation would be clearly erroneous, we understand that the preliminary list of streams developed by the Division of Environmental Protection included the Ohio River as a Tier 2.5 stream. If this were the case, even with the application of the "new source performance standards", as reflected in Attachment 1, the mini-mill could not be constructed in West Virginia because the proposed rule would mandate denial of the permit.

Assuming, however, that the Board corrects the Tier 2.5 categorization and the Ohio River would not be designated in that category, then, as a Tier 2 stream, the mini-mill would trigger an antidegradation review. However, there would be considerable uncertainty as to the cost and requirements associated with the antidegradation socio-economic demonstration as well as the timing and final decision of the mandated review by the DEP and/or 17 other agencies. Once it is determined that Tier 2 review has been triggered, these uncertainties as to cost and time would mean that Weirton, West Virginia would no longer be considered a viable potential site for this facility. These practical limitations could result in the mini-mill being located in another state where the antidegradation requirements would be expected to be less uncertain as well as less restrictive. We offer this example to illustrate the type of analysis that we anticipate will be performed by business entities in determining whether to consider West Virginia as an appropriate location for new projects.

With respect to detailed comments on the proposed antidegradation procedures, WSC adopts by reference and supports the written comments submitted by the West Virginia Manufacturers Association. Our greatest concerns are with the stringent "trigger levels', the Tier 2.5 nomination process, U.S. EPA's insistence that the proposed rule's apply to existing dischargers and the lack of any consideration, including credits, for facilities subject to "new source performance standards" when they are used to replace older, less efficient facilities.

We are grateful to the Board and to the stakeholders for the time expended in attempting to develop a workable antidegradation procedure for West Virginia. We believe, however, that further effort is required and that with appropriate changes, West Virginia's anti-degradation policy and implementation procedure can provide real protection for the water quality of state waters as well as support economic development and improve the lives of all West Virginia citizens.

I appreciate the opportunity to provide these comments to the Board. Should you have any questions concerning these comments, please contact me at (304) 797-2353.

Very truly yours,

David L. Robertson,
Executive Vice President
Human Resources and Corporate Law

08/16/00 16:14 FAX 304 797 3484 2171 LEGAL/COMM 006

Antidegradation Review for Proposed Mini-Mill Discharging to the Ohio River

New Source Performance Limits (420.44(a),.64,.74)				Ohio River						WV Antidegradation Review				
						Upstream			Downstream					
Parameter	Units	lbs./day	mg/l	WQ Std.	units	Ambient Concentration	Assimilative Capacity (AC)	Ambient + 5% AC	Ambient Concentration	% Increase	Tier 2 Limit (Amb)	Tier 2 Limit (AC)	Tier 2 Review	Tier 2.5 Limit	Tier 2.5 Denial
Flow	MGD		3.6	NA	NA	3800	NA		3803.6						
TSS	ppd	8498	50	NA	NA	34.2	NA		34.4	0.7	35.9	NA	No	34.2	Yes
O&G	ppd	2007	8	NA	NA	2	NA		2.1	3.1	2.1	NA	No	2	Yes
Lead	ppd	9.24	0.3	0.008	mg/l	0.003	0.005	0.0033	0.0033	9.6	0.0032	0.0033	Yes	0.003	Yes
Zinc	ppd	13.87	0.46	0.191	mg/l	0.019	0.172	0.0276	0.0194	2.2	0.02	0.0276	No	0.019	Yes
Iron*	ppd	1700	10	1.5	mg/l	0.8	0.7	0.835	0.85	6.6	0.84	0.835	Yes	0.8	Yes

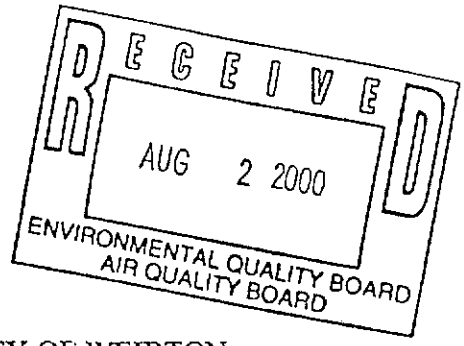
Ohio River 7Q10 = 5880 cfs = 3800 MGD

Ohio River Hardness = 200 mg/l

* Iron=TSS/5

Annual tonnage = 3,000,000 tons/yr

1000 lb product = 18,220/day



STATEMENT OF DEAN M. HARRIS, MAYOR, CITY OF WEIRTON
BEFORE THE ENVIRONMENTAL QUALITY BOARD
AUGUST 3, 2000

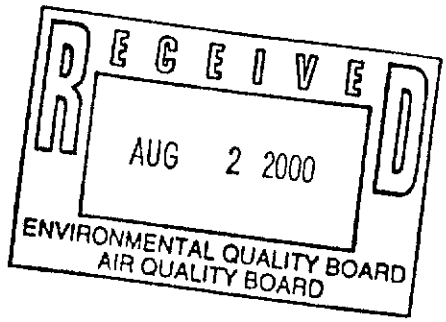
MY NAME IS DEAN M. HARRIS, MAYOR OF THE CITY OF WEIRTON. I AM SPEAKING WITH REGARD TO THE ENVIRONMENTAL QUALITY BOARD'S ANTI-DEGRADATION RULE AND ITS POSSIBLE IMPACT ON ECONOMIC DEVELOPMENT IN OUR REGION OF THE STATE. LIVING AND WORKING IN THE NORTHERN PANHANDLE, I HAVE HEARD MANY OF MY CONSTITUENTS SAY THAT DECISIONS MADE IN CHARLESTON ARE MADE IN A VACUUM WITHOUT ANY INPUT FROM THE REAL PEOPLE WHOSE LIVES ARE AFFECTED BY STATE LEVEL GOVERNMENTAL DECISIONS. I AM HOWEVER RELIEVED THAT THE BOARD TOOK THE TIME TO GET INPUT FROM DIFFERENT SOURCES ABOUT THE PROPOSED ANTI-DEGRADATION RULE. YET, UNFORTUNATELY THE RESULT APPEARS TO BE A REGULATION THAT DOES NOT ACHIEVE A BALANCE BETWEEN ENVIRONMENTAL CONCERNS AND BUSINESS NEEDS IN THE NORTHERN PANHANDLE, AS WELL AS ACROSS THE STATE.

I THINK WHAT IS MISSING HERE IS A PROPER BALANCING OF THE ENVIRONMENT AND ECONOMIC DEVELOPMENT. NO ONE WANTS A RULE WHICH SUPPORTS ONE OF THESE AND IGNORES THE OTHER. I UNDERSTAND THAT WE HAVE TO HAVE AN ANTI-DEGRADATION

IMPLEMENTATION POLICY IN WEST VIRGINIA. I ALSO UNDERSTAND THAT OTHER STATES HAVE FOUND A WAY TO MEET THE STATE AND FEDERAL LAW REQUIREMENTS FOR ANTI-DEGRADATION WITHOUT CHOOSING BETWEEN ENVIRONMENT AND ECONOMIC DEVELOPMENT. IT IS MY HOPE THAT THESE COMMENTS WILL BE OF USE TO THE ENVIRONMENTAL QUALITY BOARD IN FORMALIZING AN ANTI-DEGRADATION RULE WHICH IS RESPONSIVE TO THE NEEDS OF BUSINESS, AS WELL AS BEING ENVIRONMENTALLY RESPONSIBLE.

IF I OR ANY OF MY STAFF CAN PROVIDE ANY ASSISTANCE TO YOU IN THIS REGARD, PLEASE DO NOT HESITATE TO CONTACT ME AT ANY TIME.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THESE COMMENTS.



Subject: Anti-degradation
Date: Wed, 02 Aug 2000 16:10:31 GMT
From: "Jim and Julie Spence" <osage95@hotmail.com>
To: chatfe@mail.wvnet.edu

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs

West Virginia Environmental Quality Board

1615 Washington Street, East, Suite 301

Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia□s rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia□s

clean waters clean. As the EQB is to "promulgate rules and regulations□for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

James B. Spence

Get Your Private, Free E-mail from MSN Hotmail at http://www.hotmail.com

BASE PETROLEUM
Route 7, Box 407 ½
South Charleston, WV 25309

RECEIVED
JUL 31 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

July 13, 2000

Libby Chatfield / Technical Advisor
WV Environmental Quality Board
1615 Washington Street, East
Charleston, WV 25312

RE: Iron Water Quality Standard

Dear Ms. Chatfield,

The recent action by the U.S. Environmental Protection Agency, in pursuing the TMDL for the Little Kanawha River Watershed, creates tremendous cause for concern that requires immediate action by the board.

That TMDL is seeking to impose changes in farming, forestry, oil, gas, and roadway practices, all to achieve compliance with the Board's water quality standard for iron, a standard that has questionable scientific basis and a standard that has only been adopted by very few states across the country.

On June 22, 2000, the Independent Oil and Gas Association of WV and other trade organizations filed a request with the Board asking that the iron water quality standard be deleted or suspended. I join in that request. Immediate action must be taken by the Board to avoid potentially disastrous consequences of the implementation of the current iron water quality standard.

Sincerely,

John Wilcox

cc: The Honorable Cecil H. Underwood
State Capitol Building
Charleston, WV 23505

Charles R. Jenkins, Ph.D.
432 Wilburn Street
Morgantown, WV 26505

David Samuel, Ph.D.
1 Harvest Drive
Morgantown, WV 26508

Edward M. Snyder, Ph.D.
P.O. Box 987
Shepherdstown, WV 25443

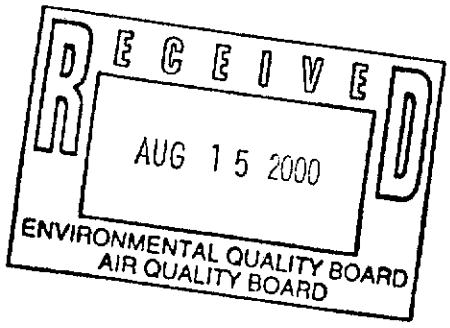
Donald C. Tarter, Ph.D.
38 Lynn Morr Drive
Huntington, WV 25705

Betsy E. Dulin, P.E.
3909 Kanawha Avenue
Charleston, WV 25304

ARCH COAL, INC.

LAWRENCE D. EMERSON
Director of Environmental Performance

August 14, 2000



Dr. Donald C. Tarter, Co-Chairman
Dr. Edward M. Snyder, Co-Chairman
WV Environmental Quality Board
1655 Washington St., East
Charleston, WV 25311

RE: Comments on Proposed WV Anti-degradation Implementation Policy 46CSR - 1

Dear Chairmen:

Thank you for the opportunity to comment on this very important matter and we recognize the degree of difficulty that the Board and the Stakeholders have faced in promulgating these proposed rules. We share your commitment to protect the State's waters and also join with you in balancing this commitment with the need to promote West Virginia's economic health and a stable regulatory environment. To that end, we offer the following comments that are intended to reflect the balance needed to achieve both ends.

Appendix F Sec. 4C.2.a.2.I. - As you know, the coal industry is one of the most heavily regulated industries in the nation. Furthermore, under the Clean Water Act (CWA) Sections 402 and 404, as well as the Surface Mining Control and Reclamation Act (SMCRA), there are multiple opportunities for public input in the permitting process. Both the SMCRA and CWA permits require public notice and provide for public comment. Indeed, through the recent changes in the regulatory review process, several state and federal agencies are consulted (including the USFWS, ACoE, OSM and USEPA) very early on and alternatives are evaluated well before SMCRA and CWA 404 permit issuance.

P.O. Box 6300 Huntington, WV 25771-6300 (304) 526-3581 Fax: (304) 526-3678

Through fill minimization procedures and "no practical alternatives" evaluations, most coal mining operations go through a rigorous review to provide for the highest level of protection to the surrounding lands and waters. Consequently, we respectfully submit that the Board recognize this through offering the same exemption from Tier 2 review requirements that are currently provided in the proposed rules by the same exemption available to other Nationwide Corps of Engineer Permits. To do otherwise, would put an unfair and unwarranted burden on this state, while West Virginia's neighbors are not saddled with this burden. The State of Kentucky simply does not apply antidegradation requirements in most of the coal producing regions of their state, while the state of Ohio has exempted stormwater and coal industry general NPDES permits from anti-degradation procedures (See Ch. 3745-1-05(D)(1)(i) and 3745-1-05(D)(1)(j) of Ohio's Administrative Code).

The Board's proposals also present great uncertainties as to how the rules could be practically implemented. For example, the current state of discharge modeling technology does not adequately address precipitation-induced scenarios. Most coal point sources discharge only as a result of significant storm events and are located in headwater areas where the critical flows (7Q10) are zero. Consequently, there simply is no way to accurately predict particular effluent concentrations, or waste load allocations in the context of the wide variety of geologic, topographic and meteorological conditions that exist in the coal fields. This fact presents insurmountable problems for WVDEP permit writers, as well as on the permit applicant. The best and only realistic way to meet the objectives of the antidegradation policy is to acknowledge the current level of regulatory and public scrutiny mentioned above, and continue to permit coal mining point sources with technology based, and in some cases water quality based effluent limits to maintain and protect existing stream uses.

Sec. 4C.2.a.1.A In the absence of a stormwater exemption, the Board can still meet the objectives of the anti-degradation policy by acknowledging laboratory testing limitations and natural variability in surface waters. That is, the proposed 5% trigger level in either ambient concentrations or assimilative capacities (whichever is most restrictive) is impractical because those values are nearly impossible to establish accurately. This is due to the limitations of testing methods and the fact that concentrations of many naturally occurring dissolved constituents (such as iron, manganese and aluminum) in surface waters naturally fluctuate beyond a 5% range. To scientifically determine ambient concentrations of "parameters of concern", with a high degree of confidence, especially in first and second order streams that flow intermittently is highly speculative at best.

The 5% trigger level as proposed will also result in unwarranted triggering of the socio-economic reviews that will unnecessarily impose expensive and time consuming permitting delays that will not achieve the objective of protecting existing water quality.
A much more practical approach, and one that has been approved by USEPA in neighboring states, is to set the trigger at 10% of assimilative capacity, which is more achievable and clearly meets the objectives of the policy.

Sec. 4.1.c - The proposed rule has a default definition of 2.5 Waters of Special Concern that does not allow any degradation. This default definition is overly broad and includes watersheds that encompass areas that provide significant opportunities for economic development and are important for the long-term economic future of the state. This default definition should be deleted, and instead provide for a nomination process that identifies those waters as provided in Sec. 4D.6 of the proposed rules. Furthermore, since circumstances can and do change over time, a clear "de-listing" procedure should be developed to recognize changes in priorities. The proposed "reclassification" language in Sec. 4D.6.c. is not explicit enough and should instead provide a more defined procedure to reclassify waters that reflect changing needs or new information.

Sec. 4A.1 - The Board's proposal to limit application of the anti-degradation review only to new or expanded discharges is appropriate and justified. By law and regulation, the Director of WV DEP already has authority to ensure the protection of water quality necessary to protect existing uses. Therefore, there is no justification to apply anti-degradation rules to existing facilities engaged in regulated activities with CWA permits. Enforcement mechanisms already exist.

Finally, the Board should recognize the implications of the proposed rules on owners of private property. As written, these rules can and are likely to be interpreted to prevent new economic development and the lawful recovery of natural resources. These lost opportunities, either through outright prohibition of discharges into or upstream of Tier 2.5 or 3 waters, or by rendering some proposed projects economically unachievable, will likely result in serious financial ramifications for the State's tax base.

Once again, thank you for the opportunity to comment on these proposed rules and we join with the Board to promote a balanced, equitable and scientifically achievable policy to protect West Virginia's waters.

Sincerely,

Laurene D. Emerson

Teresa Talley Charach
1510 Bedford Road
Charleston, WV 25314

July 31, 2000

Drs. Snyder and Tarter
Co-chairs
West Virginia
Environmental Board
Charleston, WV

Dear Dr. Snyder and Dr. Tarter:

I understand you are developing an Antidegradation Implementation Policy to keep rivers in West Virginia clean. I applaud your efforts and see your task as one of the most beneficial actions to be taken for our natural resources and for West Virginians, like myself.

I have Kayaked many rivers in West Virginia - The Cranberry, The Cherry, The Middle Fork (Cheat), The Upper New, and The Middle Gauley among them. It always saddens me to come upon a rapid called "Junk yard" in the Cherry River where cars are piled up in the river. This is a beautiful river with wildlife. The Upper New, one of my favorites, is bacteria laden from dumping and sanitation waste. It, too, houses deer, hawks, owls, and herons.

You are seeking public comment on anti-degradation implementation; therefore, I must tell you that my wish for the rivers of my state is that they remain clean and that more action is taken to restore them to their pristine state. I live here, remain here, for the natural beauty and especially the world class rivers that thousands of people visit West Virginia to enjoy each year. These rivers are a national treasure and cannot be replaced. We have butterflies and moths, minks, and birds that are still flourishing here and are nonexistent in nearby states.

Please consider my endorsement of the accompanying letter with my signature, and accept my faith in you both to continue the important ~~jobs~~ positions you are in and keep our island of beauty among more industrial areas intact.

Tara Tally Charach

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AUG 14 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law.

I request that you remove any and all exemptions from this policy. The purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations... for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

Sincerely,

Teresa Tally Chaney

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

COMMENTS OF WEST VIRGINIA FARM BUREAU TO

ENVIRONMENTAL QUALITY BOARD
REGARDING PROPOSED AMENDMENTS TO TITLE 46
LEGISLATIVE RULE GOVERNING WATER QUALITY STANDARDS

(ANTIDEGRADATION POLICY)

West Virginia Farm Bureau (WVFB) is a private West Virginia not for profit organization representing approximately 14,000 farm family members in this state. Forestry and farming are considered nonpoint activities in the realm of water quality programs. Those activities form the essence of WVFB membership. Agriculture enjoys the position of being the primary creator and preserver of our high quality streams Antidegradation is directed to protect and enhance. Agriculture in the past has certainly not been perfect, however as a whole our voluntary efforts combined with cooperative action with federal and state agencies toward cleaner water are continuing and improving, not declining.

The oral comments received by the Environmental Quality Board (EQB) at the public hearing in early August of 2000 must be put into perspective. The limited time given to each speaker allowed only for primarily negative comments. The new policy must be given due credit. The committee working to develop the policy must be commended and the EQB is likewise to be commended for adopting an Antidegradation policy in its rules. The new policy constituted in the existing policy with changes and amendments is laudable in purpose and much more clear and comprehensible than the old one.

With that basic premise in mind, WVFB offers constructive comments and suggestions from the standpoint of agriculture, the entity which should be credited with doing most to create and preserve our state's waters.

Because we participated in the Antidegradation process from the beginning, we are aware of most of the thoughts and suggestions to be made by the Chamber of Commerce and others of the regulated community. We support the majority of their comments and insights, including complementary statements. Difference may surface as the comment process proceeds. The EQB has a difficult role in balancing considerations of water quality and sound-rational, and reasonable growth, however, it is imperative that balance be accomplished. The General purpose section of the EQB rules Sec.46-1-1.1 recognizes the necessity of balance by citing WV Code Sec. 22-11-2. That provision of WV statutes indicates t to be public policy of the state to balance maintenance of water quality with (1) public health and public enjoyment; (2) propagation and protection of fish and animal life and (3) the *expansion of employment opportunities, maintenance and*

expansion of agriculture and the provision of a permanent foundation for healthy industrial development. The language renders the objectives equal in import.

The requirement for Antidegradation review for a new permittee or perhaps permit renewal on a Tier 2 stream will not be an exercise followed by automatic permit. In most cases under the restrictive policy as written either the application will not be made, or alternatively it will be denied. Applications will now receive newly focused attention and high profile publicity. That attention is beneficial, but the increased scruinty must be in a setting precluding as much irrational objection as is possible. Choice of language in the policy is consequently extremely important. The attached articles taken from the Clarksburg Telegram and Exponent are not isolated articles, but are representative of an existing pervasive problem. Feel assured it is appreciated and understood that serving on the Board is a most difficult task in the present setting.

We will rely on others to review the EPA comments on the new policy, but note quite readily that EPA is somewhat inconsistent with Region VIII and with other state Antidegradation policies EPA has itself approved.

1. The new policy makes agriculture best management practices (BMPs) mandatory to avoid application of the policy to agriculture. BMPs can be described as good farming practices having the effect of reducing agricultural input into streams. WVFB does not favor mandatory BMPs. There are various existing voluntary federal and state cost share programs which encourage use of voluntary BMPs. These expanding voluntary programs have been proven effective and are sufficient. New regulatory impositions are unneeded. We ask that the compulsory aspects to BMPs be removed from the new regulation.

2. Should mandatory BMPs remain part of the policy, the language in 46-1-4.1.b indicates authorities must assure BMPs are adequate to satisfy water quality standards or authorities shall cause the source (farm or forestry) to cease. Because of the diffuse imprecise nature and location of nonpoint activities, any attempt to label a particular activity as a direct cause of loss of water quality is technically, as well as practically, impossible for purposes of Antidegradation. Data is unavailable and will not be available under current federal and state budgets. To sensibly apply that requirement would mean that water samples would have to be taken at or near each nonpoint site. There are sufficient existing WV statutes relating to controls of water discharges when samples are site specific which subject the discharge to civil and/or criminal sanctions. We ask that (again, assuming mandatory BMPs are part of the Antidegradation policy) the language in 46-1.4.1.b tying BMPs to specific water standards be withdrawn, and language substituted calling for assurance that "cost-effective and reasonable best management practices for non-point source control" are in place.

3. WVFB monitored the committee deliberations and we believe the committee intent was to exempt nonpoint sources, including both forestry and agriculture, from Antidegradation with use of cost effective and reasonable best management practices as

per the language in 46-1-4A.2. The unstated reason is because of the diffuse and difficult to evaluate nature of nonpoint activities. Assuming BMPs remain mandatory, other language in the policy is contradictory and seem to indicate Antidegradation applies to nonpoint activities, notwithstanding use of BMPs. The rule Sec 46-1-4A.1 states that Antidegradation applies to "new and expanded regulated activities." A "regulated activity" is defined in Sec 46-1-2.21 to include "any activity subject to nonpoint source control requirements or regulations." If BMPs are mandatory nonpoint source controls, the document is inconsistent. It excludes nonpoint from Antidegradation and by other language renders nonpoint subject to the Antidegradation policy. We ask that the definition of regulated activities in Sec. 46-1-2.21 be changed to refer only to NPDES permitted or point source activities. As part of this clarification we suggest that the definition of nonpoint source be changed and defined as "any activity for which an NPDES or equivalent permit is necessary."

4. Section 46-1-4.1.b (which is incorporated by reference in the exemption language of 46-1-4A.2 and consequently has an effect on the entire document) purports to require the EQB and the chief of the Office of Water Resources (Department of Environmental Protection-DEP) to *assure* BMPs are sufficient to satisfy water quality standards. The EQB consists of five board members and a secretary and one person technical staff. It as no funds or manpower to go "out on the ground" to assure adequacy of BMPs or water quality. The new EQB Antidegradation rule further directs the DEP to work to revise deficient BMPs or cause "the nonpoint source pollution to cease." The provision in the rule for expansion of authority in the EQB as well as any EQB direction to the DEP regarding enforcement appears insupportable and may invade Legislative prerogatives. We suggest any EQB Antidegradation policy language purporting to give vague enforcement action to the EQB or the DEP be deleted. If BMPs are to be mandatory, WVFB strongly urges the EQB to suggest (direct?) their development and application be under the auspices of the State Department of Agriculture using federal Natural Resources and Conservation Service standards. That agency is most knowledgeable regarding agricultural practices and has more ready access to technical information for their development. As a precedent the Division of Forestry as the most qualified agency has developed BMPs for the forest industry.

5. The definition of regulated activities in Sec. 46-1-2.21 which are subject to the entire Antidegradation policy (if they have a potential to affect existing water quality under Sec.46-1-4A.1) includes "3) any activity which is otherwise subject to state requirements and regulations developed to protect water quality...." The broad language purports to include too great a spectrum of activities undertaken in the state. All activities of whatever nature inclusive of fishing, boating, swimming, driving, and so on are subject to regulations protective of water quality. We suggest the language in (3 be clarified and limited to NPDES permitted and forestry activities.

6. We suggest that the phrase in 46-1-4A.2 "in accordance with 46CSR 1-4.1.b" be removed as it intimates there are some nonpoint activities with BMPs that would be subject to the Antidegradation policy.

7. The policy as it regulates Tier 2.5 streams is unworkable because of the failure to have adequate criteria for selection. The present system designating 2.5 streams results in a massive number of streams statewide, many with stream quality undeserving of Tier 2.5 treatment. The Board publicly discussed that the present selection of streams for Tier 2.5 protection was somewhat irrational. Section 46-1-4D.6.b is an attempt to correct the problem with new streams, but does not accomplish the objective. The section uses the subject heading "Qualification Criteria," however the ensuing listing is not a "criteria" listing but a "factors" listing. There is a major difference in word definition between "criteria" and "factors." "Criteria" would include such things as a specified minimum water quality. The least complex way to deal with the Tier 2.5 issues is to eliminate Tier 2.5 protection as the identical object can be accomplished with an amended Tier 3 protection scheme. The Antidegradation policy would be more readily understood by the public and more easily administered by our state agencies accomplishing the same end result. WVFB suggests that, if Tier 2.5 is maintained, the selection of Tier 2.5 streams be done in a gradual stream by stream manner based on true criteria fitting of higher quality streams with affected citizen input before selection.

8. Tier 3 protection precludes under Section 46-1-4E any activity resulting in a permanent "new or *expanded point or nonpoint discharge*." Tier 3 private areas are agricultural grazing lands in many instances. The language ostensibly allows for prohibition of barn construction or adding livestock to an existing farming operation by objectors alleging expansion of a nonpoint discharge. The committee inserted a provision 46-1-4A.2 with the object that nonpoint be exempted from Antidegradation. We suggest that nonpoint activities be clearly stated to be exempted from Tier 3 so as to be in conformity and consistency with earlier exemption language in the new policy.

9. Wilderness streams exist in federal wilderness areas. The reach of Tier 3 federal wilderness extension in the policy is over approximately six thousand acres of private lands to the ridgetops of stream headwaters. It may work well in the Western States where extension is out over other federal lands, but that is not the case in West Virginia. The extension is akin to statewide zoning and a taking of a portion of private land value. WVFB has a listing of 20 of the affected landowners.

We ask that any Tier 3 protection, whether by nomination or extension, be limited to public lands. We ask that if Tier 3 protection is to cover nonpoint activities, that compensation be paid to landowners in all Tier 3 takings. Due process requires notice and hearing be afforded owners. Any extension should occur only after this Board has specifically heard from each owner losing land value. That opportunity is afforded in instances of new Tier 3 nominations and should be similarly a part of Tier 3 extensions.

10. The right is given in the policy for *any* person, whether residing inside or outside of the State of West Virginia, to nominate *any* stream for Tier 3 protection. The policy provides factors to consider when the Board makes a decision on a nomination, but significantly does not provide criteria against which to judge stream quality. Absent

specific minimum criteria for stream nomination, any person can nominate any stream with motives other than serious desire for Tier 3 stream protection. The factions which would nominate a Tier 3 stream have resources to pursue endless appeals unavailable to agriculture. The overwhelming majority of our members could not afford the costs of resisting a nomination. We suggest compensation to landowners whose land is taken, and costs and expenses be paid for the successfully resisting landowners. If a Tier 3 nomination process is to be left in the policy, we suggest a more carefully written procedure with due process protection and stream selection criteria.

11. Section 46-1-4D.2 is unclear in stating that degradation is to be determined upstream of the activity for nonpoint sources. If nonpoint is exempt, need there be a place to determine degradation or absence thereof?

12. WVFB believes the Board has changed the natural quality language of Sec. 46-1-7.2.c.4 from a more simple and workable provision providing in essence that "natural stream conditions provide applicable criteria," to something unnecessarily complex and restrictive. The section as now written is extremely difficult to understand and implement, including the requirement that legislative rule making applies. WVFB suggests modification and readoption of language in the nature of the readily understood prior language.

13. Total aluminum as a state standard has apparently been changed to measurement of dissolved aluminum, which is a harmful metal form, and due credit is extended to the Board. Total iron as a standard is still an issue as part of the triennial review of standards process. Neither the Board or staff has given official response to requests, supported by West Virginia University, for application of science and change regarding total iron. Silence and inaction fuel controversy, and generate unnecessary TMDLs with citizen cost and impact. We ask the Board to officially explain its reasons for supporting a total iron standard to assist with input of Board desired information.

14. A fiscal note has not been filed in conjunction with the proposed rule. Since additional duties are proposed for state agencies, there is a definite economic impact on state government, specific industries under discharge permits, political subdivisions, nonpoint industries, and upon citizens and the public at large resulting from increased costs to municipalities, and sewage and water treatment works to obtain and expand discharges. WVFB recommends that a fiscal note be prepared.

Thank you for opportunity to comment.

Steve Hannah 8/11/00

Steve Hannah
Executive Secretary
West Virginia Farm Bureau

THE EXPONENT VIEW

Declining population in W.Va. shows we're not out of the woods yet

Some recent population statistics from the Census Bureau indicate that while West Virginia's economy has improved in the 1990s, it is still a struggle. We seem to take two steps forward and one step back.

The census of 1990 showed the Mountain State with a population of 1.79 million people. Estimates for 1998 indicate the population at 1.81 million. That would seem to be good news, but the latest figure shows a drop from the peak population in 1995 of 1.85 million.

In recent years there have been more births than deaths in the state, but last year there were more deaths.

While the population in the Eastern Panhandle and Putnam County has grown, the rest of the state shows a decline. In all, 34 counties report a drop in population since 1995.

It should be no surprise that the largest drop has come in the southern coalfields. While the state has labored long and hard to switch to a more diversified economy, it is apparent that we're not there yet.

Dana Davis, interim director of the West Virginia Development Office, says the state has created 20,000 jobs in the last two years, so the year 2000 Census should show some improvement in population figures.

We hope that will be the case.

Still, with the rest of the country enjoying the fruits of an economy on fire, West Virginia is just starting to warm up. We're moving in the right direction, perhaps, but we still have a long way to go.

In

TODAY'S EDITORIAL

Exodus of youth from the state trend that must be reversed

West Virginia continues to lose our younger generation to other states. The number of West Virginians from the age of 18-24 decreased from 191,000 in 1995 to 173,000 in 2000, according to an estimate from the United States Census Bureau. It is expected that the number will decrease further to 141,000 by the year 2025.

A 1999 Shepherdstown Report on Rural Aging showed that West Virginia has the highest median age among the 50 states and the District of Columbia. This is a result of our younger generations leaving the state for better opportunities in the job market.

Most of the state's youth do not want to leave the state, but feel they have no choice when they compare the job opportunities that West Virginia offers to the opportunities that exist in other states. West Virginia must find a way to offer better opportunities to our youth so that they will continue to live in West Virginia.

West Virginia has seen many jobs eliminated in the manufacturing and natural resources sectors. The elimination of these jobs has hurt the number of well-paying job opportunities that exist in the state. West Virginia offers a quality place to live with a low crime rate, great outdoors and a quality workforce. We have invested heavily in our education system, but with the exodus of our youth, other states are reaping the benefits from that investment.

Providing quality job opportunities to our youth will be the challenge of the political officials of our state in the years to come. The exodus of our youth is a trend that we must reverse if West Virginia is to prosper in the future.

Steve Morris
Telegram Editorial Board member

Clarksburg Telegram March 19, 2000

Region's economy lags behind

Study by ARC shows that much of West Virginia is not enjoying the fruits of nation's prosperity

by James Fisher
©EXPONENT & TELEGRAM

Despite indications that the economy has improved, 53 of West Virginia's 55 counties remain at distressed or at-risk levels, according to a ongoing study by the Appalachian Regional Commission.

Only Jefferson County in the Eastern Panhandle and Putnam County in the Kanawha Valley are listed as competitive and none of the state's counties received the top rank by the ARC.

More alarming is the fact that seven area counties — Barbour, Braxton, Gilmer, Lewis, Randolph, Upshur Wetzel and Taylor — are listed as distressed while six more — Harrison, Tucker, Doddridge, Marion, Monongalia and Tyler — are listed at-risk.

■ See editorial/D4

The study indicates that while the rest of the country has enjoyed great prosperity, the Mountain State has lagged behind significantly in some areas, although some officials dispute the severity because the ARC numbers were based on statistics dating back to the 1990 census.

The categories of distressed and at-risk were developed by the ARC as a way to compare the economic situation in Appalachian counties with the rest of the country, said ARC senior economist Greg Bischak.

Typically, distressed counties have a much higher unemployment rate, lower per capita income and higher poverty levels than the national average, he said.

See DISTRESS, A6

funding is available through the ARC for the counties to develop economic growth projects, Bischak said.

Representatives from the 11 Planning and Development Councils in West Virginia are meeting in Washington, D.C. this week with officials from other Appalachian areas, as well as the Appalachian Regional Commission to discuss ways to better develop economic opportunities and help economically distressed and at-risk counties. Aside from the conference this week, ARC officials also are in the process of reviewing project proposals from Planning and Development councils that are designed to help counties improve their financial and economic situa-

percent

	8 percent or higher	$13,674 or less	19.7 percent or higher
Distressed area counties	Barbour — 12.8%	Barbour — $8,237	Barbour — 28.5%
	Braxton — 12.1%	Braxton — $10,147	Braxton — 25.8%
	Lewis — 10%	Lewis — $10,458	Lewis — 23.7%
	Randolph — 10.5%	Randolph — $11,242	Randolph — 21.9%
	Taylor — 9.3%	Taylor — $8,943	Taylor — 22.9%
	Upshur — 10.1%	Upshur — $10,354	Upshur — 21.2%
	Wetzel — 10%	Wetzel — $12,624	Wetzel — 20.5%
	Gilmer — 9%	Gilmer — $10,136	Gilmer — 33.5%
	6.6 to 8 percent	**$16,327 or less**	**16.4 to 19.6 percent**
At-Risk area counties	Doddridge — 7.4%	Doddridge — $10,107	Doddridge — 23%
	Marion — 9.7%	Marion — $12,994	Marion — 19%
	Monongalia — 4.7%	Monongalia — $16,044	Monongalia — 20.6%
	Harrison — 7.9%	Harrison — $14,691	Harrison — 17.4%
	Tucker — 12.1%	Tucker — $10,312	Tucker — 17%
	Tyler — 7.5%	Tyler — $10,148	Tyler — 18.3%

we were just so far behind to begin with that we're just now beginning to see the bright lights," he said.

While infrastructure is the most significant aspect of economic growth, Goolsby, Hall and Wagner were each able to point to specific advances in the state as an indication that the situation may be improving.

Growth around the Benedum Airport in Harrison County, the High Tech Consortium in Marion County, a new regional jail in Doddridge County and a new federal prison in Gilmer County are just a few of the projects completed or in the works that should add to favorable economic indicators, Goolsby said.

Expected completions of Corridor D in Parkersburg and Corridor H to the Virginia

CLARKSBURG Exponent TELEGRAM

ARC Economic Indicators

Category	1995-97 average unemployment	1996 per capita market income	1990 poverty rate
U.S.	5.3 percent	$20,409	13.1 percent
Appalachia	5.7 percent	$15,970	15.2 percent
Distressed area counties	**8 percent or higher**	**$13,674 or less**	**19.7 percent or higher**
	Barbour — 12.8%	Barbour — $8,237	Barbour — 28.5%
	Braxton — 12.1%	Braxton — $10,147	Braxton — 25.8%
	Lewis — 10%	Lewis — $10,458	Lewis — 23.7%
	Randolph — 10.5%	Randolph — $11,242	Randolph — 21.9%
	Taylor — 9.3%	Taylor — $8,943	Taylor — 22.9%
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	Gilmer — 9%	Gilmer — $10,136	Gilmer — 33.5%
At-Risk area counties	**6.6 to 8 percent**	**$16,327 or less**	**16.4 to 19.6 percent**
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	Monongalia — 4.7%	Monongalia — $16,044	Monongalia — 20.6%
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	Tucker — 12.1%	Tucker — $10,312	Tucker — 17%
	Tyler — 7.5%	Tyler — $10,148	Tyler — 18.3%

Note: per capita market income refers to actual income earned, and does not count sources such as Social Security benefits, welfare or other public assistance and unemployment benefits. All figures supplied by the Appalachian Regional Commission and were obtained from the U.S. Department of Labor, U.S. Department of Commerce and U.S. Census Bureau. The figures were compiled by the ARC in December 1998.

Staff graphic by J.G. Miller

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AUG 10 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

DIVISION OF NATURAL RESOURCES
Wildlife Resources Section
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1900 Kanawha Boulevard, East
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Cecil H. Underwood
Governor

John B. Rader
Director

August 7, 2000

Dr. Ed Snyder, Chairman
WV Environmental Quality Board
1615 Washington Street East
Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder:

The Division of Natural Resources Wildlife Resources Section (WRS) appreciates the opportunity to review and comment on the proposed changes to the Water Quality Standards Rule. This proposal represents a major undertaking and the Environmental Quality Board is to be commended.

In general, the proposal is justified and appropriate and should result in better protection of and enhancement in water quality and aquatic habitats in West Virginia waters. In a few instances, the proposal raise some questions and/or concerns. Following are specific comments on the proposal.

1. Page 3 §46-1-2.20 - The restriction that less-degrading or non-degrading pollution control alternatives are considered reasonable only if the cost is less than 110 percent of the pollution control measure associated with the proposed activity establishes too low of a standard. Factors other than just additional cost must be considered. This would include such factors as type of pollutant involved, existing water quality, downstream uses and the difference in the level of pollutant discharged by the two treatment systems.

2. Page 3 §46-1-2.22 - How is it determined which species are "representative important species of aquatic life,"? Is this determination made on a site to site evaluation or is there a list of these species?

3. Page 6 §46-1-4.1.b - To allow degradation of water quality in high quality waters is counter productive and should be permitted only if the economic and/or social benefits are far greater than the danger posed to public health and the aquatic community.

4. Page 6 §46-1-4.1.b. - WRS strongly support the requirement that the Director must insure that BMPs are sufficient to satisfy the requirements of the Water Quality Standards or he must revise the BMPs to assure compliance.

5. Page 6 §46-1-14.1.b.2.C. - Includes streams or stream segments which receive annual stockings of trout but which do not support year round trout populations as Tier 2 waters and
§46-1-4.1.C.2. - Includes all naturally reproducing trout streams as Tier 2.5 waters.

WRS concerns are what classification is given waters that support year round trout populations through fingerling trout stockings or year round survival of stocked adult trout. Such waters have the same water quality and temperature requirements as streams with naturally reproducing trout populations. This category of waters is not included in the definition of either Tier 2 or Tier 2.5 waters. They are covered under the definition of Trout Waters (page 4 - §46-1-2.27).

6. Page 16 §46-1-7.2.C.4. - A definition should be devised for "natural conditions". Few waters can be considered "natural" due to the impact man has had on the environment. If a stream was impacted by man's activities in the early 1900's and the effects of these activities continue to degrade the stream, the condition can not be described as "natural".

7. Page 17 §46-1-7.2.C.5. - The condition of Blackwater River above the mouth of Yellow Creek to a point 5.1 miles upstream can not be considered a "natural condition". While the naturally occurring organic constituents characteristic of blackwater systems do have lower oxygen concentrations, the oxygen concentrations in Blackwater River would be significantly higher were it not for the loss of streamside shade, water withdrawals, increased organic compounds and increases siltation, all of which relate to man's activities. Because of these factors, the low oxygen concentrations should not be considered a "natural condition".

8. Page 18 §46-1-7.2.d.9. -WRS strongly supports the reclassification of Blackwater River downstream of Davis as trout water (B2). All available data supports this reclassification and the Board is to be commended for this decision.

9. Page 28 - West Fork - Greenbrier River - The tannery impoundment is on the East Fork of the Greenbrier River - Both the East and West Forks should be listed.

10. Page 64 - §46-1-4A.1 -WRS objects to the limit of applicability to "new and expanded" regulated facilities. Since the policy of the State of West Virginia, as cited in §46-1-4.1. is that the waters of the state shall be maintained and protected, the regulation should apply to all regulated facilities, thereby providing maximum protection to wildlife resources.

11. Page 64 - §46-1-4A.2 - TheWRS has concerns about current agricultural exemptions regarding non-point source discharges and how they will be considered under the antidegradation policy. This section should be reworded to address the applicability of antidegradation regulations to all non-point sources. It is recommended that non-point source compliance be evaluated on its effectiveness related to physical, chemical and biological parameters assigned to the receiving waters rather than solely upon the implementation of Best Management Procedures (BMP) which were written in 1988 and have not had a final review or been amended since that time.

12. Page 65 §46-1-4B.4. - The definition of trading given in §46-1-2.25. includes the provision that trading must result in improved water quality at the new or increased downstream discharge. The wording in line 3: "sufficient to offset the water quality effects of the proposed activity" is objectionable because it does not provide for improvement. Unless overall water quality improvements can be anticipated from the new source discharge trading should not be authorized.

13. Page 66 §46-1-4C.2.a.2. - Exemptions to the review process are difficult to establish that do not provide loop holes and/or raise significant public concern. The best, safest method to handle this situation is to do a case by case review so that the public is fully aware of the situation and the appropriate state and federal agencies have the opportunity of review.

14. Page 56 §46-1-4C.2.a.2.I. - Nationwide Permit 26 is being considered for revocation by the Corps of Engineers for future nationwide permit authorization. In general, activities covered under any nationwide permit should not be excluded from the antidegradation policy. The application of nationwide permits is often controversial and the use of nationwide permits could easily result in significant stream degradation primarily because water quality certification conditions associated with nationwide permits are very difficult to enforce.

15. Page 69 §46-1-46.6-4C.8.- It is generally agreed that social and/or economic benefits of an activity should be part of the equation used to evaluate proposals that will result in water quality degradation. However, the decision to degrade water quality must be considered a major action and must not be done unless the social and/or economic benefits far exceed the environmental and biological losses.

16. Page 69 §46-1-4C.6-4C.8. - Option 1 would allow the decision to be made by the Director of DEP with input from inter-governmental agencies. Option 2 differs from Option 1 by establishing an inter-governmental coordination panel which would provide recommendations to the Director. Both options provide for the Director to make the decision on the relevance of economic and/or social considerations. Since recommendations to the Director from either the inter-governmental agencies or the proposed inter-governmental coordination panel would not be binding, it would seem that the most efficient approach, strictly from a time standpoint, would be Option 1.

17. Page 78 §46-1-4E.3.a.5. - As defined in the subject regulations at §46-1-2.6, "cumulative effects" relates only to bioaccumulation in aquatic species. WRS thinks of cumulative effects in a larger scope which could include habitat degradation, impacts on spawning or feeding behavior, etc. The language in this section or the definition of cumulative should be broadened to include a comprehensive sense of cumulative impacts.

18. Page 1 Appendix F - WRS is in general agreement with EPA's comments on the proposed antidegradation implementation procedures. Of particular concern to WRS is the proposed "grandfathering" of existing sources from antidegradation review and the exemption to Tier 2 antidegradation review when there are possible sources of stream degradation.

19. Page 5 - Appendix F - §46-1-4C.a.2.c. -WRS believe that this exemption is acceptable since it clearly states that pH levels greater than 9.0 are exempt only if they will improve water quality. The EPA statement that any pH discharge different from that of the receiving stream could cause degradation is adequately addressed by the very limited situation the Board allowed. Given the number of streams significantly impacted by acid mine drainage, the discharge of pH levels above 9 into these waters should be encouraged rather than discouraged by the need for an often extended review.

The benefits derived from such discharges were clearly demonstrated by VEPCO at Mount Storm Lake. Such a discharge restored the lake fishery which was lost during the 2 years it took to get EPA approval of the variance.

20. Page 6 - Appendix F - §46-1-4C.2.a.2.K. - There should be some quick procedure for the Director to allow very short term discharges in emergency situations. The requirement for such discharge approval should be very strict, very limited and deal primarily with direct threats to human health and safety. Economic emergencies should not be considered.

21. Page 17 - Appendix F - §46-1-4E. - WRS agrees with EPA that maximum protection should be provided Tier 3 waters and that proposed activities that would not lower water quality could be allowed. The goal is to protect water quality not prohibit any activity in the watershed.

In addition to comments provided on the proposed rule changes, WRS would like to comment on the apparent movement by industry and some private individuals to have the Environmental Quality Board eliminate or suspend the iron criteria.

WRS supports the current iron criteria for West Virginia waters. In the early 1970's WRS conducted numerous bio-assay tests that clearly showed that at lower pH levels even relatively low concentrations of iron caused more trout mortality than occurred at the same pH levels in the absence

of the metal. Given the large number of West Virginia water impacted by low pH resulting from both acid precipitation and acid mine drainage, the iron criteria is prudent. This standard is made even more important in light of evidence that acid precipitation continues to cause a declining pH in many of our sterile watersheds.

While the concentration of iron in solution may be a better measure of the chemical potential to damage aquatic populations than total iron, total iron concentration is also important. Iron particles not in solution tend to incorporate into the streambed material filling the inter-gravel spaces. This results in reduced fish reproduction and aquatic insect populations.

Another factor that must be considered is iron discoloration of streams and their associated streambed material. This discoloration reduces stream aesthetics which has a direct adverse impact on recreational use and its associated social and economic benefits.

As previously stated, WRS supports continuation of the iron criteria. As a compromise, the criteria could be established to take into consideration the background level of iron present in a particular watershed. This would also allow the iron standard to be somewhat higher for water like the Little Kanawha that apparently has a higher background of iron concentration than some other waters. The iron criteria should not be increased if the higher iron concentration resulted from man's past activities in the watershed.

Thank you for the opportunity to review these proposed rule changes.

Sincerely,

Bernard J. Dowler

Bernard Dowler, Chief
Wildlife Resources Section

West Virginia Rivers Coalition•West Virginia Highlands Conservancy•West Virginia Council Trout Unlimited•West Virginia B.A.S.S. Federation•Ohio Valley Environmental Coalition•Potomac Headwaters Resource Alliance•Raymond Proffitt Foundation•Student Environmental Network•Mountaineer Chapter Trout Unlimited•Concerned Citizens Coalition•Blue Heron Environmental Network• Coal River Mountain Watch•Green Club of West Virginia Wesleyan College• Shavers Fork Coalition•Friends of the Cacapon River

August 11, 2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter:

As concerned citizens of West Virginia, who utilize our state's waters for drinking, swimming, fishing, boating and other recreational uses; and as members of the West Virginians for Clean Water Campaign, we urge you to consider the following comments as you finalize the development of an antidegradation implementation policy for our waters. These comments cover both the July 3, 2000 draft Environmental Quality Board (EQB) document and the June 29, 2000 Environmental Protection Agency (EPA) - Region III letter of comment on the document.

Process Issues

Changes were made to prior draft implementation documents via input from a stakeholder committee convened in 1999. It was our understanding that the mission of the stakeholder committee was to submit consensus comments to the board using a prior EQB draft as a template for those discussions. Instead, a draft industry document was used for many stakeholder discussions and thus the industry document was allowed to drive the stakeholder process. While the stakeholder document finally submitted to the Board shows areas of consensus, it also shows the vote tallies in areas where consensus was not achieved. We believe this undermines the nature of the consensus process and gives additional weight to the collective votes of dischargers. This flawed process has led to a draft antidegradation implementation plan that is inconsistent with federal regulations and West Virginia's own antidegradation policy. The policy clearly does not serve the best interests of the citizens of West Virginia or adequately protect the waters of the state.

Specific comments:

4A.1 Applicability to only new and expanded regulated activities is counter to federal regulations that state "the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources". This

portion of the policy is also counter to West Virginia's own antidegradation policy at 46-1-4.1.b.

Grandfathering gives existing dischargers a clear and permanent advantage over new activities - forever. It rewards existing activities that may not be in the public interest or capable of passing an antidegradation review. Grandfathering penalizes new and environmentally cleaner industries and places them at a competitive disadvantage relative to existing dischargers.

We urge the Board to change the language of the first sentence in the opening paragraph at 4A.1 to read: "The antidegradation implementation procedures herein apply to all activities."

4A.2. New language added to the antidegradation policy at 4.1.b makes clear that it applies to all waters. This language could be re-located to clear up any ambiguity in this regard.

Additionally, we would like to respond to the August 3, 2000 comments submitted by the West Virginia Forestry Association. We would like to remind the Board that the stakeholder group thoroughly discussed this issue, agreeing that the water quality standards were meant to apply to all waters on a waterbody by waterbody approach. Just recently, our stakeholder representative, Joe Lovett, received an email request to make a slight change in this language. The July 28, 2000 email request from the West Virginia Forestry Association said they had no problems with the substance but "we could ask that it be changed more as a clerical that substantive 'fix'". (See Attachment #2). Now the WV Forestry Association request is asking to get rid of the language entirely.

There was no dissent within the stakeholders group regarding this issue when it was meeting. And there was no dissent when the stakeholders meet with the Board as you discussed the policy. The stakeholder group voted unanimously on this issue without any controversy. We believe the language should remain as is.

4A.3. We concur with EPA's letter of June 29, 2000 on this section.

4B.1.a. The phrase "physical problems such as substrate or flow that prevent the use from being attained" should be eliminated. The Clean Water Act (CWA) provides for a Use Attainment Analysis (UAA) to determine whether or not an existing use may be achieved. It is inappropriate to use the antidegradation implementation policy as a substitute for a UAA.

4B.1.c. Please see comments above.

4B.2.a. We agree with EPA in that an antidegradation policy should serve to protect existing uses and **existing water quality** (emphasis added) not merely water quality standards.

4B.2.b. We concur with EPA's letter of June 29, 2000 on this section.

4B.2.c. We concur with EPA's letter of June 29, 2000 on this section.

4B.4. Some members of our campaign have strong reservations about trading. But since trading is likely to go forward, we offer the following comments:

We strongly object to EPA's letter of June 29, 2000 changing EQB language "shall ensure that improvement in water quality occurs" to "a lowering of water quality does not occur".

Discharging into the waters of the state is a privilege given to dischargers by the public. Trading is an additional privilege that requires the public to accept some risk that the trade will be implemented as planned. By accepting this risk the public is owed reassurances that the trade be designed to lead to an improvement in water quality. The public also deserves every possible legitimate safeguard for the trade to be carried out in a reliable and straightforward manner.

We believe the trading language is weak and riddled with loopholes that are counter to the intent of 40 CFR §131.12(a)(2). The following points must be included in future trading language:
1) the trade must be for the same form of the parameter;
2) a trade must have a trading offset of 2:1;
3) all trades must be enforceable and must be clearly defined in the permits of involved point source dischargers – those dischargers being liable for the required improvements in water quality;
4) entities involved in trades must have good compliance records and be free of CWA violations;
5) trades should be limited only to requirements that are over and above effluent limits that are already required for dischargers of a type – we must continue to embrace the CWA goal of reducing, not merely trading, discharges to the waters of the state;
6) trades must avoid all "hot spots" and never degrade water quality in any trading segment;
7) if unforeseen "hot spots" do occur the trade should be revisited prior to permit renewal;
8) offset controls should be instituted and put in place prior to any increase in discharge;
9) at no point should trades involve different types of pollutants;
10) trades must occur within the same 8-digit Hydrologic Unit Code;

11) trades involving toxics must be prohibited;
12) trades should involve EPA oversight; and,
13) water quality monitoring sufficient to fully document water quality in the trade stream segments should be required at the expense of the trading partners.

4C.1. through 4C.2.a.1.5. 2. The draft procedures provide that there will not be any Tier 2 review unless the proposed activities degrade the ambient concentration by more than 5% or reduce the assimilative capacity by more than 5%.

This provision effectively exempts from review repeated 5% degradations of water quality. This clearly violates the main purpose of the CWA, which is to reduce and eventually eliminate the discharge of pollutants. 33 U.S.C. §1251(a). Proper implementation of an antidegradation policy is the key to achieving this purpose. These deminimus values should be removed from the policy.

The clear language of the current state antidegradation policy and the current federal antidegradation policy requires the elimination and reduction of pollution wherever possible, not the determination maximum allowable degradation.

Furthermore, there is no scientific basis for the idea that allowing repeated 5% degradations will not impair the existing uses of water. Indeed, as written, the regulation could allow increasing impacts, without any review. For example, if the existing ambient concentration is 100mg/l, the first 5% permitted could increase the ambient concentration to 105mg/l. Then the second 5% permitted would be 5.25mg/l (5% of 105mg/l). The third 5% permitted would be an increase of 5.51mg/l. (5% of 110.25mg/l). And so on ad infinitum. No mater how impaired the water quality becomes, it can always be further degraded, as long as the amount of degradation is "only" an additional 5% of the more restrictive of ambient concentration or assimilative capacity.

Clearly, this deminimus language effectively prevents the implementation policy from addressing cumulative impacts. That is, the cumulative impacts of repeated 5% degradations do not trigger any antidegradation review. The process is driven by individual discharges. If impacts fall below the 5% criteria, but have a cumulative impact of greater than 5%, they can still go forward without any antidegradation review.

We urge the Board to adopt the following language for the first sentence at 4C.2.a.1.A.: "Any proposed activity, including any indirect or cumulative effects of related activities that would degrade the stream at critical flow conditions shall be required to comply with all requirements of Tier 2."

4C.2.a.2. The draft Antidegradation Implementation Procedures contain 14 exemptions. According to the draft, each exemption "shall not be subject to further Tier 2 review requirements". Thus, each of the 14 exemptions is automatically and categorically excluded from antidegradation review.

There is no scientific basis for excluding certain parameters or activities from the requirements of an antidegradation implementation policy. Furthermore, the Federal regulations allow degradation only after all the requirements of a Tier 2 review have been met. 40 CFR §131.12(a)(2) Any attempt to create an automatic waiver is not minimally consistent with the Federal requirements.

4C.3. This section is flawed because it is based on a flawed deminimus concept.

4C.4. We concur with EPA's letter of June 29, 2000 on this section.

4C.5.a. We concur with EPA's letter of June 29, 2000 on this section but will have additional comment in the definition section of the document.

4C.6. through 4C.7 Option 1 and Option 2. In 4C.6.d we support the language in past documents that has been eliminated in this draft i.e. we support the inclusion of "and the proposed activity shall not be allowed." In terms of the Board's proposed options one and two, we have the following comments:

The Federal rule requires, as part of a Tier 2 review, that there be "full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process". 40 CFR §131.12(a)(2). This provision is practically meaningless as applied to West Virginia, which has not revisited the continuing planning process for 30 years.

The draft Antidegradation Implementation Procedures contain two Options regarding intergovernmental coordination and public participation. §§ 4C.6 - 4C.8, Options 1 and 2. Both Options only require public notice that a proposed activity has been determined to comply with the antidegradation rule. There is no requirement that a period of time be allowed for public comments. Indeed there is no requirement that public comments are to be considered before a final action is taken. Further, there is no provision allowing the public to ask for a hearing. Interestingly, these omissions of a basic public participation process are in violation of West Virginia's own Antidegradation Policy, which requires "opportunity for public comment and hearing". 46 CSR § 1-4.1.b.

Also, the intergovernmental coordination process is unclear in its ability to function appropriately and to meet the Clean Water Act requirement to fully protect existing uses.

Thus far, it is simply a list of the agencies which will be notified (Option 1) or convened in a panel (Option 2). There must be far more guidance on how this will work. That is, what is the protocol for decision making and what are the specific obligations of the state and federal agencies involved? Both Option 1 and Option 2 are seriously flawed. We suggest that a decision-making matrix be worked out by the agencies involved so that these questions are adequately answered and support the intent of the law.

4C.8/(?). We concur with EPA's letter of June 29, 2000 on this section.

4D.4. See comments for 4B.4, however, we believe trading is inappropriate in Tier 2.5 waters.

4D.5. We support the removal of the sentence that says "Activities which result in less than a 5% change may be deemed to have limited effects." Some parameters would be significant even if they were temporary and/or less than 5% change. For example, parameters that concentrate in sediment or bioaccumulate. Also in this section there is no time restriction on what is deemed "short term". We believe short term should be defined as one month or less.

We strongly support the EPA statement that many waters of the state are of special value or importance and should be afforded the special protection provided under Tier 2.5.

4E. This section refers to the description of Tier 3 waters from the main body of the WV Water Quality Standards at 4.1.d. We strongly believe West Virginia's definition of Tier 3 waters is contrary to federal regulations. Federal regulations at 40 CFR 131.12 describe Tier 3 as including high quality waters which meet one or more other factors. These factors include "waters of National and State parks and wildlife refuges." The current West Virginia definition of Tier 3 does not specifically allow for inclusion of these waters. The board should redefine Tier 3 waters to be consistent with federal regulations.

We support the EQB approach of prohibiting permanent new or expanded point or nonpoint discharge of pollutants to any waterbody segment that has been designated as an Outstanding National Resource Water.

4E.3. We concur with EQB's language in this section.

4E.4.b. We concur with EPA's letter of June 29, 2000 on this section.

Comments referring to the definition section of the document.

Reasonable less-degrading or non-degrading alternatives: The EQB draft defines "reasonable alternatives" to be less than 110% of the cost of pollution control measures associated with the proposed activity. There may be a case where an alternative that costs 111% of the cost of pollution control is not only reasonable but desirable. Such a possibility should not be prohibited in advance. The current proposal is too inflexible and is minimally demanding on dischargers. The EQB should use a guide of 130% of the cost of pollution control measures but the Director should also be allowed some discretion to go above that figure relative to the environmental improvements that would be gained.

There may be instances where a 25% increase in control measure expenditures is very nearly as effective as 30% and likewise the difference between 30% and 35% may be a remarkable improvement in water quality. The rigid % parameter also tends to reward those who have historically spent the least for environmental controls. This would in effect reward some dischargers who have circumvented environmental expenditures and/or been chronic enforcement problems in the past.

The future well being of West Virginia's waterways and environment, its people and economy, rests with the important work of establishing appropriate policies that adhere with federal standards. Please do your utmost to uphold the Clean Water Act and protect the waters that are so precious and vital to West Virginia's future.

Sincerely,

Pamela C. Moe-Merritt
West Virginia Rivers Coalition

Dr. Margaret Janes
Potomac Headwaters Resource Alliance

Frank Young
West Virginia Highlands Conservancy

James Summers
West Virginia B.A.S.S. Federation

Ed Crum
West Virginia Council Trout Unlimited

Donald S. Garvin, Jr.
Mountaineer Chapter Trout Unlimited

Dianne Bady /pmm

Dianne Bady
Ohio Valley Environmental Coalition

Joe Turner /pmm

Joe Turner
Raymond Proffitt Foundation

Sherry Evasic /pmm

Sherry Evasic
Blue Heron Environmental Network

Ruth Blackwell Rogers /pmm

Ruth Blackwell Rogers
Shavers Fork Coalition

Abby Chapple /pmm

Abby Chapple
Friends of the Cacapon River

Trenton Harper /pmm

Trenton Harper
Student Environmental Network

Vivian Stockman /pmm

Vivian Stockman
Concerned Citizens Coalition

Judy Bond /pmm

Judy Bond
Coal River Mountain Watch

Dr. Jeff Simmons /pmm

Dr. Jeff Simmons
Green Club/West Virginia Wesleyan College

cc:

Bradley Campbell, Regional Director, US EPA Region III
Carol M. Browner, Administrator, US EPA
George T. Frampton, Jr., Acting Chair, Council on Environmental Quality
J. Charles Fox, Assistant Administrator, Office of Water, US EPA
Joan Mulhern, Senior Legislative Council, Earthjustice Legal Defense Fund
Leon Szeptyski, Eastern Conservation Director, Trout Unlimited
Ed Hopkins, Senior Washington Representative, Sierra Club
Courtney Cuff, Legislative Director, Friends of the Earth
Daniel Rosenberg, Staff Attorney, Natural Resources Defense Council
Thomas R. Michael, Esq., Michael & Kupec
Joseph Lovett, Esq., Mountain State Justice

Attachment #1

----- Original Message -----
From: Joe Lovett <jlovett@citynet.net>
To: Bruce B. Brenneman <BBBRENN@westvaco.com>
Sent: Tuesday, July 25, 2000 11:40 AM
Subject: Re: BMP Wording in 46-1-4.1.b

Bruce,

Although I like the current language better than the language that you propose, I woud reluctantly agree to your change if the comment also contains a promise to support the new language throughout the process, including supporting the rule when it is before the legislature. Joe

----- Original Message -----
From: Bruce B. Brenneman <BBBRENN@westvaco.com>
To: <JLGreen@aol.com>; <jmbrown@ape.com>; <jlovett@citynet.net>; <Daniel_Ramsey@fws.gov>; <rsovic@mail.dep.state.wv.us>; <gibbins@marshall.edu>; <tbrandjr@yahoo.com>
Cc: <chatfe@mail.wvnet.edu>
Sent: Wednesday, July 19, 2000 5:06 PM
Subject: BMP Wording in 46-1-4.1.b

On August 26, 1999, after discussion of the nonpoint source statement in 4.A.2 of Appendix F, we further agreed to amend 4.1.b. of 46CSR-1-4 to add "The Director shall assure that BMPs are sufficient to satisfy the requirements of the Water Quality Standards. If BMPs are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards, or shall require the activity causing the nonpoint source pollution to cease."

I think Joe proposed this language, and we all agreed. My understanding was that the Director would first try to have the BMP fixed, and if this failed, the activity would then cease.

Some in the nonpoint source community think that this could be interpreted to mean that the Director could initially decide whether to either fix the BMP or cause the activity to cease (without first trying to fix it.). These folks would like the language to be clarified.

I propose that we change the statement to read, "the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with the standards, and if this action fails to correct the violation, shall require the activity causing the nonpoint source pollution to cease".

I hope that we can all agree to the change, and allow it to be presented as a consensus agreement during the public comment period. If we are not able to do so, the nonpoint source spokespersons may request deletion of "or shall require the activity causing the nonpoint source pollution to cease".

May I have consent for the proposed change from each of you?

Attachment #2

----- Original Message -----
From: Roger L. Sherman <RLSHERM@westvaco.com>
To: <jlovett@citynet.net>; Bruce B. Brenneman <BBBRENN@westvaco.com>
Sent: Friday, July 28, 2000 11:23 AM
Subject: Re: BMP Wording in 46-1-4.1.b

Joe, thanks for your response to Bruce. I was the one who brought this matter up. I felt that it was simply a drafting issue in that the language left open an interpretation that did not represent my understanding of the intent of the group. It was my hope that if everyone agreed with that understanding we could ask that it be changed more as a clerical than substantive "fix". I'm surprised but I certainly don't expect you to agree to such a change if you feel it was the intent of the group to give the director authority to leapfrog the existing BMP process and immediately shut down an activity. I genuinely felt that the process would benefit if everyone agreed. I'm not sure what you are asking in exchange for your agreement but I wasn't trying to coerce anyone to change an agreed position - I apologize if that appeared to be our intent. Again, thanks for responding.

FROM

PAM MOE-MERRITT
CONSERVATION PROGRAM DIRECTOR

WEST VIRGINIA
RIVERS COALITION

HEADQUARTERS
801 N. Randolph
Elkins WV 26241
Phone: 304.637.7201
Fax: 304.637.4084

SHAVERS FORK OUTPOST
ROUTE 1, BOX 29B
KERENS, WV 26276
(304) 478-4922
PHONE [redacted]

TO

EQB
304.558.4116

SENT BY Pam

ATTENTION: Libby Chatfield

NO. PAGES (INCLUDING COVER)

MESSAGE:

Libby + Melissa — 3 pages total 8-15-00

Could you please replace pages one ~~and~~ and eight of our comments with these two pages? I forgot to list one of our sign-ons - Americorps Whitewater. Thanks! Pam

West Virginia Rivers Coalition•West Virginia Highlands Conservancy•West Virginia Council Trout Unlimited•West Virginia B.A.S.S. Federation•Ohio Valley Environmental Coalition•Potomac Headwaters Resource Alliance•Raymond Proffitt Foundation•Student Environmental Network•Mountaineer Chapter Trout Unlimited•Concerned Citizens Coalition•Blue Heron Environmental Network •Coal River Mountain Watch•Green Club of West Virginia Wesleyan College •Shavers Fork Coalition•Friends of the Cacapon River•American Whitewater

August 11, 2000

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter:

As concerned citizens of West Virginia, who utilize our state's waters for drinking, swimming, fishing, boating and other recreational uses; and as members of the West Virginians for Clean Water Campaign, we urge you to consider the following comments as you finalize the development of an antidegradation implementation policy for our waters. These comments cover both the July 3, 2000 draft Environmental Quality Board (EQB) document and the June 29, 2000 Environmental Protection Agency (EPA) - Region III letter of comment on the document.

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Changes were made to prior draft implementation documents via input from a stakeholder committee convened in 1999. It was our understanding that the mission of the stakeholder committee was to submit consensus comments to the board using a prior EQB draft as a template for those discussions. Instead, a draft industry document was used for many stakeholder discussions and thus the industry document was allowed to drive the stakeholder process. While the stakeholder document finally submitted to the Board shows areas of consensus, it also shows the vote tallies in areas where consensus was not achieved. We believe this undermines the nature of the consensus process and gives additional weight to the collective votes of dischargers. This flawed process has led to a draft antidegradation implementation plan that is inconsistent with federal regulations and West Virginia's own antidegradation policy. The policy clearly does not serve the best interests of the citizens of West Virginia or adequately protect the waters of the state.

Specific comments:

4A.1 Applicability to only new and expanded regulated activities is counter to federal regulations that state "the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources". This

Dianne Bady
Ohio Valley Environmental Coalition

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John Gangemi
American Whitewater

cc:

Bradley Campbell, Regional Director, US EPA Region III
Carol M. Browner, Administrator, US EPA
George T. Frampton, Jr., Acting Chair, Council on Environmental Quality
J. Charles Fox, Assistant Administrator, Office of Water, US EPA
Joan Mulhern, Senior Legislative Council, Earthjustice Legal Defense Fund
Leon Szeptyski, Eastern Conservation Director, Trout Unlimited
Ed Hopkins, Senior Washington Representative, Sierra Club
Courtney Cuff, Legislative Director, Friends of the Earth
Daniel Rosenberg, Staff Attorney, Natural Resources Defense Council
Thomas R. Michael, Esq., Michael & Kupec
Joseph Lovett, Esq., Mountain State Justice

Proj 9

United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
Post Office Box 1278
Elkins, West Virginia 26241

January 22, 1998

RECEIVED
AUG 11 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Ms. Libby Chatfield
West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, West Virginia 25311-2126

Dear Ms. Chatfield:

The U.S. Fish and Wildlife Service received the West Virginia Environmental Quality Board notice regarding the January 28, 1998, inter-agency committee meeting to review the use of dissolved metals concentrations for the application of metals aquatic life criteria in the Water Quality Standards rule (46 CSR 1). Service representatives will be unable to attend that particular meeting. However, we offer these initial comments, pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. et seq.). We respectively request an opportunity to attend any future meeting that may be held to discuss this issue.

Those who favor adoption of dissolved metal criteria, generally argue that 1) use of total metal criteria are too conservative, 2) adoption of dissolved criteria will not compromise environmental protection, and 3) use of total recoverable metal criteria is not scientifically and technically supportable. We believe that water quality criteria should be scientifically and technically supportable, but that environmental protection should take precedence over discharger relief. To that end, a complete understanding of the uncertainties and ecological risks is needed before any assumptions or safeguards are labeled as over-conservative.

The rationale for adoption of dissolved metal criteria is from an October 1, 1993 memo from the U.S. Environmental Protection Agency (EPA), Acting Assistant Administrator for Water, Martha G. Prothro, to the EPA Regional Water Management Division Directors. In the memo, EPA recommended the use of dissolved criteria, but did not make the recommendation without some qualifications. Ms. Prothro stated:

> [t]he ambient water quality criteria are neither designed nor intended to protect sediments, or to prevent effects due to food webs containing sediment dwelling organisms. A risk manager, however, may consider sediments and food chain effects and may decide to take a conservative approach for metals, considering

> that metals are very persistent chemicals...Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. However, since consideration of sediment impacts is not incorporated into criteria methodology, the degree of conservatism inherent in the total recoverable approach is unknown.

The memo also stated that particulate metal can contribute to metal toxicity, although that contribution is less than dissolved metal. Therefore, while use of dissolved criteria may result in a closer approximation to the toxic fraction, the use of dissolved criteria will underestimate toxicity when toxicity due to particulate metals is important. It is unknown to what degree particulate metal toxicity affects unionid mussels, but given the fact that they are sediment-dwelling, filter-feeding organisms, it is safe to assume that particulate metal toxicity may adversely affect unionid mussels to some degree.

Endangered mussels are known to inhabit several waters of the State. Since the use of dissolved criteria with a translator will most certainly result in increased metal loading, the Service requests that use of the total recoverable metals approach be retained in waters where federally listed species are an existing use, because of the greater uncertainty surrounding the level of protection afforded by the dissolved approach.

In addition, an in-depth analysis of the toxicity of certain metals to unionid mussels was recently completed by the Service as part of a biological opinion prepared for EPA on the Great Lakes Water Quality Guidance. A risk assessment of the Guidance's metals criteria was part of the opinion. The Service reviewed studies of metal toxicity to unionid mussels and calculated metals criteria that would protect mussels.

A comparison of the current WV Water Quality Standards to the criteria protective of unionid mussels shows that for certain metals, the West Virginia Standards are not protective (see attached table). We are presently searching for additional metal toxicity data for unionids.

To summarize, the degree of protection afforded to unionid mussels by dissolved criteria is unknown, because it is not known to what degree unionid mussels are adversely affected by particulate metals. This uncertainty is reason enough to continue the use of the total recoverable method in waters where unionid mussels are an existing use. Where important benthic organisms reside, the use of the total recoverable approach is conservative, but not overly conservative. In addition, there is strong evidence that some of the criteria, whether expressed as a total recoverable or dissolved, are not protective of unionids. Expressing these non-protective criteria as dissolved dramatically increases the risk to unionid mussels. We also recommend that the State investigate the feasibility of adopting site-specific metals criteria that will be protective of unionid mussels.

In order to avoid adverse effects to federally-listed mussel species, we recommend that the WV Environmental Quality Board maintain the expression of metals criteria as total recoverable in waters where those unionid mussels occur. If EPA intends to approve the dissolved approach, state-wide adverse affects to listed species may result. Given the likelihood of adverse affects,

formal consultation with the Service under the provisions of Section 7(a)(2) of the Endangered Species Act will be required before the dissolved approach is approved. Prior to initiating the consultation process, EPA must assess impacts on listed species and provide that information to the Service.

If you have questions or require additional information, please contact Dan Ramsey (Environmental Contaminants) or myself (Endangered Species) of this office at 304-636-6586.

Sincerely,

William A Tolin

William A. Tolin
Acting Supervisor

United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
Post Office Box 1278
Elkins, West Virginia 26241

August 11, 2000

RECEIVED
AUG 11 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, West Virginia 25311-2126

Dear Board Members:

On July 6, 2000, the U. S. Fish and Wildlife Service (Service) received Public Notice from the West Virginia Environmental Quality Board (WVEQB) announcing an opportunity to provide comments on proposed changes to West Virginia Requirements Governing Water Quality Standards. The following constitutes the comments and recommendations by the Service and are submitted in accordance with the provisions of Section 404 of the Clean Water Act (33 U. S. C., Section 1344, as amended), the Fish and Wildlife Coordination Act (48 STAT. 401, as amended; 16 U. S. C. 661 et seq.) And the Endangered Species Act (87 STAT. 884, as amended; 16 U. S. C. 1531 et seq.).

Antidegradation Implementation Procedure

46-1-4A --As proposed, the Implementation Procedures "....are only intended to apply to **new and expanded** regulated activities that have the potential to affect existing water quality."(emphasis added). The Service has reviewed antidegradation regulations and guidance, and we find no rationale that supports this limited application. Federal antidegradation regulations state that "...the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and **existing** point sources..."(40 CFR SECT. 131.12(a)(2))(emphasis added). The Service recommends that the Implementation Procedure apply to all existing, expanding and new sources.

4C.2.a.1.A-- The proposed Implementation Procedures provide antidegradation review in Tier 2 waters only if the "...proposed activity would degrade the ambient concentration of any parameter of concern by more than 5% at critical flow conditions or reduce the assimilative capacity by more than 5%...." The antidegradation review is to intended to identify the extent of degradation that would be allowed if it "... is necessary to accommodate important economic or social development in the area in which the waters are located"(CFR 40 Section 131.12(2)). If after a socio-economic review it is determined that degradation is allowed, "...the State shall assure water quality adequate to protect existing uses fully"(CFR 40 Section 131.12(2)). Defining

degradation, a priori, is contrary to the Antidegradation Policy and is not scientifically supportable. The Service recommends that a de minimus value not be included in the Implementation Procedures.

Appendix E

Aluminum—It is proposed to add a chronic value of 87 ug/l, provide for use of dissolved concentration rather than total concentration for measurement of both acute and chronic criteria, and to adopt a conversion factor of one for implementation of the dissolved concentrations. In 1996, the West Virginia Division of Environmental Protection, Office of Water Resources (OWR) raised concerns that many streams in West Virginia were not meeting their designated uses because of violations of aluminum criteria. OWR believed that the aluminum criteria excursions were a result of natural background conditions and/or non-point sources, and requested re-examination of the aluminum criteria. In 1998, the WVEQB removed the aluminum chronic criterion from the water quality standards. Although EPA found the rationale provided by West Virginia to be insufficient to allow removal of the chronic criterion, they deferred action on the removal in order to allow the State additional time to collect data to support their action. West Virginia did not provide data to support the chronic criterion removal, and in 1999 EPA disapproved the removal. Recent work by Dr. William Sharpe at Pennsylvania State University supports the aluminum chronic criterion value of 87ug/l and the Service supports the reinstatement of that value.

On January 22, 1998, the Service provided comments to the WVEQB regarding the use of dissolved metals concentrations for the application of metals aquatic life criteria in the Water Quality Standards (attached). The Service does not support the use of dissolved aluminum criteria.

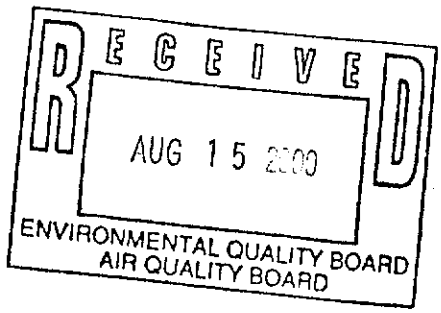
If you have any questions or require additional information, please contact me, or Dan Ramsey of my staff, at 304-636-6586 or at the letterhead address.

Sincerely,

Jeffrey K. Towner

Jeffrey K. Towner
Field Supervisor

James D. Wilkins, II
P. O. Box 26
Riverton, WV 26814



August 7, 2000

Environmental Quality Board
1615 Washington Street
Suite 302
Charleston, WV 25311-2126

Re: Antidegradation

This letter will be an expanded version of my remarks at the public hearing on August 3, 2000 concerning the proposed legislative rules on Antidegradation of the waters of West Virginia.

I am fortunate to live in an area where the water is clean. I am also the ninth generation to live in the area that is now Pendleton County, West Virginia, which, if you do a little math, goes back to before the formation of the United States of America. Since the majority of my ancestors were farmers I am very proud of the quality of the water that flows by my house. However, I am going to actively work against the passage of this legislation in its present form.

There are two primary reasons for me to work against it.

The first is Best Management Practices (BMPs). I have read Appendix F 46-1-4A.2, "Nonpoint source activities will be deemed to be in compliance with antidegradation requirements with the achievement of cost effective and reasonable best management practices in accordance with section 4.1.b herein." I understand that farming and timbering are nonpoint sources. I know that this indicates that BMPs will be sufficient and will be considered to be in compliance with the regulations according to this statement (we will discuss other statements later).

I am opposed to BMPs becoming mandatory for three reasons:

1) This will represent a significant new level of regulation. In an area where the water is clean, which is being proven by scientific means (please see the work of the Water Quality Office in Moorefield), a significant number of farmers are being sent letters from the DEP indicating that the practices they are using are not sufficient. In other words, the farmers are keeping the water in the river clean but this is not good enough. Interestingly, these letters are being sent on the basis of a drive by and not an inspection of the site.

   Farmers are in a very difficult business. They face challenges from the weather and the business environment, in addition to farming related problems. Financially stressed already, they cannot stand another fiscal challenge. The proposed regulation does say in 46-1-4.1.b that "the Board and the chief shall assure that all new and existing point sources shall achieve the highest established statutory and regulatory requirement applicable to them and shall assure the achievement of cost-effective and reasonable best management practices for non-point source control." I am not reassured that the Environmental Quality Board and the Chief of the Office of Water Resources of the West Virginia Division of Environmental Protection will have an understanding of what is reasonable for farmers and worry that their definition of cost-effective may be drastically different from mine. It also concerns me that this standard has not been met in the current regulatory environment, which I believe will only become more stringent if this regulation is passed.

2) I believe that it is impossible for BMPs to be created that will be accurate and effective for the entire state. With the shortage of enforcers for this regulation, statewide BMPs would be the only possible way for enforcement to begin. This would mean the farmer in Kanawha County would have the same BMPs as the farmer in Pendleton County, even though topography and farming operations are totally different. This will result in massive inequities to some of the farmers.

3) I am opposed to giving one person total authority to set BMPs, or say that they are inadequate, **46-1-4-1.b** "The Director (Director of the West Virginia Division of Environmental Protection) shall assure that BMPs are sufficient to satisfy the requirement of the Water Quality Standards. If BMPs are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards or shall require the activity causing the nonpoint source pollution to cease." This is a tremendous amount of authority for one person. By the way, what are Water Quality Standards? The definition in the regulation says, ""Water Quality Standards" means the combination of water uses to be protected and the water quality criteria to be maintained by these rules." ""Water quality criteria" shall mean levels of parameters or steams conditions that are required to be maintained by these regulations. Criteria may be expressed as a constituent concentration, levels, or narrative statement, representing a quality of water that supports a designated use or uses." I read, but I still don't know.

The second reason that I oppose this legislation is that BMPs are not going to be enough. Even though I have spent all this time talking about BMPs it is important to note that, for Pendleton County and most of the state, in spite of Appendix F **46-1-4A.2**, BMPs (the best that we know how to do) may not be enough. Consider the following statements.

For Tier 2, which is a lessor standard than the waters in Pendleton County shall be held to, BMPs may not be enough, **46-1-4.1.b** again "If BMPs are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards or shall require the activity causing the nonpoint source pollution to cease."

For Tier 2.5, BMPs (the best we know how to do things) do not even come into play in spite of Appendix F **46-1-4A.2** (see above) which refers to 4.1.b (a section discussing Tier 2). Consider Appendix F **46-1-4D.2** and **2.a**; "The Director shall determine or, when appropriate, require a discharger to determine on a parameter-by-parameter basis whether the activity will degrade ambient water quality conditions. This determination shall be made at or directly upstream of the point of the proposed discharge for point source discharges and at or directly upstream of the location of the activity for nonpoint source discharges. If a determination is made that the activity will result in degradation of ambient water quality conditions, *the activity shall not be allowed*." Period. There is no discussion or consideration of reasonable and cost effective, just a statement that it will not be allowed.

It is not enough that this the way it is for Tier 2.5. The regulation continues, **46-1-4D.3** "Discharges from activities in waters upstream of a water of special concern (Tier 2.5) shall not result in the degradation of ambient water quality conditions within the Tier 2.5 water."" Period. Again, no statement of reasonable, just a ban for what could be a significant portion of the state waters. In the event that the argument is made that Tier 2.5 waters are not as significant as I believe (perhaps 80% of the state) then consider that anything upstream is still held to the same standard.

For Tier 3, "the streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act within the State" there are no regulations. This seems to be a very small segment of the state, but please consider 46-1-4.1.d "Additional waters may be nominated for inclusion in that category by any interested party or by the Board on its own initiative. To designate a nominated water as an outstanding national resource water, the Board shall follow the public notice and hearing provisions as provided in 46 C.S.R. 6."

This Tier may be the scariest of all, Appendix F 46-1-4E.3 "Sources upstream from an ONRW (Outstanding National Resource Waters or Tier 3). Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source would not degrade the existing water quality of the downstream ONRW segment." Now look at what will be used to be determine if the proposed activity will degrade the water quality in the downstream segment: "change in ambient concentrations. . . change in loading. . . reduction in available assimilative capacity. . . nature, persistence and potential effects of the parameter. . . potential for cumulative effects. . . degree of confidence in the various components of any modeling technique utilize. . .and *other factors determined by the Director*." In other words this is a moving target with one person holding the ability to set any factor they want as a limiting factor.

Even if a study (too expensive for the financially stressed farmer to reasonably afford) shows that there will be no effect on the water in the ONRW the components of the study can be declared to be of a small degree of confidence and the study can be made invalid. Even if the study addresses everything mentioned in the regulations the Director can add other factors and declare the study valid but not sufficient.

This has the potential to become a taking by the state of the value of the property without compensation. It could destroy property values for the few who hold property above the Tier 3 property. The destruction of property values would not be quick, but, depending on the Director and those enforcing this regulation, it could be almost total.

The number of people who own land above the Wilderness area is small, but the United States of America is supposed to respect the rights and properties of the few.

It has the potential to be more than a few. Please remember that any interested party can nominate additional waters for Tier 3 status. There is nothing within the regulations controlling what happens in the Tier 3 areas (which is kind of strange) but everyone upstream may need an expensive permit for any change in land usage. The language is "Any proposed activity. . . is prohibited except where such source would not degrade the existing water quality of the downstream ONRW segment." The only way to determine this is perform a study. There is no statement about who will pay for the study or the time frame of a decision following the study.

It is my understanding that something other that the above may have been intended by the Environmental Quality Board. In some cases there are obvious contradictions within the proposed regulations. If the regulations are not clear then the courts have to decide what is said. In matters that affect the population of the State of West Virginia to the extent that this proposed regulation does the clarity must be absolute.

As they now stand, although I am in favor of clean water, I am opposed to these regulations. I am opposed because of the lack of clarity and because it places too much power in the hands of one individual, an individual in whose appointment the landowners have no say.

Sincerely,

James D. Wilkins, II

James D. Wilkins, II

Contractors Association of West Virginia

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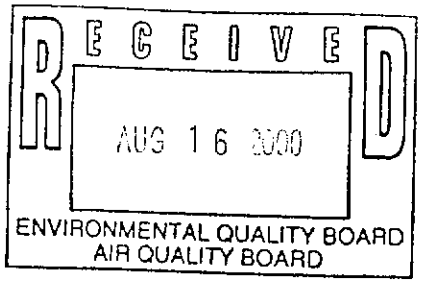


August 16, 2000

Dr. Edwin Snyder, Chair
The Environmental Quality Board
1625 Washington Street East
Charleston, West Virginia 25311

Re: Antidegradation Implementation Policy

On behalf of the Contractors Association of West Virginia, I would like to offer the following comments on the proposed Antidegradation Implementation Procedure which is being considered as part of the state's Water Quality Standards by the Environmental Quality Board.

The CAWV has serious concerns over the potential impact of this rule on highway construction and repair and economic development in West Virginia. We believe strongly that a clean environment and clean water are important goals for our state. However, we also believe that the state and its citizens need an improved highway system and other infrastructure to be economically successful. We are concerned that the rule as currently envisioned will have a significant impact on our ability to build and maintain highways and could effectively slow or stop economic development in many areas of our state.

Highway construction and repair and infrastructure projects are necessary functions in our society. It appears that the proposed new rule could put serious hurdles in the way of both new road-building and necessary maintenance of our existing infrastructure. In large areas of the state, many if not all of the streams could be designated as Tier 2.5. The absolute prohibition against any degradation of waters in these streams could effectively stop all future economic development and infrastructure repairs and modernization.

The language of the rule needs to be more specific in the description of which streams qualify for the designation of Tier 2.5 and should also allow for the de-listing of streams to accomplish important economic and social goals.

We support the exclusions from the full antidegradation review which are found in the section of the rule on Tier 2 waters. As a matter of public policy, certain activities such as running publicly owned sanitary waste treatment works and road building should be considered below the scope of a complete review. Similarly, minor changes in water quality which do not violate the state's numeric Water Quality Criteria should not require a complex socioeconomic analysis as justification. We would also encourage the Board to consider extending some of these same exclusions into Tier 2.5 waters to allow for future population growth and economic development in the area surrounding these streams.

We encourage the Board to reconsider their definition of 'significant degradation' in both Tier 2 and Tier 2.5 streams.

We would encourage the Board to adopt criteria which are no more stringent than those of surrounding states for Tier 2 waters and to reconsider their wording of the definition of degradation in Tier 2.5.

West Virginia's border states share and use the same waters but West Virginia's proposed trigger of 5% would seriously impact future economic development in our state. The trigger in surrounding states is as follows: Ohio — 10%: Maryland — 10%; Kentucky — 20%; and Virginia — 25%. If the state's antidegradation policy is unrealistic, future development, and the jobs associated with that development, will not occur in West Virginia.

The stringent 'trigger' for Tier 2 will require facilities and activities which serve the public to undergo a complex socioeconomic analysis which is unnecessarily complex, costly and time consuming. Many times these projects are financed by taxpayers who will bear the additional costs of construction and delay.

It would appear that the wording for Tier 2.5 waters would require any permitted facility or regulated activity to have no measurable impact on the quality of a Tier 2.5 stream. This prohibition against 'any degradation' would appear to effectively stop all roadway construction in the area of Tier 2.5 streams and limit the scope of repairs and modernization that could be done in these areas. The only possible exclusion for 'short duration activities' is not adequate to allow necessary maintenance or construction of roads in these areas.

The construction industry is particularly concerned about Section 4B.4 which provides that a new expanded discharge subject to Tier 1 and Tier 2 protection may be allowed if the discharger implements or finances upstream controls to increase the water quality. This would mean that a contractor could not build on land near waters impaired by sediment without first going to nearby farms, factories and waste treatment plants and asking them to reduce their discharges by a set amount for the duration of the project.

We encourage the Board to continue to apply the Antidegradation Implementation Rule only to new and expanded activities. Requiring all regulated activities to conduct a complete antidegradation review each time a permit is renewed would almost certainly require significant upgrades in permitted facilities with little actual gain in water quality. The language for Tier 2.5 would also suggest that some, possibly many, facilities on Tier 2.5 streams could face the denial of permits if they could not install sufficient new equipment and technology to maintain the 'upstream ambient stream quality'. This could mean that facilities which are intended to reduce pollution and clean up wastes could be required to shut down, since they were no longer able to obtain permits. We do not believe the Board intends this outcome.

An issue we wish to clarify is that it is our understanding that piers and supports for buildings are not degradation, and that construction activities in streams qualify as limited, temporary activities that are allowed in Tier 2.5 and Tier 3 streams.

The Contractors Association of West Virginia, its 500 members their 30,000 employees respectfully requests the Board to consider our comments carefully and respond appropriately by making changes in the proposed rule.

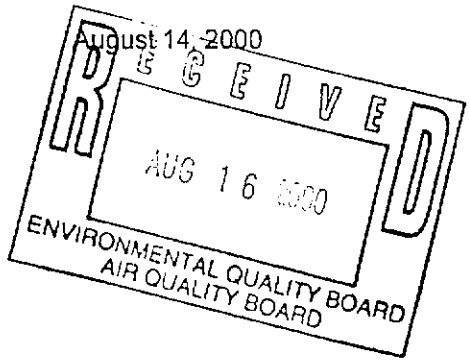
Should you have any questions or need further information, please do not hesitate to contact me at 342-1166.

Sincerely,

Michael L. Clowser
Executive Director

OSi
SPECIALTIES
a Crompton business

August 14, 2000



Environmental Quality Board
1655 Washington Street
Charleston, WV 25311

Re: Comments on Antidegradation Rules and Implementation Procedures

The OSi Specialties business of Crompton Corporation welcomes this opportunity to comment on the recently proposed revisions to Title 46, Series 1 (Requirements Governing Water Quality Standards) Legislative Rules of the Environmental Quality Board.

Crompton Corporation's Sistersville plant employs over 600 persons in Tyler County, West Virginia. The company and its employees are interested in the protection of the environment not only for the health and well-being of current residents of the State, but for future generations as well. Likewise, the company and its employees are interested in ensuring good jobs and a sound and growing State economy for the future. We believe that both of these interests can be achieved through sound decision-making on the State's environmental protection regulations, including those affecting water quality of the State's streams.

We are concerned that the proposed antidegradation rules do not adequately balance both the environmental and economic interests of the State. Specifically, we are concerned that the classification system for State waterways is flawed and that the stringency of the antidegradation rules will drive businesses to neighboring states where, in some cases, they can discharge to the same waters to which discharges would be forbidden in West Virginia. As written, we do not believe the rules are consistent with the scope of Title 46, Series 1, which says in part that "It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with 1) public health and public enjoyment thereof,....3) **the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development** (emphasis added).

OSI Specialties
Crompton Corporation Sistersville Plant 3500 South State Route 2 Friendly, West Virginia 26146 (304) 652-8000

A strict, literal interpretation of the classification system could result in the Ohio River being categorized as a Tier 2.5 stream (due to the river flowing through or near State and National Forests and Recreation Areas). This, in turn, would mean that no reduction of ambient water quality would be permitted. This would have the impact of severely restricting, if not eliminating, the potential for future growth of the Sistersville plant (should, for example, a new pollutant be discharged even in extremely low levels, or any other change be made that would be regarded as a new regulated activity). The impact would be the same for other industry developing in our area if that industry needed to discharge to the Ohio River. To add insult to injury, the same change in activity could occur on the Ohio shoreline of the river, without the activity being regulated in the same manner. More thought needs to be put into the proper means of classification of waters of the State.

Even if the Ohio River is categorized as Tier 2.0 (and as a result new activities at the Sistersville plant are subject to the 5% antidegradation "trigger") it is our understanding that surrounding states have higher thresholds for triggering evaluations of water quality impacts. The Sistersville plant is in competition with other plants within the Corporation for location of new projects. The imposition of costly unit modifications to avoid antidegradation triggers, or costly socioeconomic reviews and the resulting delays in project approvals by the State will be negative factors for the plant versus locations in other states.

To maintain competitiveness, West Virginia's regulations should be comparable, at least, with surrounding states and to the same degree of stringency required by Federal regulations. West Virginia should re-examine its antidegradation triggers, and provide a more workable and timely process for review of socio-economic impact should a new activity trigger implementation of the antidegradation guidelines.

Crompton Corporation is a member of the West Virginia Manufacturers Association and we support the comments made by the Association.

Your consideration of our comments is greatly appreciated.

Sincerely yours,

Fred E. Dailey

Fred E. Dailey
Plant Manager
Crompton Corporation
OSi Specialties business
Sistersville Plant

bcc: D. R. Heintzman
L. Moon
M. L. Gum
J. A. LoMenzo
J. Nortz
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K. Price - WVMA

West Virginia Rural Water Association

P.O. Box 225 • Teays, WV 25569 • 304/757-0985

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AUG 7 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 3, 2000

Dr. Edwin Snyder-CoChair
Dr. Donald Tarter-CoChair
The Environmental Quality Board
1625 Washington Street East
Charleston, WV 25311

Re: Antidegradation Implementation Policy

Dear Drs. Snyder and Tarter:

On behalf of West Virginia Rural Water Association and our over 270 member utility systems who provide public water and wastewater services to over 800,000 citizens across the state of West Virginia, I would like to offer comments on the draft Antidegradation Implementation Rule which is being considered by the Environmental Quality Board. We believe the Rule proposed by the Board has serious flaws that must be corrected before the Rule is sent forward to the West Virginia Legislature.

We are concerned that the proposed regulation will impose unnecessary and expensive requirements on small businesses and the towns and cities of the state. We understand this rule may be the most stringent in the nation and is more stringent than equivalent rules in surrounding states. We would also point out the clear intent of the West Virginia Legislature that regulations and rules which are more stringent than federal requirements must be justified scientifically. We do not believe the Board has met this intention.

The Proposed Rule is Excessively Costly Without Significant Benefits

The Board has admitted in their Fiscal Note that they do not know the costs involved in implementing the proposed Rule. These costs will come in many forms:

- Individual permit holders, including municipalities, Public Service Districts, manufacturing facilities and individual citizens will be required to prepare complex analyses of the environmental conditions both at their facilities and also upstream of their facilities. They may be required to do modeling studies to determine the impact of their facilities on the quality of water in the stream. If it appears that their activities would trigger the antidegradation provisions of the proposed Rule, they could be required to perform a complex and costly "socioeconomic analysis" to justify their activities. On streams designated as "Waters of Special Concern", they could be required to install extensive treatment facilities or face the denial of their permits. This is despite the fact

that the waters in question would continue to meet all of the uses defined by law including being acceptable as public drinking water supplies. In short, this is an expensive process which would be required even though the waters in question have in fact not been degraded in any meaningful way.

- The West Virginia Department of Environmental Protection will be required to add additional staff trained in socioeconomic analyses to review permit applications. The Department does not have any staff trained in this area at this time. The number of such staff cannot be estimated based on the current draft rule and will depend on the application of parts of the proposed Rule.

- Perhaps the most significant cost will be the impact on economic development in West Virginia. Faced with what may be the most restrictive rule in the country, few corporations will choose to locate new operations in West Virginia or to expand their current facilities. The costs to our state cannot be calculated.

The Proposed Rule is Overly Broad

We believe it would be in the best interest of the state to set West Virginia's antidegradation rule to be no more stringent than our surrounding states. We understand that Indiana, Ohio and Michigan have all set the trigger for requiring a full antidegradation review at 10% of the available "assimilative capacity" in High Quality Waters. We believe that this is sufficient to protect water quality. We request that the Environmental Quality Board set the trigger level for West Virginia at a level that is no more restrictive than these neighboring states.

- For most states the "trigger" for requiring a complete Antidegradation review is based on the difference between current ambient water quality and the Water Quality Standard for each regulated component—sometimes called the "assimilative capacity" or "loading capacity". Surrounding states use anywhere from 10% to 25% of the assimilative capacity as the cutoff point below which a complete antidegradation review and socioeconomic analysis is not required. By adopting a much more stringent standard than is required by USEPA, the Board will require permit holders to meet a series of time-consuming and costly hurdles that would not be required in other surrounding states. As an example: Under the Board's proposed Rule a permit applicant on the West Virginia side of the Ohio River could be forced to spend scarce resources to meet the requirements of the "antideg" rule which an identical permit application directly across the river in Ohio or 50 miles downstream in Kentucky would not be required to meet. We urge the Board to adopt a "de minimis" value consistent with surrounding states and no less than 10% of the assimilative capacity.

- The classification of streams into Tiers needs to be considered carefully and should include adequate public input from concerned municipalities, property owners, and water systems along such streams. Because the Tier 2.5 criteria is so strict—and effectively represents a "no growth" situation. This proposal

can adversely effect the expansion of services into unserved areas and hinder improvements to public health and safety. The definition of Tier 2.5 needs to be clarified to prevent improperly classifying streams as such. We note that in other states the Tier 2.5 and Tier 3 designations are used in a very limited way. One draft list of Tier 2.5 streams recently produced by the West Virginia Department of Environmental Protection contained nearly every river of any size in the state including the Ohio and Kanawha Rivers. A practical and defendable Nomination Procedure must be included in both the Tier 2.5 and Tier 3 language to prevent serious economic damage to our communities and citizens by misapplying an overly broad definition of streams that would be classified as Tier 2.5 or 3.

- The members of the Stakeholder Process recommended a series of exclusions for specific activities such as treating municipal wastes, work done under National General Permits and the remediation of impaired waters, among others. We urge the Board to retain all of these exclusions and to extend them into Tier 2.5 waters. We are particularly concerned by the absence of any exclusions in Tier 2.5. Under the draft Rule, towns and citizens located along Tier 2.5 streams could suffer severe economic penalties for any expansion of population and economic base. We cannot believe that the Board intends this result of their actions.

- The Board has proposed two possible "intergovernmental coordination" procedures for public comment. The proposal to set up a "standing committee" comprised of different state and federal agencies to review the socioeconomic analyses prior to the decision to issue or deny a permit is unworkable. In our view, the only things that would be accomplished by such a procedure would be to add time and costs to the permitting process. The intergovernmental coordination process can be accomplished most effectively by public notice during the normal comment period.

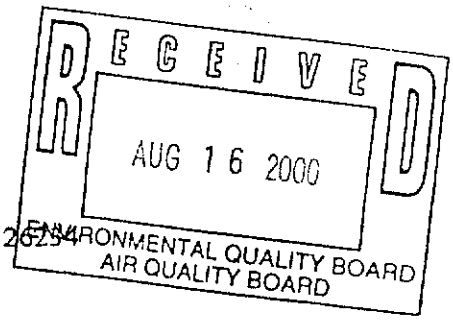
We urge the Board to adopt an Antidegradation Implementation Rule consistent with those of surrounding states. To do otherwise puts West Virginia at a severe disadvantage for future economic growth. We appreciate the opportunity to offer these comments and ask the Environmental Quality Board to accept and act upon these recommendations.

Sincerely,

Randall Lewis

Randall Lewis,
WVRWA Executive Director

RL/drs



August 15, 2000

Cindy Rank
HC 78, Box 227
Rock Cave, WV 26234

Dr. Edward M. Snyder, Chairman
Environmental Quality Board
1615 Washington Street, East Suite 301
Charleston, WV 25311-2126

RE: Proposed Rule 46 CSR 1: Requirements Governing Water Quality Standards

Chairman Snyder:

I submit these comments on behalf of the **WV Highlands Conservancy (WVHC)**, a statewide conservation organization of over 700 members, and **Friends of the Little Kanawha (FOLK)**, a local organization concerned with the communities and natural resources in and around the headwaters of the Little Kanawha River from Goshen in Upshur County to below Wildcat in Lewis County.

ANTIDEGRATION IMPLEMENTATION/ COMMENTS ON OUR BEHALF

Both organizations represented here fully endorse comments submitted on behalf of the West Virginians for Clean Water Campaign. We have actively participated in coalition meetings, phone conversations, discussions and EQB meetings involving the proposed rule and are acutely aware of the positions and comments submitted on our behalf with regard to process, 'grandfathering', de minimus review, exemptions, trading, intergovernmental coordination and public participation, etc.

Please note that the Clean Water Campaign statement includes an assessment of the June 29th comments submitted by EPA Region III as well as the Board's proposed language for the antidegradation implementation procedures.

We also refer you to the August 1, 2000 letter by counsel Tom Michael to EPA Region III and copied to the Board RE: deficiencies in the proposed antidegration implementation procedures.

Furthermore, we encourage the Board to consider the interest and concern expressed by several respected national environmental organizations dated August 1, 2000 and addressed to Brad Campbell, EPA Region III Administrator. Earthjustice, Friends of the Earth, NRDC, Sierra Club and Trout Unlimited have long championed the cause of clean water by their untiring efforts to uphold provisions of federal law that protect and restore water resources in every corner of the country.

We urge the Board to promulgate antidegradation implementation procedures. However, we can only support procedures that reflect the improvements indicated in the comments referenced above.

p 1 of 4

ADDITIONAL COMMENTS

Section 7.2.d.9 We support the **reclassification of the Blackwater River** below Davis from a warm water fishery (Category B1) to a trout water (Category B2) (Section 7.2.d.9). In some ways it is ALMOST imaginable why many people have a difficult time understanding the value of the small, off-the-beaten-path streams that members of both WVHC and FOLK live near and try desperately to preserve and protect. However, there should be little doubt why the Blackwater River is so valuable and why it should receive the extra measure of protection afforded by trout stream designation. A great amount of effort has gone into restoring the quality of that river and the historic and increasing activity along its banks will continue to threaten that restoration.

Appendix E We regret the Board's decision to remove the fish **body burden criteria** for chlordane, DDT, Aldrin, Dieldrin, Endrin, Toxaphene, PCB and particularly for Dioxin.

ADDITIONAL OBSERVATIONS

"Significant Degradation" needed to trigger review

Ed Crum of WV Council of Trout Unlimited and former member of the Water Quality Board hit the nail on the head at the public hearing the other night. If I heard him correctly he said *any* degradation of a high quality stream is significant and should trigger an antidegradation review. Antidegradation assumes protection and preservation of water quality where it is better than that needed to support a use, and only upon review of socio-economic impacts, etc. should any limited amount of degradation be considered and/or approved. The decision to degrade should be made on a case by case basis and not be predetermined by the Board in creating allowable levels of degradation by establishing percentages of acceptability or outright exceptions in the implementation procedure.

Manganese

We must express our deep concern about the apparent lack of any limit on the amount of Mn that can be permitted in some high quality streams without involving the antidegration provisions of section 4.

Take for example many streams in the headwater area of the Little Kanawha River that have little or no discernable amounts of Mn. Applying the water quality standards as changed/approved by the Legislature last year (i.e. sections 6.2 and 6.2.d.) and the proposed changes in this package (i.e. sections 2.17, 8.17.1 and Appendix F section 4C.2.a., etc.) the only time a proposed discharge of Mn (in a mining permit, for instance) would trigger a review for these high quality streams is when the Mn discharge is proposed within 5 miles of a known Category A (Water Supply, Public) water.

Mn will not be a "parameter of concern" because there is no numeric criteria for Mn except within that 5 mile zone of a Category A water. The only other way for the proposed Mn discharge to be considered a "parameter of concern" is if the discharge has "a reasonable potential to either cause or contribute to a violation of the narrative criteria...in section 3." In other words, as I understand it, Mn can flow freely without triggering a review unless it is anticipated that the discharge will become toxic, or create a taste, odor or other condition not allowable under section 3.

The scenario is further complicated without the Board's historical assumption that Category A Water Supply, Public "...shall apply to all waters of the state unless specifically removed as indicated in section 7.2.d...." The legislature excluded that language from 46CSR1 section 6.2 in the Spring of 2000. The burden of proof that a stream is not or cannot be used as a drinking water source is no longer on the person who proposes some level of degradation. Rather, that burden of proof is shifted to the Board or the individual user.

The Board will have to depend on some source of information to determine which waters are to be considered Category A. The Bureau of Health presented a map at the public hearing that depicts the Zones of Critical Concern based on the Bureau's knowledge of known intake points. This source of information will be inadequate for several reasons. Intake points on the Bureau's map represent only water supplies that serve 20 or more people. Private water intakes that supply fewer than 20 people are not indicated on that map but are considered public water supplies under section 6.2. Private water supply users will have to know when a permit to discharge Mn into their water supply is being proposed. Granted, Appendix F requires notification of a review in a newspaper. However, that notification may well be missed as many people do not subscribe to newspapers, and a discharge 4.9 miles upstream may be in another county and notice might appear in that county paper.

Furthermore, consider the stream where no one is currently using the water as a water supply but the quality of the stream is far better than that needed for such a use. Without the presumption that all waters of the state are suitable for Category A unless proven otherwise and with no numeric criteria for Mn for other use categories, an activity could discharge Mn into stream with no review and no limit until or unless the stream becomes toxic or violates other narrative standards in section 3. Certainly in that instance the intention of antidegradation provisions of the Clean Water Act will have been thwarted. Future use of that stream as a drinking water supply is precluded without expensive cleanup or treatment. Given this scenario, the potential loss of high quality headwater streams, especially in coal mining areas, is great.

We realize that technology-based effluent limits still exist for the mining industry. However, that same industry has already convinced this Board and the WV legislature to reduce the water quality requirements for Mn and will no doubt exert increased pressure on EPA and OSM to relax their effluent limits by piggy-backing recent Board actions as additional rationale to take that action.

We must conclude that with regard to Mn the current proposal achieves the opposite of what the antidegration policy intends, and is not in keeping with the Clean Water Act. Additional actions by EPA or OSM to further reduce Mn standards will only exacerbate the problem.

OTHER *PARAMETERS OF CONCERN*

Furthermore, Manganese is not the only *parameter of concern* to WVHC and FOLK. Similar scenarios to those described above are possible when other parameters are considered.

- Board and agency action encouraged by several industries in a letter to EQB dated June 23, 2000 with regard to the Iron standard will possibly create the same or similar unacceptable results as outlined above for Mn..
- Implementing the current dissolved numeric criteria for metals when permits require those limits to be expressed in total concentrations may also cause confusion in applying the antidegradation procedures as proposed,
- The lack of numeric criteria for SO4 (Sulfate) and possibly other parameters not listed in Appendix E also create situations similar to those described for Mn where unpolluted high quality streams may well be polluted with no review for socio-economic reasons to justify the change, and no real limits to set until the stream becomes so polluted that it demands cleanup at some point in the future, either because the water is putrid or a proposed use is not possible without cleanup.
- Unless other provisions are changed to accommodate review of these parameters the cumulative impacts could be substantial.

FINAL OBSERVATION

We realize the Board is not responsible for the June 29, 2000 cover letter sent to the Administrative Law Division of the Secretary of State's Office and signed by Commissioner Mike Castle. However comments in that letter are so offensive and incorrect that the Board should really address them in its written submission to the Legislature.

We are in agreement with other members of the Clean Water Campaign that additional language could be included in the Board's Statement of Circumstances that would clarify the inaccuracies of Director Castle's letter. We encourage the Board to add two additional sections to that statement. One should clearly state why the proposed rule, especially the antidegration implementation procedures, is not only appropriate, but also required by law. The other should clarify 1) that there are really no exact parallel federal regulations that the Board can copy and 2) how this proposal is not any more stringent than federal regulations concerning stream designations, etc.

Please call with questions (924-5802).

Respectfully,

Cindy Rank

p4of4

WVHTA
WEST VIRGINIA HOSPITALITY & TRAVEL ASSOCIATION

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RECEIVED
AUG 16 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Hand-Delivered - 8/16/00

August 16, 2000

Dr. Edwin Snyder-Chair
The Environmental Quality Board
1625 Washington Street, East
Charleston, WV 25311

Re: Antidegradation Implementation Policy

Dear Dr. Snyder:

The West Virginia Hospitality and Travel Association (WVHTA) and the West Virginia Tourism Commission share some serious concerns on the proposed Antidegradation Implementation Procedure (AIP) which is being considered by your board as part of the state's Water Quality Rules. Thus, we come together in a joint statement approved by both our boards. We are the two largest and most diversely represented organizations in the tourism industry. We have worked hard, both as organizations and as individuals, to create a strong positive image for all of West Virginia. We consider ourselves a growth industry creating many new jobs and economic development in all fifty-five (55) counties of this great state. Our concerns are about the potential impact these rules will have on tourism and economic development in years to come.

We know that tourists are attracted to a clean environment and clean waters. We believe a clean environment (especially clean rivers) is essential to our continued growth in the tourism sector. However, West Virginia needs the ability to provide infrastructure to support visiting tourists. We should work on improving outdated facilities and not penalize those that look to growth by using new modern technologies. We are concerned that the rules as currently envisioned will have a significant impact on our ability to expand tourism and could effectively slow or stop development in numerous areas of our state.

Tourism, which brings large numbers of people to our state, requires infrastructure including roads and waste treatment facilities. It appears that the proposed new rules could put serious hurdles in the way of both the expansion of waste treatment facilities and road-building.

We will be the first to admit that there are sections of these rules that we do not fully understand. We have recently spent considerable time educating ourselves and at this time we have four specific concerns:

(1) While we fully support procedures that ensure high water quality, we are seriously concerned that the AIP procedures go too far and will present undue burden to expanding necessary waste treatment facilities and infrastructure. Therefore, we would encourage the Board to avoid criteria which are no more stringent than those of our contiguous states. The proposed AIP requirements could seriously slow or halt resort and/or lodging construction and growth of existing business along our rivers and streams - growth that has substantial implications to the future of West Virginia's tourism industry.

(2) The nomination process for change in any waterway's Tier status appears to be vulnerable to manipulation and private agendas. We think it should be fair and equitable by providing an avenue of input for all stakeholders, including property owners.

(3) We would like to be assured that a commitment to best practices in keeping our waterways as clean as possible be met with a speedy and complete review no matter where development may take place.

(4) The absolute prohibition against any degradation of our waterways could effectively stop future development of new tourism facilities and infrastructure developments, including hotel expansions, road construction and the expansion of sanitary water treatment plants. We believe this to be counterproductive to West Virginia's future. A no-growth scenario is unacceptable.

We ask the Board to consider our comments carefully and to re-evaluate the Tier status classification of both waterways and land. The board needs to find a balance that allows both clean waterways and continued growth. We will continue to be a part of this process and would like to request that a representative from your Board (possibly your technical advisor) address both our organizations at a mutually convenient time. Ms. Carol Fulks will contact you to hopefully coordinate a presentation. Again, thank you for giving us the opportunity for input on this very important matter. Please see the attached listing of all those individuals which constitute our organizations.

West Virginia Hospitality & Travel Association
Board of Directors

David Arnold
Class VI River Runners
Lansing, WV

Joe Stevens
Snowshoe Mountain Resort
Snowshoe, WV

Beverly Wellman
Mercer County CVB
Bluefield, WV

Joy Johnson
The Woods Resort
Hedgesville, WV

Ann Walker
The Greenbrier
White Sulphur Springs, WV

Dale Maurer
Mountaineer Racetrack & Gaming Resort
Chester, WV

Sharon Rowe
The Greenbrier
White Sulphur Springs, WV

Ashby Berkley
Pence Springs Hotel
Pence Springs, WV

Ted Arneault
Mountaineer Racetrack &
Gaming Resort
Chester, WV

Brian Ball
Red Fox Restaurant
Snowshoe, WV

Mike Folio
North Central Distributors
Charleston, WV

Gene Coulson
WV Hospitality Education & Training
Charleston, WV

Rod Stoner
The Greenbrier
White Sulphur Springs

Susan Hanger
Songer Whitewater
Fayetteville, WV

Robert Brown
Holiday Inn Express
Ripley, WV

Jim Martin
Citynet
Fairmont, WV

Suzie Fredericks
Lewis Co. CVB
Weston, WV

Buddy Butler
Fenton Glass Factory
Williamstown, WV

Robert Reintsema
Division of Tourism
Charleston, WV

West Virginia Tourism Commission

David Arnold
Class VI River Runners
Lansing, WV

Joe Harper
Harper's Old Country Store
Seneca Rocks, WV

Dale Maurer
Mountaineer Racetrack & Gaming Resort
Chester, WV

Steve Rice
Snowshoe Mountain Resort
Snowshoe, WV

William Bright, Chairman
Bright Enterprises
Summersville, WV

Norman Roush
WV Department of Transportation
Charleston, WV

Connie New
Wheeling CVB
Wheeling, WV

Sharon Rowe
The Greenbrier
White Sulphur Springs, WV

Randy Worls
Oglebay Park
Wheeling, WV

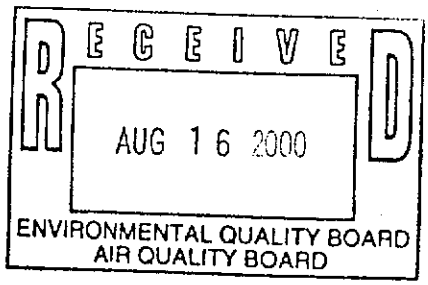
Buddy Butler
Fenton Glass Factory
Williamstown, WV

Ken Lowe
Clarion Hotel & Conf. Ctr.
Shepherdstown, WV

John Rader
Div. of Natl. Resources
Charleston, WV

John Skidmore
Days Inn – Flatwoods
Flatwoods, WV

CONSOL ENERGY.



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August 14, 2000

West Virginia Environmental Quality Board
1615 Washington St. East
Charleston, WV 25311

Re: Title 46 Legislative Rules

Dear Environmental Quality Board:

The following written comments are provided to the Board by CONSOL Energy. CONSOL Energy, through its subsidiary units, operates numerous underground coal mines in West Virginia. CONSOL Energy leads the United States in the production of coal from underground mines and has active coal mines in six states. CONSOL Energy is deeply concerned with these rules and we have a number of questions and comments for the Board. We believe that these amendments are in many places vague and confusing and in other places, overly stringent to the point of disabling the growth of new and existing industry in West Virginia.

Our foremost concerns are with the Antidegradation Policy portion of the rules, Section 4 and Appendix F. If implemented as proposed, West Virginia will have the most stringent program requirements of any state east of the Mississippi and these requirements will clearly impact present and future growth in the state. Our specific comments follow.

§ 4.1.b. Tier 2 Protection:

The requirement limiting the assimilative capacity increase of Tier 2 streams to five percent (5%) is more stringent than any neighboring state and it will place the citizens and businesses of West Virginia at a severe disadvantage for taking care of their problems in a reasonable and technically sound manner. The linking of Best Management Practices (BMPs) to a demonstration that they must satisfy water quality standards creates a reliance on data that just doesn't exist.

It also appears that a Tier 2 classification will not be tied to historical water quality data, rather just about any stream could be put into this category. Another unique and growth-stopping provision is the inclusion of existing along with new

and expanded discharges into the review process. No other state we know of requires this for existing operations.

We question if any company or municipality will ever be able to demonstrate to the multitude of federal and state agencies involved, that a discharge into a Tier 2 stream that exceeds the five percent assimilative capacity should be allowed for social and economic development reasons.

§ 5.2. Mixing Zones

The last sentence of this subsection appears to contradict the intent of the preceding language by stating that no mixing zones will be allowed while the preceding language suggests that mixing zones will be determined on a case by case basis by the Chief. The restriction of no mixing zones for human health criteria down to a $_7Q_{10}$ of 5 cfs or less is too restrictive. What is the basis for this seemingly arbitrary cutoff?

§ 6.2. Category A Streams

These are clearly public water supply streams, but how far downstream of the proposed discharge does the intake have to be to cause a conflict? This should be clarified to avoid future conflicts with interpretations.

§ 7.2.c.4 Natural Conditions Site Specific Criteria

Shouldn't mixing zones be included as part of the alternate criteria that must be met at the end of the pipe? We also believe that the legislative approval procedure detailed here to modify water quality standards is far too cumbersome to be of any value.

§ 8.15 Iron

We urge the Board to eliminate this water quality standard until the issue is closed at the federal level. The existence of this unsupported standard is causing a significant number of streams to fall within the TMDL program which may be wholly inappropriate.

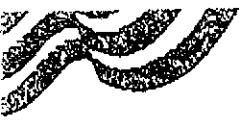
In addition to the above specific comments, we have numerous comments and concerns regarding the Antidegradation Implementation Procedures detailed in Appendix F of these proposed rules. Rather than detail our comments here, CONSOL Energy includes and endorses by reference the comments submitted by the West Virginia Chamber of Commerce and those submitted by the West Virginia Coal Association on these

procedures. We also endorse their comments submitted on the overall proposed rule package.

We urge to Board to give serious consideration to these issues and concerns and, at the very least, modify the proposed rules to bring them inline with those of neighboring states. Thank you for your consideration.

Sincerely,

Gary E. Slagel, Director
Regulatory Affairs



Bright Enterprises

300 Greenbrier Rd., P. O. Box 460, Summersville, West Virginia 26651
Phone: 304/872-3000 Fax: 304/872-3040

August 16, 2000

Edward M. Snyder, Chairman
West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 304
Charleston, West Virginia 25311

RE: Comments on Proposed Amendments to 46 CSR 1

Dear Chairman Snyder:

I am writing to express my alarm about certain elements of the proposed amendments to West Virginia's water quality regulations as issued by the Environmental Quality Board on July 3, 2000. While I appreciate this opportunity to comment on the draft rules, I must request that the proposed amendments be withdrawn, or at least changed substantially before the Board places the rules before the legislature. Specifically, I am concerned that the new Appendix F, the antidegradation implementation policy, will have a chilling and disastrous effect on economic development and employment in the state. This impact will fall not only upon major businesses and manufacturers, but also upon tourism, recreational, and residential activities. I felt it important that I let the Board know of my serious concern about the proposed antidegradation policy, and about my personal perspective as to the impacts of the policy as proposed.

I am the primary investor in Winterplace Ski Resort and Glade Springs Resort, both near Beckley. I have invested tens of millions of dollars in tourism development within the state, and I have a vested interest in making sure that our streams remain clean, and our environment attractive. I also have a vested interest, however, in the ability to create and expand tourism through development of attractive and environmentally sound facilities. I intend to continue my investment in West Virginia tourism and recreation by completion of a project to create a new ski and golf four season resort in Northern West Virginia, which will be as significant as any facility in the state. Other businesses in which I am involved include residential developments, some of which lie within, and some outside, areas served by public sewage collection and treatment systems.

As I understand the proposed policy, I believe it will as drafted threaten the continued success of existing resorts in the state, and in all likelihood prevent future development of new such facilities as well as significant new residential development. The policy sets up a process in which a would-be resort or residential developer could be forced through endless and impossible tests in an attempt to prove a negative or to somehow prove to the satisfaction of all detractors that the proposed activity will generate "important economic or social development" in the area.

The proposed policy includes some paragraphs indicating what type of information an economic or social development benefit showing might involve, but it gives little or no guidance as to how your Board or the Division of Environmental Protection would decide whether the demonstrated benefits would be adequate for the proposed activity to be allowed. I can safely and confidently predict that those rising in opposition to a project, for whatever reason, will never agree with those proposing or supporting the project as to whether the "economic or social development" benefits are adequate or "important". Accordingly, the requirement for such showing, tied to the overly strict trigger levels for such review as you have proposed, will prevent beneficial economic development simply by the time and cost of the process itself. In the face of all the risks inherent with such investments, and in light of the alternate investment opportunities, few if any potential developers would invest the time and money to begin, much less complete, what could easily be the years-long and prohibitively costly permitting and appeal processes set up by the proposed policy.

By its very nature, development of recreational and tourism facilities often takes place in areas that are not served by public sewage collection and treatment systems, and proposed or expanding facilities would therefore be directly subject to the overly stringent trigger levels, the required showings of "important economic or social development" benefits, and the requirements to attempt to prove the negative that the policy imposes. Even where a new facility would be served by public sewage systems, however, this proposed policy would set up potentially (likely) fatal roadblocks. The proposed rules allow for a certain "exemption" from some of the Tier 2 requirements for expanded sanitary waste facilities, but only where and to the extent such facilities are necessary to correct existing problems created by inadequately treated sewage. This limited exemption does not allow for new or expanded sanitary waste discharges to satisfy the needs of growing communities and public service districts, and this real need must be accounted for in the regulations.

The rule language at 46-1-4.1, defining what constitutes Tier 1, 2, 2.5, and Tier 3 streams is, we realize, for the most part not new language within these proposed rule amendments. The impact of these overly broad definitions could not, however, be understood until coupled with the new proposed antidegradation policy. Accordingly, these previously written tier definition provisions should be considered part of the proposed rule, and must not be ignored as if they were already in effect and settled. These sections include far too many of the state's streams in the higher protection categories of Tier 2 and Tier 2.5, and these sections should be modified to be less stringent and inclusive.

The draft rule includes by default virtually all of our state streams in Tier 2. The draft rule also includes "significant degradation" trigger levels, for further Tier 2 review, which are so low as to be unprecedented in the nation. The proposed rule for Tier 2 will in operation impose often impossible or prohibitively costly showings requirements on proposed discharges of all types and sizes throughout the state. To make matters drastically worse, however, the rules are also extremely broad in their definition of the Tier 2.5 category. This category will include an

alarmingly large number of streams throughout the state, and under this category "no reduction of ambient water quality" is allowed.

Even without the Tier 2 default process, I can think of no streams of any significance in our area of south central West Virginia which would not fall into Tier 2 or Tier 2.5 as currently written. Many of our streams either support put and take trout fisheries, have been listed as "high quality streams" by WVDNR, are listed in the Natural Streams Preservation Act, or flow in part through State or National Forests but also through the privately owned lands that are interspersed throughout the general national forest boundaries. A number of our streams in fact fall under more than one of these categories, and we also have some streams which support naturally reproducing trout populations.

Having all of these excellent streams is a wonderful thing, but these streams are also where our people own properties and businesses, where our communities lie, and where we work and live as well as enjoy the environment. I assure you the people of our region, and I believe throughout the state, are for the most part totally unaware of the drastic and costly effects they would suffer from this regulation as proposed. If you and the other Board members have not realized the extent and extremity of these effects, you must take the time to acquire a full understanding before you proceed with this rule proposal.

It would be easy to fill pages with descriptions of specific streams where the impact of the draft antidegradation policy would hit residents, communities, and businesses with extreme and totally unexpected costs, and with prohibitions that would effectively destroy their property rights. The New River, however, provides one dramatic example of the zero growth impact of your proposed antidegradation policy. As I understand the proposed rule, the entire New River watershed would be subject to the Tier 2.5 prohibition, because of the National River designation for the river. Your proposed rule makes it clear that the strict antidegradation test applies to proposed discharges on all tributaries to a Tier 2.5 water, not just to the listed stream itself.

The Beckley and Raleigh County area, and other areas within the New River watershed, are among the growing regions of our state. Chairman Snyder, if the draft rule issued on behalf of your Board is not significantly modified, it can and I believe would stop that growth, including future growth of our resorts in the watershed, in its tracks. I cannot fathom any valid reason or any common sense support for such drastic regulatory actions. The New River's designation as a National River relates to scenic, geologic, historic, and tourism values, much more than to water quality issues. That is not to say that water quality is not of crucial importance; obviously, we want to and should protect the quality of the New River, but the river can accommodate development and growth. Your policy would prohibit that growth, however, by the strict prohibition of any lowering of ambient quality, no matter how minute or imperceptible the impact. To my knowledge, no other state along the New River has implemented or proposed a rule anywhere near as stringent, costly, restrictive, or anti-development as that now proposed on behalf of your Board.

As scientists the members of the Board surely recognize the impossibility of proving that any proposed new or expanded discharge would have zero impact on ("...no reduction in...") ambient water quality. One microgram per liter addition of chloride, for example, would surely not be considered harmful or detrimental in light of the 230 to 860 milligram per liter use-related standards for this parameter, but even that microgram per liter addition is not zero, and could be used by opponents of a project to block the project. The proposed rule allows for no reasonableness test for this and for many other of the required determinations, and we feel strongly that the rule as proposed is not reasonable.

I understand that West Virginia needs an antidegradation policy, and that such policy is required by federal rules. I also understand, however, that no federal requirements exist that mandate such a costly, overly restrictive, and economically damaging policy as that set forth in the draft rules issued on July 3rd. It is unbelievable that USEPA staff members commenting on your proposed rules are asking that the proposal be modified to be even more restrictive, more costly, and more damaging to the economic vitality of the state than the policy you have proposed.

I implore you to resist the attempts by federal bureaucrats to mold our state policy into their view of environmental utopia. I understand the Board has been informed that USEPA has approved many state programs that are much less restrictive than your proposal. Further, USEPA itself has never proposed or implemented an antidegradation policy so strict as that you have put forth. EPA cannot legally mandate that the content of our state policy be more stringent than their own requirements, and the West Virginia Environmental Quality Board surely cannot in good conscience submit to such legally unsupportable dictates.

I would point out that the West Virginia Legislature has addressed the issue of whether state rules should be more stringent than counterpart federal requirements. Section 3a, Article 1, Chapter 22 of the Code of West Virginia, provides that new or amended environmental rules may be more stringent than federal requirements or counterparts, but the Code mandates that a more stringent rule may be imposed only if the "...Director first provides specific written reasons which demonstrate that such provisions are necessary...". This section goes on to require the Director to set forth scientific evidence, specific environmental characteristics, or other specific justification for the more stringent rule. Your Board may not, arguably, be directly subject to this section, in that it applies to rulemaking by the Director of WVDEP. The WVDEP will, however, be the implementing agency for your rule, and I can't imagine that the Environmental Quality Board intends to ignore or flaunt these clearly stated legislative views of environmental regulation in West Virginia.

I have not tried in this letter to address many specific details of the proposed rules. With regard to such details, I support and endorse the West Virginia Chamber of Commerce's verbal comments delivered to the Board at the August 3 public hearing, and the detailed written comments that are being submitted to the Board by the Chamber.

I urge you to consider the crucial need for West Virginia to, yes, protect its streams and its environment, but to balance reasonable and effective protection with rules and policies that still allow our economy to be vital and competitive. With the challenges our state's economy faces every day, it is incumbent on those in power within our state, including the Environmental Quality Board, to not create self-inflicted wounds upon our economy and its potential.

I ask that the Environmental Quality Board re-review the rules that have been proposed, and that you modify those rules so as to be reasonably consistent with, not more stringent than, the specific federal requirements, and comparable with, not more stringent than, rules adopted by other states. The State of West Virginia cannot afford for you to do otherwise.

Sincerely Yours,

Bill Bright

William T. Bright

COL. THOMAS A. PIANKA, USA (RET)

CONSULTANT
MIDDLE EAST POLITICAL-MILITARY AFFAIRS

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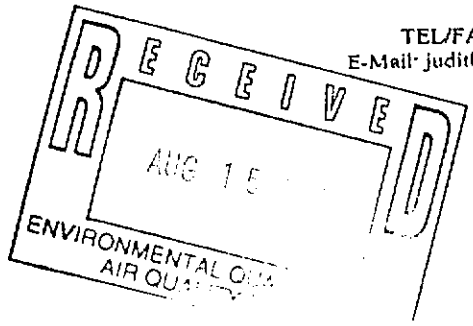


14 August 2000

West Virginia Environmental Quality Board
ATTN: Drs. Snyder and Tarter
FAX: (304) 558-4116

Dear Doctors Snyder and Tarter, Co-Chairs:

I have just been apprised this day of your draft Anti-degredation Implementation Procedures. As the attached letter indicates, "I care deeply about West Virginia's rivers and streams." I own property in Hardy County, WV, and I live on the Severn River, on the Chesapeake Bay, and, as you know, water flows downhill.

Because of time restraints, I cannot compose my own letter and get to you, in a timely manner, my comments on your draft. Accordingly, I am sending you a copy of the "Sample Letter" produced by the West Virginia Rivers Coalition, of which I am a proud member. I support unequivocably every sentence in this "sample letter." (In truth, I couldn't write a better one.) I hope you will take into consideration, in dealing with this issue, not just the polluters' interests, but also the interests of the people of West Virginia, and the interests of our children and grandchildren and the entire Chesapeake Bay watershed.

Tom Pianka

Col. Thomas A. Pianka, USA (Ret)
213 Saint Swithins Lane
Annapolis, MD 21401

Tel/FAX (410) 757-5296

Dr. Edward Snyder and Dr. Donald Tarter, Co-Chairs
West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301
Charleston, WV 25311-2126

Dear Dr. Snyder and Dr. Tarter,

Please accept the following as comments on your draft Anti-degradation Implementation Procedures. I care deeply about West Virginia's rivers and streams and this policy should protect them to the full extent of federal law. Thank you in advance for your attention to my comments and concerns.

I request that you remove the grandfather clause at the beginning of the document. All permits should be required to go through an anti-degradation review, not just new and expanded ones. Some of our worst polluters are the older industries and facilities, and federal clean water laws require both new and existing permits to be covered by this policy.

I request that you add language about the cumulative impacts to our rivers and streams. Currently there is not one word that addresses cumulative impacts in this document. These impacts can be extremely harmful, and can do as much if not more damage than single polluters.

I request that you do not allow for a de minimus value in the policy. A de minimus is the degree that waters can be maximally polluted. Anti-degradation literally means "no degradation". Allowing the policy to state that water can be polluted to an acceptable level before a review occurs is contrary to the intent of the law. purpose of the policy is to review activities and allow them to continue if they have positive social benefits. Activities that seek exemptions are claiming they are beneficial. Allow the anti-degradation policy to run its course and determine this.

I request that you develop an Intergovernmental Coordination process that is adequate and functional. Currently it is not. This policy only lists various departments and agencies, and determines no method of how they are to interact and react to an anti-degradation review. The same is true for the State Continuing Planning process. Neither of these processes meets the requirement to fully protect existing uses.

I request that you add specific language to the proposed Trading Assessment Procedure. This procedure does not define "improved water quality" as a result of a trade. Therefore, the most miniscule improvement of water quality in one river or stream could allow significant pollution in some other river or stream.

Finally, I request that you remove the 110% cost provision of the Reasonable Alternatives definition and add additional parameters of consideration. Otherwise, some exceptional alternative may cost 111% of the original proposal and the agency would not have the authority to request its use.

Thank you for your attention to my concerns, and for incorporating them into an anti-degradation implementation policy that will keep West Virginia's clean waters clean. As the EQB is to "promulgate rules and regulations...for the protection of surface waters and groundwaters of the State," I am confident you will strengthen the draft policy in accordance with federal requirements.

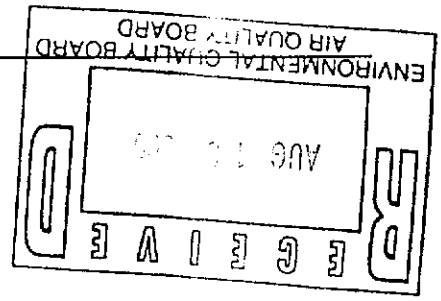
Sincerely yours,

Thomas A. Pianka

West Virginia Crushed Aggregates Council

2114 Kanawha Boulevard, East - Charleston, WV 25311

(304) 342-1166 FAX (304) 342-1074



August 16, 2000

Dr. Edwin Snyder, Chairman
Environmental Quality Board
1625 Washington Street, East
Charleston, West Virginia 25311

Re: Antidegradation Implementation Policy

The following are items believed to be of concern to all facets of the quarry industry:

1. Currently if your discharge results in an increase of ≥ 5% of ambient concentration in the stream for the parameter of concern or ≥ 5% of assimilative capacity then you have triggered the requirement for a socioeconomic analysis. This is significantly more restrictive than the surrounding states and the "Great Lakes" states which use ≥ 10% of assimilative capacity. We do not need to be more stringent than our counterpart states and put West Virginia quarries at a disadvantage in the competitive marketplace. Many times a one or two cent per ton difference in cost determines a 200,000 ton order. If West Virginia quarries operate under different standards they will not be able to compete with quarries operating in Virginia, Ohio, Kentucky, Pennsylvania and Maryland. The majority of the stakeholders group recommended assimilative capacity not ambient concentration. The scientific reliability behind the 5% ambient concentration method is very tenuous at best. Additionally, ambient concentration is continually changing.

2. The quarry industry feels strongly about the need to have an exemption for storm water outfalls (i.e. precipitation induced discharge outlets). Our precipitation induced discharge outlets drain to intermittent streams or lower flow streams whose critical flow conditions (if it is the 7Q10) will probably be zero flow (and hence zero remaining assimilative capacity at critical flow conditions), thus triggering the need for socioeconomic evaluations nearly every time a precipitation induced discharge outlet is added. This will result in:

    a. An enormous regulatory burden for industry in terms of timing and cost.

b. An enormous burden on the multitude of regulatory agencies participating in the socioeconomic evaluations, as the number of technical and socioeconomic evaluations needing reviewed will increase substantially.

c. A loss of credibility for the antidegradation process since regulatory scrutiny will center on the effects of minor storm water outlets (precipitation induces discharge outlets) that in all likelihood will not be discharging during critical flow (i.e. possibly defined as 7Q10) conditions.

d. Unworkable technical analyses since it is unknown at this time as to whether technical models exist that could evaluate (a) which storm water outlets will be discharging during a precipitation event at critical flow conditions (not all storm water outlets will discharge during a precipitation event), (b) what the volumes of storm water discharging would be and, (c) what the effects of such storm water outlets would be on the quality and quantity of flow in the receiving stream.

3. The intergovernmental process procedure requires coordination with 19 state and federal agencies. This activity needs to be performed as quickly and expeditiously as possible to prevent delays to permits. There should be a certain time period that the agencies must respond within or else their approval is automatically granted. It has been estimated that this step could add one year to permit approval times. A second option to set up a permanent socioeconomic review committee before the review goes to the DEP Director attempts to greatly limit the Director's authority and range of actions. This should be deleted.

4. Previously DEP sent a list of Tier 2.5 streams to the EQB which contained every major stream in West Virginia. The list is too broad. A procedure needs to be put into place as to how and why a stream is listed and also how it can be delisted. Only those streams that meet the actual definition of "special" should be classified as Tier 2.5.

5. How does EQB propose to fund all of their mandates? EPA Region 8 has provided a much more flexible, practical and cost effective approach in their guidance document than the EQB has in their policy. The EQB should take note.

6. The quarry industry believes that this policy should apply to only new or expanded discharges for the following reasons:

   a. We understand that EPA Region III has already approved Pennsylvania's Anti-deg policy which only applies to new or expanded sources.

b. The proposed policy is so broad in scope that no one, not even the EQB staff, can project the likely outcome of the implementation of this policy. Therefore, to apply it to existing permittees would unnecessarily slow down the implementation and produce unprecedented burdens on existing entities. More time is needed to work out the full ramifications of this new, and unfunded, policy directive.

c. By definition, the DEP has the authority to implement tighter effluent limits on existing dischargers if there is reason to believe that their effluent is causing unjustified impacts on water quality.

The following items may apply to our members' specific operations:

1. If a quarry reserve becomes unminable due to a ruling resulting from the antidegradation policy, it should be considered a "takings" issue. The State of West Virginia should reimburse all who have had a "taking" of their reserves; a special fund should be set up to properly compensate those so affected.
2. The policy should allow for trading offsets between different watersheds.
3. The policy should allow for offsets to be performed at other locations within the same watershed rather than only at the site in question.
4. The exemption for pH>9.0 should be supported.

Members of the West Virginia Crushed Aggregates Council and their thousands of employees respectfully request that the Board consider our comments carefully and respond appropriately by making changes to the proposed rule.

Should you have any questions or need further information, please do not hesitate to contact me at 342-1166.

Sincerely,

Michael L. Clowser
Executive Director

American Electric Power
PO Box 1986
Charleston, WV 25327-1986

AMERICAN ELECTRIC POWER

Edward M Snyder, Ph.D., Chairman
West Virginia Environmental Quality Board
1615 Washington Street East
Charleston, West Virginia 25311

RECEIVED
AUG 15 2000
ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

August 15, 2000

Re: Proposed Amendments to 46 CSR 1

Dear Dr. Snyder:

On behalf of American Electric Power (the Company) I wish to thank the Environmental Quality Board for this opportunity to offer these comments on the Board's proposed changes to 46 CSR 1, Requirements Governing Water Quality Standards. As the Board is aware, the Company has assisted in the development of the new Appendix F, Antidegradation Implementation Procedures through the participation of J. Mike Brown as one of the stakeholders on the committee that drafted this amendment. While Mr. Brown was not on the committee as a representative of the Company, the Company supported him in his efforts and provided the resources upon which he drew to work so effectively on the development of the proposal. We applaud his efforts and the efforts of all the stakeholders who served on this long and often difficult group.

Attached to this letter are the comments on specific sections of the proposed amendments. As is fitting, considering the extent of the Antidegradation Implementation Procedures, the bulk of these comments are concerned with this issue. To aid the Board in reviewing the specific comments we offer the following summary of our concerns.

The idea behind the concept of the antidegradation restrictions is a good one. Once gains are made in water quality it is only with a great deal of reflection that these gains should be at all compromised. The Company agrees with this ideal. The Company also agrees there are water bodies that, due to their specific natural attributes or the particular use to which they are being put, may require enhanced protection to allow full use by the citizens of the state and the nation.

The Company also is aware, however, that there is a very large difference between protecting a water body and just making it difficult to obtain permits for activities involving these water bodies. Our citizens use state waters for many purposes. A recognized and legal (although, by law, not a designated) use is the assimilation of properly treated waste material. Recognizing the needs of a modern civilization and the constraints of costs associated with waste treatment, a fully operational regulatory system has been set up to ensure that waste treatment activities can be carried out in accord with societal desires related to water quality. This regulatory process has been in operation for many years with demonstrable result of constantly improving water quality.

An appropriate antidegradation implementation procedure recognizes the need to support economic advance, not impose burdensome administrative requirements, have full public notice and support for any restrictions that may result, be fair and equitable, comply with state and federal law, and protect water quality. We are concerned that the currently proposed implementation process does not fulfill all of these needs.

The Company's concerns are centered in four areas. These are: the low trigger levels for the requirements to undergo alternatives analysis and socio/economic justification, the inclusion of large numbers of streams into the Tier 2.5 category without benefit of appropriate public notice, the suggestion by special interest groups to the Board that existing dischargers should be subject to antidegradation review, and the comment by USEPA that the exclusions from Tier 2 review be eliminated.

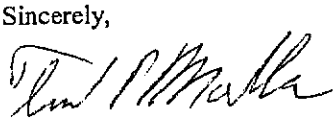
To discuss these points, the Company will show in our comments that the proposed program imposes either full antidegradation review or almost impossible restriction on a far greater number and on far less impacting discharges than existing programs in our neighboring states. We will contrast the manner of imposing antidegradation restrictions in other states and discuss the differences in water quality benefits to be obtained from the proposed program versus those in these states.

In addition to our comments we are providing in Appendix A to our comments a short discussion comparing the Appendix F program to the surrounding states of Kentucky, Michigan, Maryland, New Jersey, North Carolina, Tennessee, Ohio, Pennsylvania, and Virginia. Appendix B contains a somewhat extended summary of the provisions of the antidegradation implementation of these same states. In Appendix C will be found copies of the pertinent parts of the regulations of these states used in this analysis. Preceding these appendices is a map showing the location of the states used in this analysis so that their geographic relationship to West Virginia can be seen.

The Company suggests to the Board that the proposed amendments are correct in the treatment of existing discharges and the provision of important exemptions to Tier 2 review. We recommend to the Board that the Tier 2 trigger be changed to cover any discharge that exceeds an impact on the receiving stream of 10% of the remaining assimilative capacity. We also strongly recommend that existing section 4.1.c. be amended so that the very large number of streams currently forced into Tier 2.5 must all undergo specific nomination and public notice before being considered to be in this category.

We hope that our comments are helpful to the Board and will be happy to expand on any of the issues raised.

Sincerely,



Timothy P. Mallan
Environmental Affairs Manager

Attachments

Comments Of

American Electric Power

On Proposed Amendments To

West Virginia 46 CSR 1

Requirements

Governing Water Quality Standards

August 6, 2000

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Comments on Specific Sections of Rule **pages 1-11**

Map Showing Location of States Used for Comparison

Appendix A – Antidegradation Regulations of Surrounding States, Comparisons to Proposed Amendments to WV 46 CSR 1.

Appendix B – Analysis of Surrounding States' Antidegradation Implementation Policies.

Appendix C – Surrounding States' Antidegradation Implementation Policies

Comments of American Electric Power
On Proposed Amendments to West Virginia 46 CSR 1
Requirements Governing Water Quality Standards
August 16, 2000

Section 2.20 – Definition of "Reasonable less-degrading or non-degrading alternatives." Section 2.20 establishes a cost test to be used in determining whether an alternative is "reasonable." EPA has objected to cost being the only criterion upon which the determination of reasonable less-degrading or non-degrading alternatives is to be based. We agree with EPA that the Director should be empowered to consider other factors in making this determination. We are somewhat surprised, however, at EPA's reading of the definition which begins "Generally speaking..." This, in our reading, does not establish an absolute and inviolable standard, but simply gives a general guideline to the Director regarding what the Board considers to be reasonable. In our opinion, it would have been a deficiency on the Board's part not to give an indication of what it considered to be reasonable in establishing this principle. The Director still has the authority to consider any factors that may be pertinent in his or her decision. We suggest that EPA has misread this definition and recommend to the Board that no change be made in the proposed language.

Section 2.25 - Definition of "Trading." AEP supports the inclusion of the concept of trading and agrees with the Board on this definition. Trading is an important concept in the protection of environmental quality and recognizes the power of market based systems to achieve societal goals. It is well understood that there are limits to trading. We are fully supportive of the fact that trading can in no way compromise the ability of any body of water to be clean enough to be fully utilized for its existing and intended purposes. Trading in this case impacts only on the usually unmeasurable quantities that are the subject of antidegradation restrictions and not on water use or enjoyment.

Section 4.1.c. – Listing of Waters for Tier 2.5 Protection. – This is the section of the current regulation that describes those types of waters that are to be listed automatically in Tier 2.5. The Board is currently proposing no changes to this particular section. However, because of the establishment of the implementation policies in the proposed Appendix F, the Company suggests that the Board reconsider the classes of waters that automatically default into this category and amend this section to instead list the types of water bodies that **may** be included in this tier.

The restrictions that are to be placed on new and expanded discharges to Tier 2.5 streams are indeed extreme. In 40 CFR 131.12(a)(3), EPA establishes the criteria for the most restrictive category in the federal regulation by stating that "...water quality shall be maintained and protected." Arguably this is equivalent to the Tier 2.5 standard of "...no activities which result in the reduction of ambient water quality shall be allowed." The Board has recognized the extreme burden that potentially may result from the imposition of Tier 2.5 restrictions by establishing at Appendix F section 4D.6. the same requirements for a new stream to be listed as Tier 2.5 as apply to a nomination to Tier 3. In this section

the Board requires individual written notice to property owners on the nominated segment and lists 8 criteria that must be considered before a listing can occur.

While 46 CSR 1 has been in effect for a number of years, it is evident that most property owners involved in these areas have no idea of the potential restrictions to be imposed following the implementation of the proposed regulation. The Board's proposed solution to the lack of effective public notice of these extreme regulations, allowing a prospective discharger to petition for a change in Tier classification, places the burden of the process entirely on the person proposing the activity to correct what is, in fact, the lack of appropriate notification by the state. This places extensive, complex and costly requirements on the citizens of West Virginia who live or pursue economic activities in these areas.

A review of our surrounding states reveals no precedent for this type of restriction. (See appendices A and B to these comments). None of the states reviewed have a specific Tier 2.5 classification. Many states do include Outstanding State Resource Waters (OSRW) in their highest tiers along with ONRW. However all of the states list those waters having that designation and the lists are part of the Water Quality Standards Regulation. They have thus been specifically subject to review and public comment at some point in the approval process. Some states do have lists of types of waters that track the list in 4.1.c. (s, in our opinion,ee for instance the New Jersey definition of "category two" waters) however these states generally have provisions that such streams "may" be included in the highest protection category . In fact, many states (see for instance, Kentucky, Maryland, North Carolina, and Pennsylvania) have specific requirements that evidence of existing high quality must be demonstrated before a water can even be considered for such a designation. Regarding the absolute protection of ambient water quality in other states in their high protection category, New Jersey allows some changes related to specific in-stream agricultural activities (cranberry and blueberry production), Tennessee allows no degradation of ONRW but then defines degradation as no measurable change or no change greater than 5% of assimilative capacity, Ohio allows changes from 10% of assimilative to 5% of ambient in two of its highest protection tiers, and Pennsylvania allows a lowering of water quality in exceptional waters if a socio/economic review is performed.

In summary, 46 CSR 1, in conjunction with the proposed new Appendix F, will subject large areas of the state to a difficult and expensive process without benefit of those potentially affected areas having adequate public notice of these designations. While some other states do subject some areas in their state to requirements equivalent to or exceeding West Virginia's (See for instance New Jersey and North Carolina), in every case the lists of streams in these categories is small compared to the large number of streams automatically placed into the 2.5 Tier in West Virginia's rule (Kentucky has 3 ONRW, North Carolina has 13, Tennessee has 8).

AEP strongly recommends that the Board change section 4.1.c. by inserting the word "may" in the second sentence so that it reads: "Waters of special concern **may** include:" The Board should then develop a list of those streams to be afforded this special

protective status and adopt the list as an appendix to 46 CSR 1 after appropriate notice and opportunity for comment.

Appendix C (See section 6.6.c) – List of Power Production Streams Category E3 - The hydro at Hannibal Dam is operated by the City of New Martinsville, not Ohio Power Company.

Section 8.1 Appendix E – Specific Water Quality Criteria – The Company offers the following comments on these specific criteria:

8.1 Dissolved Aluminum

Comment: The chronic aquatic life aluminum criterion should be revised to 750 µg/L.

Rationale: The West Virginia Manufacturers Association (WVMA), Chamber of Commerce, and their member companies have been working with the EQB and OWR over the past several years to gather scientific data on aluminum and the forms of aluminum and water quality conditions that must be present to result in aluminum toxicity to aquatic life. These efforts culminated in the submittal of a variety of technical documents and the delivery of several presentations.

In particular, please note the information supplied to EQB by WVMA in its letter of January 10, 2000. In part, this letter provided extensive documentation of the scientifically flawed basis for U. S. EPA's chronic aluminum criterion of 87 µg/L. U. S. EPA failed to follow its own guidelines for deriving water quality criteria in adopting this criterion; instead relying upon two unpublished studies to arbitrarily set the criterion at 87 µg/l. According to EPA's guidelines, the chronic criterion should be 750 µg/L.

The scientific community has performed considerable research on aluminum bioavailability and toxicity since U. S. EPA published its aluminum criteria in 1988. This research clearly demonstrates that the EPA criteria are scientifically flawed and in need of extensive revision. Studies have demonstrated that bioavailable forms of aluminum at low pH can be toxic; however, aluminum is generally not going to be present in toxic forms in waters that are not violating the State's water quality standards for pH. There are ameliorating effects on aluminum toxicity associated with water hardness, dissolved organic matter, and other water quality characteristics, none of which are reflected in the current criteria. EPA staff has admitted that the basis for the chronic criterion places limitations on its applicability, such that additional review is needed.

Many states have recognized the technical problems with the chronic aluminum criterion, and refused to adopt it. We strongly urge the EQB to do the same, in favor of the more scientifically defensible 750 µg/L criterion. Failure to do so

could result in a large number of streams across the state being placed on the West Virginia 303(d) list and unnecessarily classified with an aquatic life use "impairment" that does not exist. This listing may cause technically deficient water quality-based effluent limits to be imposed on dischargers, and would require the unnecessary development of TMDLs for aluminum.

8.6 Beryllium

Comment: (a) The aquatic life acute criterion of 130 µg/L should be removed.
(b) The Public A criterion should be updated to 4 µg/L.

Rationale: These changes are consistent with U. S. EPA's most recent nationally recommended criteria.

8.7-8.33 Cadmium, Copper, Nickel, Zinc

Comment: The equations for calculating aquatic life criteria need to be updated.

Rationale: These changes are consistent with U. S. EPA's most recent nationally recommended criteria.

8.8 Chloride

Comment: The Human Health criterion of 250 mg/L should be removed.

Rationale: We are aware of no scientific basis, federal or otherwise, for application of this criterion to human health uses; therefore, it should be removed.

8.9.1 Dissolved Hexavalent Chromium

Comment: (a) The chronic B2 aquatic life criterion of 7.2 µg/L should be revised to 11 µg/L.
(b) The Human Health A criterion of 50 µg/L should be removed.

Rationale: These changes are consistent with U. S. EPA's most recent nationally recommended criteria.

8.10 Copper

Comment: The Human Health A criterion of 1,000 µg/L should be updated to 1,300 µg/L.

Rationale: This change is consistent with U. S. EPA's most recent nationally recommended criteria.

8.11 Cyanide

Comment: (a) The chronic aquatic life criterion should be updated from 5.0 to 5.2 µg/L.

(b) The Human Health criteria should be updated from 5.0 to 220,000 µg/L for Use Category C, and from 5.0 to 200 µg/L for Use Category A.

Rationale: These changes are consistent with U. S. EPA's most recent nationally recommended criteria.

8.12 Dissolved Oxygen

Comment: The dissolved oxygen criterion of 5 mg/L should be removed from Human Health Use Categories A and C, and All Other Uses.

Rationale: We are aware of no scientific basis, federal or otherwise, for application of this criterion to uses other than aquatic life; therefore, it should be removed from these other uses.

8.15 Iron

Comment: The present Aquatic Life B1/B4 criterion of 1.5 mg/L should apply to all aquatic life uses until the national criterion is revised.

Rationale: In comments previously filed by American Electric Power, the West Virginia Manufacturers Association, and the West Virginia Chamber of Commerce, it was demonstrated that the U. S. EPA recommended criterion of 1 mg/L is not scientifically defensible. EPA has agreed to partner with industry to revise this criterion.

We understand that the EQB agrees with the scientific evidence documenting the deficiencies in U. S. EPA's antiquated and scientifically indefensible Red Book iron criterion, and has not recommended its adoption. To bring closure to the issues that EPA Region III has raised regarding the State's aquatic life criterion, we request that the EQB submit to EPA its rationale supporting the current criterion of 1.5 mg/L. Should this rationale document prove to be unacceptable to Region III, we then urge the EQB to remove the standard altogether until the national criterion is revised.

8.19 Nickel

Comment: The Human Health A criterion of 510 µg/L should be revised to 610 µg/L.

Rationale: This change is consistent with U. S. EPA's most recent nationally recommended criteria.

8.21 Nitrite

Comment: The aquatic life criteria should be removed.

Rationale: We are aware of no scientific basis, federal or otherwise, for application of these criteria to aquatic life uses; therefore, they should be removed.

8.27 Silver

Comment: The Human Health A criterion should be removed.

Rationale: We are aware of no scientific basis, federal or otherwise, for application of hardness-based silver criteria to human health uses; therefore, it should be removed.

8.32 & 8.32.1 Turbidity

Comment: The aquatic life and human health criteria should be removed.

Rationale: We are aware of no scientific basis, federal or otherwise, for application of turbidity criteria for the protection of either aquatic life or human health; therefore, they should be removed.

Table 2 Cadmium

Comment: The first number in the acute equation should be revised to 1.138672.

Rationale: This change is consistent with U. S. EPA's most recent nationally recommended conversion factors.

Comments Related to Proposed New Appendix F – Antidegradation Implementation Procedures,

Section 4A.1. – Applicability to Point Sources. This part of the proposal would limit the application of antidegradation review to "...new and expanded activities that have the potential to affect existing water quality." There has been some concern expressed that the language in this proposal would in some way allow an existing discharger to make changes in a facility that could impact negatively on water quality without being subject to the provisions of this rule. The Company has looked closely at the proposal and feels that it is clear that any activity resulting in the new or increased discharge of any parameter of concern (which includes materials such as pH impacting constituents and materials affecting narrative criteria) would be subject to antidegradation review. The Company has no objection to any clarifying language that the Board may offer that addresses this point.

The Company is extremely concerned, however, with any attempt to apply the procedures of this appendix to existing discharges that do not expand or add new discharges or to existing permits upon permit reissuance unless that reissuance would allow new or increased discharges.

In reviewing the antidegradation implementation procedures of surrounding states, not one applies to existing permits. In fact some, such as New Jersey, have specific allowance that, even in the highest classification of waters, existing discharges are allowed to continue discharging under their existing permits. Most every state has specific language requiring antidegradation review for new and expanded discharges only and for those states that do not it is clear from a reading of the regulation that only new and expanded discharges are covered.

AEP will support the Board if it feels that a clarification in line with the above discussion is needed. The Company, however, does not think such clarification is needed and recommends that the currently proposed language be retained. The Company does not agree that the rule needs to be changed to apply to existing activities that do not undergo an increase in discharge quantity.

Section 4B.1.d. - Tier 1 Public Notice – This section requires that public notice procedures take place before any final action is accomplished on a request for authorization of a new activity subject to the rule. It should probably be clarified that this public notice requirement can be met simultaneously with the public notice for the permit.

Section 4C.1.a. – Default to Tier 2 – This section places any stream that is not in Tiers 2.5 or 3 automatically into the Tier 2, "High Quality Water" category unless it can be proven that the stream does not exhibit the characteristics of a high quality stream. This

requirement, when coupled with the very low trigger level (4C.2.a.1.A.) for the consideration of non-degrading or less degrading alternatives and socio/economic justification, makes the proposed implementation procedure the most stringent of all states that have been reviewed by the Company. The actions needed to fulfill these requirements can be long, complex and resource intensive. While the stated purpose of this requirement is to enable the public to determine if a potential lowering of water quality in a high quality water is justified by the benefits to be derived by the activity, in reality this forces the environmental professionals of the Division of Environmental Protection to decide whether an activity is to be allowed based strictly on non-technical issues. It allows an activity to be prohibited by DEP based not on its impact on the environment but on the perception of the activity by the general public. Such issues are more properly in the purview of local zoning requirements not an environmental agency.

The Company suggests to the Board that, for the above reason, most states have reserved this type of analysis for those situations in which either a larger potential impact on the water quality of the stream is indeed contemplated or the coverage of this type of requirement has been reserved to those streams for which there is a positive demonstration of the existence of a use that can not otherwise be protected.

Of the nine other states reviewed by the Company (See Appendices A,B) only Michigan, Ohio and Virginia have a clear default to Tier 2 status. However in Michigan there are a number of exclusions from the HQW category and full tier 2 review is not imposed on any discharge having less than a 10% assimilative capacity impact. In Ohio all streams not proven to be in another category (either higher or lower restriction) are assumed to be General High Quality Waters. This category, however has a de minimis exclusion equal to 10% of remaining assimilative capacity. Virginia defines a discharge meeting certain limits as not constituting a significant lowering of water quality and allows an impact equal to 25% of assimilative capacity for aquatic life criteria and 10% impact for human health criteria. These changes are based on a total deviation from a baseline that equals water quality at the program inception.

In summary, in each state of the nine surveyed, a proposed discharge will have to have a much larger impact on the receiving stream than would a discharge in West Virginia before being forced into a full socio/economic review. The survey states were chosen to include states bordering West Virginia, in the Company's service territory, or in EPA Region III.

The Company strongly recommends that the Board adopt 10% of assimilative capacity as a de minimis exclusion if the default to Tier 2 remains in the regulation.

Section 4C.2.a.1.A. - 5% of Ambient or Assimilative Tier 2 Trigger. – Based on the research that AEP has done into the antidegradation programs of the various states, there appears to be little question that West Virginia's program will result in smaller discharges being subjected to the socio/economic review or additional treatment requirements than will occur in any of these other states. Given the fact, that all nine of the surrounding

Table 1 - Comparison of 5% Ambient to 10% Assimilative for Copper

Copper with a WQS of 20 micrograms / liter

A	B	C	D	E	F	G	H
2	20	18	0.1	1.8	2.1	3.8	1.7
4	20	16	0.2	1.6	4.2	5.6	1.4
6	20	14	0.3	1.4	6.3	7.4	1.1
8	20	12	0.4	1.2	8.4	9.2	0.8
10	20	10	0.5	1	10.5	11	0.5
12	20	8	0.6	0.8	12.6	12.8	0.2
14	20	6	0.7	0.6	14.7	14.6	-0.1
16	20	4	0.8	0.4	16.8	16.4	-0.4
18	20	2	0.9	0.2	18.9	18.2	-0.7
20	20	0	1	0	21	20	-1

A = Ambient Concentratio
B = Water Quality Standa
C = Assimilative Capacity
D = 5% 0f Ambient
E = 10 % of Assimilative Capacity
F = Final conc. After 5% ambient
G = Final conc. After 10% assimilative
H = Difference final 10% ass. - 5% amb.

Table 2 - Comparison of 5% Ambient to 10% Assimilative for Iron

Iron with a WQS of 1.5 mg/l

A	B	C	D	E	F	G	H
0.1	1.5	1.4	0.005	0.14	0.105	0.24	0.135
0.2	1.5	1.3	0.01	0.13	0.21	0.33	0.12
0.3	1.5	1.2	0.015	0.12	0.315	0.42	0.105
0.4	1.5	1.1	0.02	0.11	0.42	0.51	0.09
0.5	1.5	1	0.025	0.1	0.525	0.6	0.075
0.6	1.5	0.9	0.03	0.09	0.63	0.69	0.06
0.7	1.5	0.8	0.035	0.08	0.735	0.78	0.045
0.8	1.5	0.7	0.04	0.07	0.84	0.87	0.03
0.9	1.5	0.6	0.045	0.06	0.945	0.96	0.015
1	1.5	0.5	0.05	0.05	1.05	1.05	0
1.2	1.5	0.3	0.06	0.03	1.26	1.23	-0.03
1.3	1.5	0.2	0.065	0.02	1.365	1.32	-0.045
1.4	1.5	0.1	0.07	0.01	1.47	1.41	-0.06

A = Ambient Concentratio
B = Water Quality Standa
C = Assimilative Capacity
D = 5% 0f Ambient
E = 10 % of Assimilative Capacity
F = Final conc. After 5% ambient
G = Final conc. After 10% assimilative
H = Difference final 10% ass. - 5% amb.

states surveyed (including 4 of the other 5 USEP Region III states) have a higher threshold for full Tier 2 review, coupled with cursory knowledge of a number of other state programs, it appears that the Board's proposal will indeed be the most stringent in the nation.

Given the above, it is appropriate that an analysis of the benefit to be obtained from this more stringent program be carried out. Will this lower threshold mean that West Virginia's streams will be cleaner? The answer is" "Theoretically, yes."

First of all, some potential dischargers will simply by pass West Virginia all together. AEP has no estimate of the number of potential economically beneficial activities that will be deferred or shifted to another state because of this program. AEP, however is actively engaged in economic development in West Virginia and is very much aware of the highly competitive process of locating new and expanded beneficial industrial and commercial activities. In determining where to place these activities, a prospective investor must carefully weighs the pros and cons presented by the area in which there is an interest. If an activity will require more administrative procedure, more investment of time and capital, and take a longer period of time to be approved, this establishes barriers to locating the activity that must be overcome by other positive factors. As shown above, the Board's proposal does establish such barriers, especially when weighed against our surrounding states. This lack of investment and growth will result in West Virginia's waters not being subject to some potential lowering of water quality.

The question then becomes, "How much cleaner will West Virginia's streams be because of this proposal?" A look at Tables 1 and 2 illustrates the difference between the 5% of ambient/assimilative (whichever is less) to be allowed in West Virginia versus the 10% of assimilative that AEP and others have urged the Board to adopt. Column A gives a theoretical background concentration for two constituents copper and iron. For illustrative purposes this value is allowed to vary from 10% for copper and 7% of the iron standards up to 100% of the standard. Column D is the allowable change at 5% of ambient and column E is the 10% assimilative change. Column F is the after mix stream mix concentration in the 5% ambient case and column G is the mix at 10% assimilative.

A review of the data shows that the largest differences between the allowable at 5% of ambient and 10% assimilative occur when the background level is extremely low. For copper the allowable concentration change is 0.1 micrograms/liter (ug/l) for 5% ambient when the background is 2 ug/l as opposed to 1.8 ug/l at 10% assimilative. However the resulting mix for the 10% assimilative case yields an instream concentration of 3.8 ug/l, a value still only 19% of the water quality standard. As the background concentrations increase, the allowable quantities in the 10% case decrease until at 80% of assimilative capacity an increase from 16 to 16.4 ug/l is all that is allowed. Some states do cut off allowable discharge at 80% assimilative capacity. The values for iron exhibit the same behavior as would any constituent.

This table demonstrates what other states have concluded in their analyses leading to the establishment of de minimis levels for triggering socio/economic review and more

stringent treatment requirements. The changes that are associated with the 10% of assimilative capacity trigger are indeed insignificant and basing the trigger strictly on assimilative capacity is self regulating in protecting against cumulative impact. In effect, the Board's proposal could achieve somewhat less impact on water quality, but the benefit will be almost undetectable and come at significant cost to the state.

The Company recommends that the Board adopt a Tier 2 trigger based on 10% of remaining assimilative capacity.

Section 4C.2.a.2.A-N – Exceptions to Full Tier 2 review. – The Company fully supports the list of exemptions contained in this section. As stated above, full Tier 2 review can be a long and resource intensive process. With the low trigger level that the Board is proposing for full Tier 2 review, it is essential that the activities listed in this section retain the exemptions the Stakeholders' Group recommended. The four exemptions for temperature, fecal coliform, pH, and dissolved oxygen are based on the difficulty of even applying a 5% ambient criteria. This is specifically recognized in at least one other state (Virginia) and is generally covered in other states by their higher trigger levels.

The exemptions for reissuing existing permits without changes is not necessary as long as it is well understood that existing permits of this type are not subject to antidegradation at all as in every other state the Company has reviewed.

The exemptions for water treatment chemicals meeting water quality standards are extremely important. Any new or increased addition of such chemicals is subject to review by OWR to insure that no harm will come to the receiving water. Requiring an antidegradation review for additions that have already received a technical review by OWR only delays improvements in water quality to be gained by innovative and improved treatment technology.

The exemption for ammonia treatment is simply a recognition of the type of wastewater treatment that is required to treat ammonia. The subsequent removal of the byproducts of ammonia treatment is expensive and difficult. The subsequent byproduct is also the subject of a relatively high water quality standard and has minimum potential stream or health impact.

General permits are usually established for specific, low impact activities where the potential for stream impact does not justify individual technical review. For these permits, either specific universally applicable permit limits or best management practices are determined to be enough to ensure water quality protection. Some states (Michigan, Ohio, Virginia) specifically exclude general permit registration review from antidegradation review. Requiring an antidegradation review for general permit registration defeats the purpose and the efficacy of the general permit program, which is to streamline the permit process.

Emergency situations should never be the subject of antidegradation review. Michigan and Ohio have specific language dealing with emergencies.

In the case of health hazard correction the delay caused by antidegradation review can not be justified. Several states have specific provisions dealing with exemptions for sanitary wastes. Michigan, for instance, exempts sanitary discharge increases within the design capacity of the facility from increases in sewered areas or trucked-in sanitary wastes. Other states (Maryland) exempts sanitary waste increases that are in accord with an approved area water and sewer plan.

In general states have many exemptions to the requirement to perform socio/economic review. The decision should be made based on the value to be obtained by subjecting such activities to these tighter restrictions.

The Company recommends that the Board retain the listed exemptions.

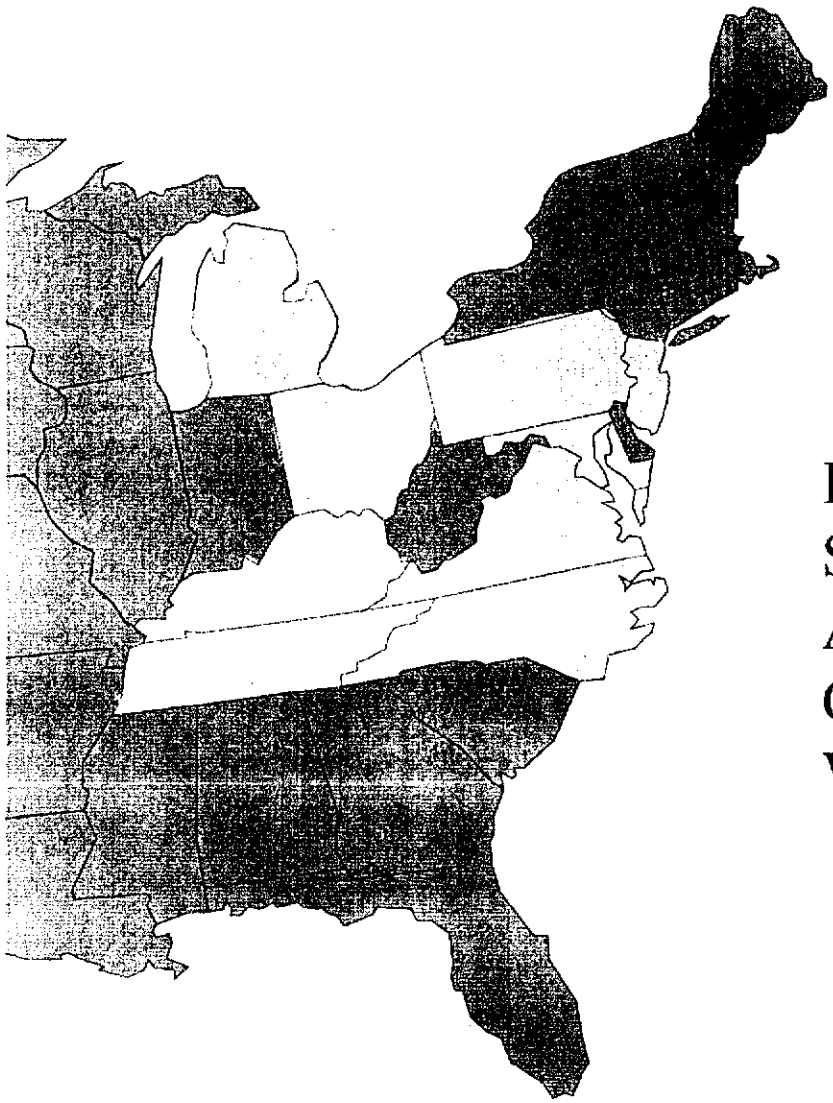
Sections 4C.6, 4C.7 – Socio/Economic Review. – The Company agrees that in some circumstances the lowering of water quality should be the subject of a review to determine if the benefits to be obtained by the state justify the loss to the state of water quality. The Company supports a review process that is fair and based on a reasonable, technically defensible cost benefit analysis.

The Company is concerned however, as outlined in the comments above, that, due to the proposed Tier 2 trigger levels, this potentially expensive and time consuming procedure could be applied to a very large number of potential activities for which such a barrier to development is inappropriate. As has been discussed above, an activity in West Virginia will be more likely to be forced into such a review than a similar activity in any of our surrounding states and possibly any state in the nation.

We recommend to the Board that the trigger levels be adjusted to address this problem.

The Company is also concerned that the process involving the convening of a panel to achieve intergovernmental coordination will introduce even more complexity into this process and will extend the time required for approval even more than currently projected.

The Company recommends that intergovernmental coordination be accomplished by a simple letter notification to the agencies believed appropriate for each activity by the Director. The letter should be phrased in a manner that a failure to respond is determined to be a determination of no objection by the contacted agency.



Location of States used for Antidegradation Comparison to West Virginia

Appendix A

Comments Of

American Electric Power

Antidegradation Regulations of

Surrounding States,

Comparisons To Proposed

Amendments To WV 46 CSR 1

Appendix A
Comments of American Electric Power
On Proposed Amendments To West Virginia 46 CSR 1
August 16, 2000
Antidegradation Regulations of Surrounding States
Comparisons to Proposed West Virginia 46 CSR 1 Amendments

Kentucky – While Kentucky does have certain default listing of streams to the highest protection category, this automatic listing is limited in scope. Only 3 streams are even in this category. Kentucky has no real tier analogous to WV's Tier 2.5 although the exceptional waters category is somewhat the same. This category requires specific nomination and listing with only 70 stream segment statewide in this category. This category does not require effluents equal background quality, but instead sets strict, but achievable effluent limits. Socio/economic demonstration is only required if one can not meet these restrictions and existing discharges can increase loading up to 20% without having to meet these treatment requirements. Streams default to the use protected category and are only required to preserve the quality necessary to protect the use. This is considered accomplished if a proper KPDES permit is issued

Michigan – Michigan has only three categories, and exempts large numbers of activities from full Tier 2 review. Michigan does not subject existing discharges to antidegradation review. With the exception of streams in one small area of the state Tier 3 does not prohibit new discharges. Only a small number of streams have the equivalent of WV's Tier 2.5 or Tier 3 restriction. No full Tier 2 review is applied to streams having an impact less than *10% of assimilative capacity.*

Maryland – Maryland has only three categories and it is extremely difficult to obtain Tier 3 status. The restrictions in Tier 3 are more difficult than West Virginia's but these appear to be mostly preexisting requirements for listing rather than restrictions that result from the declaration of Tier 3 status. Streams must be specifically listed to be Tier 2 and Tier 2 listing is done at the sole discretion of the Department subject to up to 8 criteria. The Department may require more than one criteria to be met (or all 8) before listing a stream. Any Tier 2 discharge requires a non-degrading or less degrading review, but no socio/economic review is required until 25% of the assimilative capacity that originally existed when the stream was first listed is used up. Antidegradation Review is restricted to new or expanded NPDES permits or to any 401 certification (there is no mention of retroactive action to activities receiving past 401 certification). At present, Maryland's ONRW rules are not yet part of the state regulation.

New Jersey – In the treatment of default streams it is clear that New Jersey is less restrictive that the proposed West Virginia rule. Everything that is not a special protection stream is in the least restrictive category and even streams that are better than WQS appear to not trigger review unless the designated or existing use can not be preserved. The socio/economic review seems to be reserved for those cases involving a request for a change in a designated use. This has not been confirmed but is based on a reading of the regulation, especially section 7:9B-1.5(d)6.iv. Nondegradation waters contain a prohibition against "manmade wastewater discharges." Apparently this could apply to existing discharges, but it is unclear if a stream with an existing discharge could receive this classification. New Jersey has a category one generic list of waters but states such streams "may" be included in this category, not must be as in West Virginia

North Carolina – It is clear that with very few exceptions confined to certain OSR waters existing discharges with no expansion in loading do not undergo antidegradation review. Waters with quality better than standards are allowed to receive discharges up to the assimilative capacity of the stream as long as uses are protected. There is no default category, as each stream is evaluated upon permit application. Socio/economic review is apparently reserved for changes in use designation or to contest the treatment requirements in HQW. High Quality waters do not have the "no increase in ambient" restriction placed on WV Tier 2.5 streams but lists specific, strict, but doable, permit limits. ORW are protected to a greater degree than the proposed WV rule would, but this is an extremely limited category and has stringent restrictions on the existing water quality before a stream may be considered. ORW are designated by specific action following a petition by any interested party. There is no default by definition into either HQW or ORW categories.

Tennessee – Tennessee apparently does not subject existing discharges to antidegradation review and even specifically states that existing discharges in the highest classification .(Tier 3) are allowed to continue at current levels. No degradation is allowed in Tier 2 waters, but degradation is defined as greater than 5% of assimilative capacity. Tier 2 is not a default category and streams must be determined to be in Tier 2. One of four characteristics that enable a stream to be Tier 2 is the same as West Virginia's. Discharges are apparently allowed even in Tier 3 streams if they meet the 5% assimilative test. There is no Tier 2.5 and no default into a comparable tier. Tier 3 restriction is less than WV's Tier 2.5 and only contains 8 streams, statewide.

Ohio – There is no question that once one becomes subject to a full antidegradation review in Ohio it will be more complex than West Virginia's. However, most streams in the state default to the GHQW category which has a de minimis exclusion at 10% of remaining assimilative capacity. Even in the SHQW category, represented by a very limited number of exceptional waters, there is a de minimis definition that is equal to West Virginia's Tier 2 trigger of 5% of ambient. Ohio also has a number of exemptions and opportunity for waivers many of which are very much like those proposed in West Virginia's rule (to which EPA has raised objection). It also appears that most of the exclusions and waivers can be applicable to the higher protection categories unlike West Virginia's proposal that limits these to Tier 2.

Pennsylvania – Pennsylvania's rule is stricter than West Virginia's in that no lowering of water quality is allowed in HQW. However since HQW is a designated category unlike West Virginia's default Tier 2 there are fewer streams subject to this restriction. Thus a discharge is more likely to be required to do SEJ and alternatives analysis in WV. Also, it appears that an SEJ is allowed for discharges in EV waters to allow lowering of water quality, something that is not allowed in WV's Tiers 2.5 and 3.

Virginia – Virginia uses three protection tiers that are closely analogous to West Virginia's. Just as in West Virginia the default tier is Tier 2, but Virginia concludes that discharges meeting certain criteria are insignificant and require no further review. In contrast to West Virginia's 5% of ambient, Virginia allows 25% of remaining assimilative capacity for aquatic criteria and 10% of assimilative for human health criteria. To prevent against cumulative lowering of water quality, Virginia limits the total lowering to these criteria compared to a baseline determined after the antidegradation requirements go into effect. Virginia does not perform antidegradation review on general permit registration, stormwater, or existing discharges. Virginia considers pH, fecal coliform, and temperature to be in compliance with antidegradation if the standards are met. Virginia does not put large numbers of streams into the exceptional category (Tiers 2.5 and 3 in WV) requiring specific nomination for all such waters. Only one stream has been so designated.

Appendix B

Comments Of

American Electric Power

Analysis of Surrounding States' Antidegradation Implementation Policies

Appendix B
Comments of American Electric Power
On Proposed Amendments to West Virginia 46 CSR 1
August 16, 2000
Analysis of Antidegradation Rules in Surrounding States

Kentucky

401 KAR 5:030

Kentucky's antidegradation implementation policy does not expressly mention the discharges to which the policy applies, except in the context of exceptional waters where it states that the special limitations of this subsection for domestic waste apply to "unpermitted or expanded" discharge (5:030 Section 1.(3)(a)). Under the general provisions section of the rule (401 KAR 5:029 Section 1.(2), there is a requirement that all new and existing discharges meet the highest statutory and regulatory requirements. This is part of the antidegradation policy.

All Kentucky waters are placed into one of three categories (5:030 Section 1.(1). The three tiers are: outstanding national resource waters, exceptional waters and use protected waters. The default category is the use protected waters category. All water bodies in the other two tiers are the result of nomination and specific inclusion except waters listed in the Kentucky Wild Rivers Act, Federal Wild and Scenic Rivers Act, the Kentucky Nature Preserves Act (that are contained in a formally dedicated preserve or are specifically listed),or that support federal endangered or threatened species are automatically Outstanding State Resource Waters and thus in the exceptional waters category (5:031 Section 7.(1)(a). An ONRW must first meet the criteria of an OSRW and then is categorized as ONRW if it also exhibits national ecological or recreational significance (5:030 Section 1.(1)(a)). Waters containing endangered or threatened species apparently are considered to exhibit ecological significance. All ONRW and exceptional waters are specifically listed at 5:030 Section 3. There are three stream segments in the ONRW category and 70 stream segments in the exceptional waters category. Streams that fully support all designated uses are classed as exceptional waters if the stream also contains a fish community rated "excellent" or a macroinvertebrate community rated "excellent." The stream must be specifically nominated to be in this category.

For streams in the ONRW category water quality shall be maintained and protected except for short term and temporary changes.

For exceptional waters, unpermitted or expanded domestic wastewater discharges must meet certain specific limits for BOD_5, ammonia nitrogen, TRC, TSS, total phosphorous, DO,WET limits, fecal coliform, chloride and must meet restrictions on flow as a cumulative percentage of the 7Q10. Non-domestic wastewater dischargers are restricted to no more than one half of the discharge limits that would have been allowed in a use protected stream under the same conditions. The renewal of an existing discharge permit is exempt from these restrictions if the renewal contains less than a 20% increase in loading from the existing permitted loading. Stormwater management must be in compliance with state regulations and are not subject to further antidegradation restrictions. If a potential discharger can not meet these limits the discharger must demonstrate important economic and social benefits and perform an alternatives analysis as a justification (5:030 Section 1.(3)).

For use protected waters, existing uses and the level of water quality necessary to protect those uses must be protected. The KPDES system is the method to protect these uses (5:030 Section 1.(4)).

Comparison to West Virginia – While Kentucky does have certain default listing of streams to the highest protection category, this automatic listing is limited in scope. Only 3 streams are even in this category. Kentucky has no real tier analogous to WV's Tier 2.5 although the exceptional waters category is

somewhat the same. This category requires specific nomination and listing with only 70 stream segment statewide in this category. This category does not require effluents equal background quality, but instead sets strict, but achievable effluent limits. Socio/economic demonstration is only required if one can not meet these restrictions and existing discharges can increase loading up to 20% without having to meet these treatment requirements. Streams default to the use protected category and are only required to preserve the quality necessary to protect the use. This is considered accomplished if a proper KPDES permit is issued.

Michigan

Rule R 323.1098.

Applies only to activities that result in "...new or increased loading of pollutants..." by a source already subject to independent regulation to protect water quality. (R 323 1098.(1))

High Quality waters are waters that exhibit a quality that is better than the Michigan Water Quality Standards (R 323. 1098(3)). In HQ waters no activity can occur that lowers WQS unless the provision of the rule apply (R323. 1098.(3)). The applicant must either show the activity is exempted from coverage or do a socio/economic review. The rule then lists 11 activities that do not constitute a lowering of water quality. The department can decide on a case-by-case basis that further action may be needed. Exemptions include: presence of constituent in intake water, response actions in accord with CERCLA, RCRA and 3 separate Michigan statutes, increases in pollutants from POTWs within the design of the facility, increases due to wet weather flows, new or increased loadings from general permit registrations and coverage under construction activity permits, loadings from activities involving trading (R 323. 1098.(8)) There are then three other actions that do not constitute lowering of water quality that apparently are not subject to department review. Two of these cover changes in loading already covered by a valid control document (i.e. permit), and the third is "Increased loading of a pollutant which do no involve BCCs and which use less than 10% of the unused loading capacity that exists at the time of the request."(R 323.1098.(9))

Michigan does not have an ONRW but does give special protection to Outstanding State Resource Waters and to waters of the Lake Superior Basin. Certain discharges to the Lake Superior Basin are restricted to no new loading, in the remaining OSRW there can be no lowering of water quality. The exemptions to the definition of lowering from 1098(8) and (9) do not apply in these waters. Outside the Lake Superior Basin there are 7 named water body segments (a total of 79 miles) and three National Parks or Lakeshores afforded this status (R323.1098(6) and (7)).

Comparison to West Virginia – Michigan has only three categories, and exempts large numbers of activities from full Tier 2 review. Michigan does not subject existing discharges to antidegradation review. With the exception of streams in one small area of the state Tier 3 does not prohibit new discharges. Only a small number of streams have the equivalent of WV's Tier 2.5 or Tier 3 restriction. No full Tier 2 review is applied to streams having an impact less than *10% of assimilative capacity*.

Maryland

Maryland's antidegradation is applicable to any application for a water quality certification (i.e. 401 certification), a new discharge permit, or a major modification to an existing discharge permit. The major modification is defined as an expansion of a discharge.

There are three tiers, Tier 1 requires the protection of existing uses, Tier 2 requires protection of existing quality, and Tier 3 is ONRW.

All streams not in Tiers 2 or 3 are in Tier 1.

Tier 2 allows no lessening of water quality unless certain procedures are followed. Discharges less than 5000 gpd are exempt from review. Tier 2 streams are determined by the Department and a list of those streams is published subject to being contested by someone who disagrees with the listing. The Department may require any or all of 8 listed criteria before designating a stream as Tier 2. All discharges are the subject of Water and Sewerage plans prepared by localities and these undergo antidegradation review. If a discharge is to a Tier 2 stream it must undergo a review to see if there is a cost effective no-discharge alternative and if not if there is an alternative that lowers the use of the assimilative capacity of the stream. Following this analysis a socio/economic review is required only if more than 25% of the assimilative capacity that existed on the date the waterbody was listed as Tier 2 is used. The socio/economic justification (SEJ) is performed by the Department and its conclusions are listed in the public notice for the permit.

No new or expanded discharges are allowed in a Tier 3 stream. But Tier 3 is only done by nomination subject to stringent criteria. There must be evidence of exceptional biological resources, scientific evidence that the water has exceptional quality and that quality is typical of the water body, the watershed and the upstream area must have a protected status, an attempt must be made to contact all riparian owner. Any lack of any of these criteria and the stream may not me listed. A further requirement is that all landowners in the restricted area give written permission for the listing. Upstream areas must also be subject to restricted landuse or no growth rules.

Comparison to West Virginia – Maryland has only three categories and it is extremely difficult to obtain Tier 3 status. The restrictions in Tier 3 are more difficult than West Virginia's but these appear to be mostly preexisting requirements for listing rather than restrictions that result from the declaration of Tier 3 status. Streams must be specifically listed to be Tier 2 and Tier 2 listing is done at the sole discretion of the Department subject to up to 8 criteria. The Department may require more than one criteria to be met (or all 8) before listing a stream. Any Tier 2 discharge requires a non-degrading or less degrading review, but no socio/economic review is required until 25% of the assimilative capacity that originally existed when the stream was first listed is used up. Antidegradation Review is restricted to new or expanded NPDES permits or to any 401 certification (there is no mention of retroactive action to activities receiving past 401 certification). At present, Maryland's ONRW rules are not yet part of the state regulation.

New Jersey

N. J. A. C. 7:9B-1.5(d)

Applicability to existing discharges is not specifically addressed. In one of the highest class of waters (Pinelands (d)6.ii.(2)) it is specifically stated that discharges existing as of May 20, 1985 are allowed to continue discharging under their existing permits. If expansions or modification occur these discharges are subject to the requirements of the antidegradation rule ((d)6.ii(3)). As this is included in the protection standards for one of the highest classifications, it would be logical to conclude that existing discharges in other waters are also unaffected as long as there are no modifications or expansions.

The classification scheme does not strictly follow the three tier system seen in most other states. There appear to be only two antidegradation categories with "Category one waters" (7:9B-1.4) being the most restrictive. This category includes Outstanding National Resource Waters, Outstanding State Resource Waters, Pinelands Waters, and FW1 waters. Basically all Category One Waters are waters that have been "set aside for posterity " (a term not used in the definition of category one but that appears in the definition of the subcategories). There is no nomination procedure set out and it appears that the Department makes the determination although some waters (Pinelands) are statutorily defined. Waters that **may** be included in category one include waters originating wholly or flow through or border "...Federal, interstate, State, county, municipal parks, forests, fish and wildlife lands, and other special holdings..."Trout production and maintenance waters, and shellfish waters of exceptional resource value also may be category one. Category

one waters by definition are worthy of special protection because of "...their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, or exceptional water supply significance."

New Jersey has little to say about Category Two Waters which is the default antidegradation category. It includes both waters that exceed fishable/swimable quality and waters that do not (i.e. Category two is defined as not category one). There is a statement (1.5(d) 5.) regarding all waters exceeding levels necessary to support designated uses that mirrors 40 CFR 131.12(2). However under 1.5(d)6.iv. there is a requirement that category two waters with water quality characteristics that are better than or equal to the WQS shall be maintained "...within a range of quality that shall protect the existing/designated uses..." and then requires studies relating uses to water quality. It is not clear how the state implements this provision but it appears that the state will consider a new discharge to maintain and protect water quality if the existing and designated uses are protected. There is no arbitrary percentage of wither ambient or assimilative capacity that triggers review.

Category one waters have both absolute restrictions against any changes (1.5(d).4) for ONRW or OSRW waters, and an allowance for changes in some waters such as for cranberry or blueberry production in Pinelands waters. Category one waters can have no "measurable changes." This is contrasted to "calculable changes" which are simply mathematical changes such as mass balanced determinations. To be a prohibited change it must be measurable by EPA or State approved analytical methods.

Comparison to West Virginia – In the treatment of default streams it is clear that New Jersey is less restrictive that the proposed West Virginia rule. Everything that is not a special protection stream is in the least restrictive category and even streams that are better than WQS appear to not trigger review unless the designated or existing use can not be preserved. The socio/economic review seems to be reserved for those cases involving a request for a change in a designated use. This has not been confirmed but is based on a reading of the regulation, especially section 7:9B-1.5(d)6.iv. Nondegradation waters contain a prohibition against "manmade wastewater discharges." Apparently this could apply to existing discharges, but it is unclear if a stream with an exisitng discharge could receive this classification. New Jersey has a category one generic list of waters but states such streams "may" be included in this category, not must be as in West Virginia.

North Carolina

15A NCAC 02B.0201

North Carolina's antidegradation policy does not specifically apply to new or expanded discharges and may under certain circumstance be applied to existing activities. This retroactive application does not appear to be applicable in any but OSR waters

The state classification system recognizes three types of waters: Waters with quality higher than standards, High Quality Waters, and Outstanding Resource Waters. The state incorporates 40 CFR 131.12 by reference. Existing uses are to be protected by "properly classifying surface waters and having standards sufficient to protect these uses" (02B.0201(b)). This is included as a general statement and does not designate a separate tier. Waters with quality higher than standards is specifically defined at 02B.202(69) as water whose quality is sufficiently higher than standards that "...significant pollutant loading capacity still exists in those waters." Degradation of the quality of these waters may not be allowed "...below the water quality necessary to maintain existing and anticipated uses of those waters"(02b.201(c)). When an NPDES permit goes through public notice for a permit involving any water quality limited constituent the notice must state whether the discharge will use up all of the remaining load capacity of the receiving stream and whether it will have any impact requiring more stringent permit conditions on downstream dischargers. Waters with quality higher than standards is identified on a case-by-case basis by the Division.

High Quality Waters are defined at 02B.0101(e)(5) and are waters rated as excellent by specific studies or other waters having a special purpose such as primary nursery areas. High Quality Waters are a subset of waters with quality higher than standards and are bound in general by the same restriction, that is, no degradation beyond the quality necessary to maintain existing and anticipated uses (02B.0201(d). However the rule has a separate section (02B.0224) that places additional restrictions on this category. For these waters new or expanded discharges must meet additional requirements. These requirements include specific discharge limitations, restrictions on cumulative wastewater flow as a percentage of 7Q10, failsafe design requirements, and lessened amounts of allowable toxic substances discharge (02B.0224(1)(b). Exisitng discharges which expand with no increase in pollutant loading are exempt from these requirements (02B.0224(1)(c). Outstanding Resource Waters must be free from manmade wastewater and have a resource value that can not be protected by the otherwise applicable standard. The water then must meet at least one and possibly more of five criteria before it can be listed (02B.0225(a),(b)). There are then separate restrictions imposed for freshwater and salt water. The minimum freshwater restriction is a ban on new or expanded discharge, with specific stormwater rules also applicable. OWR waters are listed in the regulation with only 4 freshwater segments having this designation. Certain tributary streams have specific discharge requirements or other restrictions also listed with a total of 9 streams placed in this category.

Comparison with West Virginia – It is clear that with very few exceptions confined to certain OSR waters existing discharges with no expansion in loading do not undergo antidegradation review. Waters with quality better than standards are allowed to receive discharges up to the assimilative capacity of the stream as long as uses are protected. There is no default category, as each stream is evaluated upon permit application. Socio/economic review is apparently reserved for changes in use designation or to contest the treatment requirements in HQW. High Quality waters do not have the "no increase in ambient" restriction placed on WV Tier 2.5 streams but lists specific, strict, but doable, permit limits. ORW are protected to a greater degree than the proposed WV rule would, but this is an extremely limited category and has stringent restrictions on the existing water quality before a stream may be considered. ORW are designated by specific action following a petition by any interested party. There is no default by definition into either HQW or ORW categories.

<u>Tennessee</u>

1200-4-3-.06

Tennessee's antidegradation policy references new or expanded discharges in several places. Even in Outstanding National Resource Waters, "Existing discharges, including existing upstream discharges, will be allowed at present levels" (3-.06(3)). There is nothing to indicate that existing discharges are required to undergo review.

Tennessee has three tiers that correspond to the 131.12 categories. Tier 1 requires the protection of existing uses. If a WQS is not met in a Tier 1 water there can be no new or increased discharge of that substance. High quality surface waters are designated as Tier 2 and four characteristics of such waters are listed. It is not clear whether meeting a single characteristic is sufficient for classification or more than this is required. "Waters where existing conditions exceed water quality," is one of the characteristics (3-.06(2)). In Tier 2 high quality waters no degradation is allowed without a socio/economic review. However in section 1200-4-3-.04(5) the definition of "Degradation" states, "Alterations not resulting in the condition of pollution that are temporary in nature or those alterations having a de minimus impact (no measurable or less than 5 percent loss of assimilative capacity) will not be considered degradation."

ONRW designation is the result of a recommendation by the Department to the Water Quality Control Board who have the authority to make such a designation. No new or expanded discharge or mixing zone is allowed unless there is no degradation of water quality. Remember that degradation is defined as having an impact greater than 5% of assimilative capacity. Existing discharges are allowed to continue at current levels. An environmental, economic and social assessment must be prepared for each designation before it can be so classified. There are currently 8 stream segments so listed.

Comparison with West Virginia – Tennessee apparently does not subject existing discharges to antidegradation review and even specifically states that existing discharges in the highest classification .(Tier 3) are allowed to continue at current levels. No degradation is allowed in Tier 2 waters, but degradation is defined as greater than 5% of assimilative capacity. Tier 2 is not a default category and streams must be determined to be in Tier 2. One of four characteristics that enable a stream to be Tier 2 is the same as West Virginia's. Discharges are apparently allowed even in Tier 3 streams if they meet the 5% assimilative test. There is no Tier 2.5 and no default into a comparable tier. Tier 3 restriction is less than WV's Tier 2.5 and only contains 8 streams, statewide.

Ohio

3745-1-05

Ohio's antidegradation rule is extremely complex. Existing discharges undergo a review under section (B)(1)(a). If the reissued permit would result in any of several defined increases the permit must undergo antidegradation review. The applicability for review is not determined based on stream impact but on the characteristics of the discharge. Once the need for review is determined the information submittal and procedures requirements can be reduced to almost nothing if certain exclusions apply. The same is true for new discharges.

The classification system is also complex. There are two main categories: High Quality Waters and Limited Quality Waters. There are five subdivisions of high quality waters. The default for all streams is to the General High Quality Waters (GHQW) category. The other subdivisions are Superior High Quality Waters (SHQW), State Resource Waters (SRW), ONRW, and Outstanding High Quality Waters (OHQW). These four subdivisions make up an extended Tier 3 type of category. Ohio has specific treatment requirements and restrictions for each of the categories. Section (E) of the rule designates all waters as GHQW except Lake Erie (SHQW), publicly owned lakes and reservoirs (SRW), previously defined SRW until these are reviewed, and limited quality waters. Other than these there are no default assignments to these highly restrictive categories. New designations are the responsibility of the Director and anyone affected by the setting of a higher designation can contest the listing.

Once an antidegradation review begins, the Ohio process is long, resource intensive and most likely expensive. Discharge to other than limited quality and GHQ waters encounter a variety of restrictions and in most cases a requirement for a public hearing that is separate from the permit public hearing. The key to the Ohio regulation is section D, "Exclusions and Waivers." Bioaccumulative substances discharged to the Lake Erie Basin are not eligible for exclusion or waiver but all other materials are. If a discharge is eligible for an exclusion most of the onerous requirements of the review are eliminated. These include alternative analyses and socio/economic demonstrations. Exclusions include: any discharge to a limited quality water, for GHQW any increase less than 10% of the assimilative capacity up to 80% of the total, for SHQW up to 5% change in ambient background allowing for a special reservation of assimilative capacity by the Director of between 90% and 30%, for Lake Erie (which is an SHQW) up to 10% of assimilative capacity, and for SRW up to 5% ambient background with no more than one discharge per five mile segment ((D)(1)(a),(b)). The section contains 9 more exclusions including coverage by several specific general permits (construction stormwater, industrial stormwater, coal mining), environmental restoration projects, CSO projects, and others. There are then listed 6 situations in which the Director may waive most of the review procedures. This includes situations in which a proposed net increase will not result in a change in background concentration after mixing, an increase in nutrients or toxic substances which will meet all WQS and pose no downstream threat, an analysis of alternative treatment schemes shows none to be technically feasible and economically justifiable, the discharge is in compliance with an approved general plan, temporary activities or there is pending action on a site specific standard (subject to some restrictions)

Comparison to West Virginia – There is no question that once one becomes subject to a full antidegradation review in Ohio it will be more complex than West Virginia's. However, most streams in the state default to the GHQW category which has a de minimis exclusion at 10% of remaining assimilative capacity. Even in the SHQW category, represented by a very limited number of exceptional

waters, there is a de minimis definition that is equal to West Virginia's Tier 2 trigger of 5% of ambient. Ohio also has a number of exemptions and opportunity for waivers many of which are very much like those proposed in West Virginia's rule (to which EPA has raised objection). It also appears that most of the exclusions and waivers can be applicable to the higher protection categories unlike West Virginia's proposal that limits these to Tier 2.

Pennsylvania

Pa. Code Section 93.4

The antidegradation policy has no specific applicability statement but specifically does reference new, additional, or increased discharges in both High Quality and Exceptional Value waters as the trigger for coverage under the implementation procedures.

The Pennsylvania process mirrors 40 CFR 131.12 in assigning three tiers of protection. These are "existing use," High Quality Waters," and "Exceptional Value Waters" (93.4a.). Existing use protection is provided when the Department's evaluation indicates a surface water attains or has attained an existing use. This is the default category for the state. Inclusion in the other two categories requires an affirmative demonstration of the presence of high water quality. Exceptional value waters may then be designated if one or more other criteria are met. HQW must exhibit (based on a least one year of data) exceedence of the WQS for 12 specified parameters or show presence of a high quality biological community. The water body may then be designated HQW by action of the Environmental Quality Board. A water of exceptional quality must meet these criteria and meet one of 6 criteria including being located in a wildlife refuge, in a designated state or national forest natural area, wild river, or is an ONRW. The EQB must be in receipt of a complete evaluation of a water body before either a HQW or exceptional value water is declared.

Proposed new, additional or increased discharges to HQ or EV waters must evaluate a non-discharge option and if no option is environmentally sound and cost-effective the discharger shall use the best mix of cost effective alternatives. If existing quality protection can not be demonstrated a socio/economic justification (SEJ) must be performed. Sewage treatment facilities are subject to less onerous SEJ is they are in accord with an approved sewage facilities plan.

Comparison to West Virginia – Pennsylvania's rule is stricter than West Virginia's in that no lowering of water quality is allowed in HQW. However since HQW is a designated category unlike West Virginia's default Tier 2 there are fewer streams subject to this restriction. Thus a discharge is more likely to be required to do SEJ and alternatives analysis in WV. Also, it appears that an SEJ is allowed for discharges in EV waters to allow lowering of water quality, something that is not allowed in WV's Tiers 2.5 and 3.

Virginia

9 VAC 25-260-30. Note: Implementation Policy is contained in OWRM Guidance Memo No. 93 -- 021 dated July 27,1993.

Virginia's antidegradation policy does not specifically reference applicability to new or expanded discharges however has an opening statement "Antidegradation requirements are triggered whenever a regulated activity **is proposed** that may have some effect on surface water quality" [Emphasis added]. The policy then exempts the following discharges from the definition of regulated activity: those covered by general permits, permits for corrective action plans, storm water permits at existing dischargers not already covered by the stormwater general permit, existing dischargers not previously covered by a permit.

Waters are divided into three tiers. Tier 1 is analogous to West Virginia's. Tier 2 is any stream where data indicates all parameters meet WQS. If there is not sufficient data, the applicant may be required to obtain such data or the EEQ can perform and engineering analysis based on existing information to determine classification. Waters that are classed as Public Water Supply or as class i or ii natural trout streams are

assumed to be tier 2. If sufficient information is not available to classify the stream the default is to tier 2. Tier 3 streams are specifically designated on an individual basis and are all listed as part of the Water Quality Regulation at 9 VAC 25-260-30 A 3 c. At present only one stream has been designated to be tier 3 in Virginia.

In Tier 1 streams water quality standards are to be protected. In tier 2 there can be "...no significant lowering of water quality from the allowance of new or increased discharges..." [Emphasis in original] unless the state performs a socio/economic review. If the proposed discharges conforms to specified limits it is considered to not be significant and subject to no further review. These limits are: DO sag less than 0.2 mg/l, compliance with temperature standard, compliance with fecal coliform standard, compliance with pH standard, the change in concentration of aquatic protection parameters is no more than 25% of the difference between the existing quality and the standard, the change in human health parameters is no more than 10% applied in the same manner. If there are multiple discharges proposed the total change from all changes can not exceed these criteria. The existing quality establishes a baseline insignificance level for all future discharges. If the insignificance level is exceeded, the DEQ, in addition to an SEJ review, must also ask the Department of Conservation and Recreation to undertake appropriate action.

Comparison to West Virginia – Virginia uses three protection tiers that are closely analogous to West Virginia's. Just as in West Virginia the default tier is Tier 2, but Virginia concludes that discharges meeting certain criteria are insignificant and require no further review. In contrast to West Virginia's 5% of ambient, Virginia allows 25% of remaining assimilative capacity for aquatic criteria and 10% of assimilative for human health criteria. To prevent against cumulative lowering of water quality, Virginia limits the total lowering to these criteria compared to a baseline determined after the antidegradation requirements go into effect. Virginia does not perform antidegradation review on general permit registration, stormwater, or existing discharges. Virginia considers pH, fecal coliform, and temperature to be in compliance with antidegradation if the standards are met. Virginia does not put large numbers of streams into the exceptional category (Tiers 2.5 and 3 in WV) requiring specific nomination for all such waters. Only one stream has been so designated.

Appendix C

Comments Of

American Electric Power

Surrounding States'

Antidegradation Policies

KENTUCKY

401 KAR 5:029. General provisions.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 146.990, 224.10-100, 224.01-400, 224.16-050, 224.16-070, 224.40 to 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73, 40 CFR Part 136

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 136, 33 USC 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:030, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes: the Commonwealth's surface water antidegradation policy, provide for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, mixing zones, and variances for coal remining operations.

Section 1. Antidegradation Policy. (1) The purpose of 401 KAR 5:026 to 401 KAR 5:031 is to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of any new pollution of these waters, and to abate any existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 5:030, Section 1(3). In allowing degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully. Further, the cabinet shall assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 5:030, Section 1(2).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in 401 KAR 5:031, Section 7.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 USC 1326, shall be in compliance with this section.

Section 2. Withdrawal of Contaminated Water. Surface waters may, on occasion, not meet the criteria established in 401 KAR 5:031. Withdrawal and subsequent discharge of these waters without alteration of the physical or chemical characteristics into the same or similar surface water shall not be considered a violation of water quality standards. The cabinet shall determine KPDES permit limitations in these situations based on the quality of the raw and receiving waters. The cabinet retains the right to require permit modification under the provisions of 401 KAR 5:035, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080.

Section 3. Sample Collection and Analytical Methodology. All methods of preservation and analysis used to determine conformity/nonconformity with water quality standards shall be governed by 40 CFR Part 136, as amended, if applicable. Sample collection and other methods not found in the above reference may be used where appropriate if they:

(1) Meet commonly accepted quality assurance and quality control principles;

(2) Are within the accuracy required for determining conformity or nonconformity with water quality standards; and

(3) Receive prior written approval by the cabinet.

Section 4. Mixing Zones. The following requirements shall apply to a mixing zone:

(1) The cabinet may assign definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Dilution provided by assigned mixing zones shall not be allowed until applicable limits are assigned by the cabinet in accordance with this section.

(2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic life in 401 KAR 5:031 shall not exist within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned pursuant to subsection (3) of this section. Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

401 KAR 5:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1316, 1341, 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Implementation of Antidegradation Policy. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 5:029, Section 1, for a point source discharge.

(1) Categorization. Surface waters shall be placed into one (1) of three (3) categories:

(a) Outstanding national resource waters:

1. Surface water that meets, at a minimum, the requirements for an outstanding state resource water classification found in 401 KAR 5:031 Section 7; and

2. Surface water that demonstrates to be of national ecological or recreational significance.

(b) Exceptional waters:

1. Surface water designated as a Kentucky Wild River, unless it is categorized as an outstanding national resource water;

2. Outstanding state resource water that does not support a federally threatened or endangered aquatic species;

3. Surface water that fully supports all applicable designated uses and contains:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in "Methods for Assessing Biological Integrity of Surface Waters", incorporated by reference in Section 4 of this administration regulation; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky", incorporated by reference in Section 4 of this administrative regulation; and

4. Water in the cabinet's reference reach network.

(c) Use protected waters. Use protected water is water not listed in Section 3 of this administrative regulation as outstanding national resource water or exceptional water.

(2) Procedure for implementing the antidegradation policy in outstanding national resource waters.

(a) Water quality shall be maintained and protected in outstanding national resource waters.

(b) The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support their designated uses.

(3) Procedure for implementing the antidegradation policy in exceptional waters.

(a) A KPDES permit for an unpermitted or expanded discharge shall contain effluent limitations for the entire effluent that are as follows:

1. Domestic discharges shall have an effluent quality of:

a. No greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand;

b. No greater than two (2) mg/l ammonia-nitrogen;

c. No greater than 0.010 mg/l total residual chlorine;

d. No greater than ten (10) mg/l total suspended solids;

e. No greater than one (1) mg/l total phosphorus;

f. A minimum seven (7) mg/l dissolved oxygen;

g. A chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent;

h. A geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days; and

i. The discharge shall not cause the average instream dissolved oxygen concentration to be less than six and zero-tenths (6.0) mg/l.

2. Chloride limits shall be based on the domestic water supply criterion of 250 mg/l.

3. Stormwater discharges shall be exempt from antidegradation implementation procedures for exceptional waters, but shall be subject to control by existing cabinet programs.

4. Chronic whole effluent toxicity limits shall apply unless an acute whole effluent toxicity limit is more stringent.

5. Waste discharges that are not domestic waste or stormwater discharges shall be restricted to no more than one-half (1/2) of the limitation that would have been permitted for use protected waters at standard design conditions.

6. KPDES permit renewals that result in less than a twenty (20) percent increase in pollutant loading are exempt from implementation procedures for exceptional waters and shall be regulated by the requirements in subsection (4)(a) and (b) of this administrative regulation.

(b) If the permit applicant determines that it can meet effluent limitations required by paragraph (a) of this subsection, the KPDES permit shall be issued with the effluent limitations without further antidegradation review as described in subsection (4) of this section for use protected waters. If a KPDES permit applicant cannot meet the effluent limitations the applicant may request a less stringent limitation. In making this request, the applicant shall demonstrate to the satisfaction of the cabinet that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 incorporated by reference in Section 4 of this administrative regulation and include an alternatives analysis that shall consider the following:

1. Discharge to other treatment facilities;

2. Use of other discharge locations;

3. Water reuse or recycle;

4. Process and treatment alternatives; and

5. On-site or subsurface disposal. In allowing the resultant lowering of water quality, the cabinet shall assure water quality necessary to fully protect existing uses.

(c) Zones of initial dilution are prohibited in exceptional waters unless assigned before the effective date of this administrative regulation.

(4) Procedure for implementing the antidegradation policy in use protected waters for point source discharges. All surface waters not listed in Section 3 of this administrative regulation as outstanding national resource waters or exceptional waters shall be categorized as use protected waters.

(a) All existing uses shall be protected and the level of water quality necessary to protect the uses shall be assured in use protected water.

(b) The process to allow a discharge to a use protected water and to assure the water's protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

(5) The antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for dischargers located within that local government's jurisdiction to surface waters of the Commonwealth.

Section 2. Procedure for Recategorizing Waters. This section shall apply to the recategorization of surface waters to outstanding national resource waters and exceptional waters. The redesignation of waters to outstanding state resource waters shall be governed by the procedures in 401 KAR 5:026.

(1) The cabinet may propose to recategorize certain waters to outstanding national resource waters and exceptional waters.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization. Any permit issued after the date of publication shall be issued with limitations based on the new category. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized waters promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource waters shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface waters for which the recategorization is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface waters for which the recategorization is proposed;

4. The existing and designated uses of the waters upstream and downstream of the proposed recategorized waters;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water, and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the waters qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional waters shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing the surface waters to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and specific land uses adjacent to the surface waters for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water, and the $7Q_{10}$ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(3)(c) of this administrative regulation are utilized.

Section 3. Surface Water Categories. Surface waters categorized for antidegradation purposes are listed in the following tables. The county column indicates the county in which the mouth or outlet of the surface water is located.

SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATERS		
Stream	Zone	County
Red River	River Mile 68.6 to River Mile 49.2	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary	Edmonson/ Hart/Barren
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary

SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATERS		
Stream	Zone	County
LITTLE SANDY RIVER BASIN		
Arabs Fork*	Source to Clay Fork	Carter
Big Caney Creek*	Source to Grayson Lake	Elliott
Big Sinking Creek*	Source to River Mile 10.7	Carter
Laurel Creek*	Source to River Mile 7.6	Elliott
LICKING RIVER BASIN		
Blackwater Creek	River Mile 11.4 to River Mile 3.8	Morgan
Bucket Branch*	Source to North Fork of Licking River	Morgan
Devils Fork*	Source to North Fork of Licking River	Morgan
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan
North Fork of Licking River*	Source to River Mile 13.0	Morgan
KENTUCKY RIVER BASIN		
Buffalo Creek*	River Mile 12.8 to River Mile 0.8	Owsley
Cavanaugh Creek	River Mile 5.3 to South Fork of Station Camp Creek	Jackson
Clear Creek*	Source to River Mile 4.1	Woodford
Clemons Fork*	Source to Buckhorn Creek	Breathitt

Coles Fork*	Source to Buckhorn Creek	Breathitt
Drennon Creek*	River Mile 11.9 to River Mile 10.5	Henry
East Fork of Indian Creek*	Source to West Fork of Indian Creek	Menifee
Elisha Creek*	Source to River Mile 0.95	Leslie
Gladie Creek*	Source to Red River	Menifee
Goose Creek	Laurel Creek to Red Bird River	Clay
Hardwick Creek	Little Hardwick Creek to Red River	Powell
Indian Creek*	River Mile 4.7 to River Mile 0.55	Carroll
Line Fork	River Mile 27.5 to River Mile 17.3	Letcher
Lulbegrud Creek	Falls Branch to Red River	Clark/Powell
Middle Fork of Kentucky River	Upper Twin Creek to North Fork of Kentucky River	Lee
Middle Fork of Kentucky River	Greasy Creek to Buckhorn Reservoir backwaters	Leslie
Musselman Creek*	River Mile 8.4 to River Mile 2.6	Grant
Red Bird River	Big Creek to Goose Creek	Clay
Right Fork of Buffalo Creek*	Source to Buffalo Creek	Owsley
South Fork of Kentucky River	Sexton Creek to River Mile 11.3	Owsley
South Fork of Red River	Sand Lick Fork to Middle Fork of Red River	Powell
South Fork of Station Camp Creek*	Source to River Mile 5.3	Jackson
Station Camp Creek*	River Mile 22.3 to River Mile 19.0	Estill
Sturgeon Creek*	Source to River Mile 4.0	Lee
Sugar Creek*	Source to River Mile 0.8	Leslie
Wolfpen Creek*	Source to Red River	Menifee
SALT RIVER BASIN		
Salt Lick Creek*	Source to River Mile 5.3	Marion
Wilson Creek*	Source to River Mile 12.2	Bullitt
GREEN RIVER BASIN		
Beaverdam Creek*	Source to River Mile 7.6	Edmonson

Caney Fork*	Source to River Mile 0.85	Barren
Falling Timber Creek*	River Mile 16.0 to River Mile 11.5	Metcalfe
Gasper River*	Source to River Mile 32.3	Logan
Goose Creek*	Source to River Mile 5.6	Casey
Green River	River Mile 207.8 to River Mile 181.7	Edmonson
Lick Creek*	Source to River Mile 5.3	Simpson
Otter Creek*	Source, including East and Middle Fork, to River Mile 1.75	Larue
Peter Creek*	River Mile 18.05 to River Mile 13.05	Barren
Russell Creek*	Source to River Mile 23.8	Adair
Trammel Fork*	River Mile 30.15 (Kentucky-Tennessee State Line) to River Mile 19.4	Allen
LOWER CUMBERLAND RIVER BASIN		
West Fork of Red River*	River Mile 26.5 to River Mile 16.3	Christian
Whipporwill Creek*	Source to Red River	Logan
TENNESSEE RIVER BASIN		
Blood River*	River Mile 15.65 (Kentucky-Tennessee State Line) to River Mile 15.1	Calloway
Panther Creek*	Source to River Mile 1.2	Calloway
Soldier Creek*	River Mile 5.3 to River Mile 2.6	Marshall
TRADEWATER RIVER BASIN		
Sandlick Creek*	Source to River Mile 3.5	Christian
Tradewater River*	Source to River Mile 126.0	Christian
OHIO RIVER BASIN (Main Stem and Minor Tributaries)		
Yellowbank Creek*	Source to River Mile 4.4	Breckinridge
LAKES AND RESERVOIRS		
Metropolis	Entire Lake	McCracken
Swan	Entire Lake	Ballard
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)		
Murphy's Pond	Entire Pond and Preserve Area	Hickman
UPPER CUMBERLAND RIVER BASIN		

Bad Branch*	Source to Poor Fork of Cumberland River	Letcher
Bark Camp Creek*	Source to River Mile 2.6	Whitley
Buck Creek*	River Mile 62.6 to River Mile 28.9	Pulaski
Cane Creek*	Source to River Mile 7.0	Laurel
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/ Whitley
Eagle Creek*	Source to River Mile 3.0	McCreary
Horse Lick Creek*	Source to River Mile 12.3	Jackson
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne
Marsh Creek*	Source to River Mile 12.6	McCreary
Martins Fork of Cumberland River	River Mile 31.3 to River Mile 27.4	Harlan
Rock Creek	Tennessee-Kentucky State Line (River Mile 21.9) to White Oak Creek	McCreary
Rockcastle River	River Mile 24.4 to River Mile 8.5	Laurel/ Pulaski
South Fork of Dog Slaughter Creek*	Source to Dog Slaughter Creek	Whitley

*Waterbodies in the cabinet's reference reach network

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Methods for Assessing Biological Integrity of Surface Water", October 1993, Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet;

(b) "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky", June 1999, Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet;

(c) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (21 Ky.R. 2843; Am. 89; 280; eff. 7-12-95; 26 Ky.R. 145; 819; 1144; eff. 12-8-99.)

Virginia:

Guidance issued on July 27, 1993. (OWRM Guidance Memo # 93-021)

They only have Tier 1, 2, and 3 - NO Tier 2.5.

Significant Degradation for Tier 2 equivalent waters:

For Aquatic Life Criteria it is NOT considered significant degradation if:

The predicted change in the concentration (or other measure specified by the standard) for the parameters for aquatic life protection in the table in VR680-21-01.14 is not more than twenty five percent of the difference between the existing quality and that allowed by the standards.

For Human Health Criteria - plug in 10% above. (This is has meaning in VA where they do not consider all mud puddles as a pristine Category A drinking waters).

Ohio:

For General High Quality Waters - "...any net increase in the discharge of a regulated pollutant that does not exceed 10% of the waste load allocation to maintain water quality standards...." There is an 80% cap. Once 80% of assimilative capacity is used up, antideg. review is required for new and expanded operations.

Indiana:

Antidegradation rules for the Great lakes Basin have been adopted – antideg. criteria for the rest of the state is still draft and part of the ongoing triennial review.

In the Basin (which lake Michigan and many tribs. are considered OSRW's)- A proposed discharge of a new pollutant or pollutant parameter is subject to full antidegradation review where, " ... the monthly average mass discharge would be greater than ten percent (10%) of unused loading capacity...."

Kentucky: They apparently just passed a new antidegradation implementation regulation that I think we would REALLY LIKE in West Virginia. It has three categories, ONRW's, Exceptional Waters, and Use Protected Waters. Most streams are classified as Use Protected (tier 1) – which means no antidegradation reviews apply. Only three streams are ONRWs and 72 stream segments are listed as Exceptional Waters. For Exceptional Waters, the significance threshold is defined below:

"KPDES permit renewals that result in less than a twenty (20) percent increase in pollutant loading are exempt from implementation procedures for exceptional waters and shall be regulated by the requirements in subsection (4)(a) and (b) of this administrative regulation."

Subsection (4) (a) and (b) read as follows:

(4) Procedure for implementing the antidegradation policy in use protected waters for point source discharges. All surface waiters not listed in Section 3 of this administrative regulation as outstanding national resource waters or exceptional waters shall be categorized as used protected waters.

(a) All existing uses shall be protected and the level of water quality necessary to protect the uses shall be assured in use protected water.

(b) The process to allow a discharge to a use protected water and to assure the water's protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

Section 7. Outstanding State Resource Waters. This designation category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200146.360;

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 USC 1271 et seq.;

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet; and

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 USC 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or fulfill two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna;

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 5:026, shall be applicable to these waters.

(b) If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

(c) Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 5:026.

(3) Determination of designation.

(a) Any person may present a proposal to designate certain waters under this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 3(3)(a) through (h).

(b) The cabinet shall review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 5:026.

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem

MARYLAND

Antidegradation

Outstanding National Resource Water | Implementation of Antidegradation

OUTSTANDING NATIONAL RESOURCE WATER

Status: The following approach is being considered for designation of outstanding Natural Resource Waters.

What is an Outstanding National Resource Water?

An Outstanding National Resource Water or ONRW is the third and most stringent of the three Tiers of water quality protection described in the federal regulations for the Clean Water Act. Tier I protects waters for support of aquatic life and recreation, often referred to as fishable/swimmable. Where water quality is better than that required for Tier I, Tier II protects and maintains that better water quality. An ONRW designation identifies water with the highest water quality or other values that are deserving of the most stringent protection. That protection usually takes the form of no new or increased discharges to the ONRW waterbody.

What is the scope of Maryland's approach to designating ONRWs?

In Maryland there are many tools available to protect special resources including Smart Growth, Rural Legacy, comprehensive plans, Program Open Space, and others that work through the private sector and non-governmental organizations. The intent of this regulation is to apply the stringent Tier III ONRW designation where the most stringent protection is necessary and appropriate to protect and maintain existing exceptional resources.

How can a water body be nominated for ONRW designation and what information must the nomination package contain?

The nominating group or individual must provide documentation that the water body meets all of the requirements below:

1. Evidence of the presence of the exceptional biological resources;
2. Scientific information and analysis concerning existing water quality in the water body including a demonstration that the existing water quality is typical of the nominated water body;
3. Confirmation of "protected status" for both the nominated water

body and the upstream watershed, including specific boundaries of the nominated waters and protected area demonstrating that the nominated water body is fully within the protected area except as provided below;

4. Demonstration that an attempt has been made to notify all impacted riparian landowners of the nomination.

What other information may be required in the nomination package?

An economic analysis by the nominee may be required as part of the submittal by the Department to address community economic and social concerns, if these factors are deemed by the Department to be relevant to the ONRW determination.

How will the Department respond to the initial nomination?

Prior to promulgating the ONRW designation to a water body, the information in the nomination package will be analyzed for completeness and confirmation of the ability of the water body to achieve and meet the conditions of the ONRW designation.

What is meant by "exceptional biological resources"?

Ecologically significant aquatic or wetland habitat that is distinctive because of its unique or very rare combination of natural species and communities which may include:

1. Wholly aquatic threatened or endangered species, or wholly aquatic species in need of conservation (Natural Resources Article §10-2A-01);

2. Other habitats or communities of special state concern listed in COMAR §26.23.06.

3. The biological resources must be dependent on maintaining high or pristine water quality or special conditions of existing water quality (e.g., a bog) which can best be assured protection by no new or increased discharge.

What if the water quality is high, but there are no exceptional biological resources?

If the area nominated for ONRW designation has high water quality but does not have exceptional biological resources, it will be protected against degradation under the Antidegradation provisions in COMAR and will not be considered for ONRW status.

What does protected status mean?

The area nominated for ONRW designation must be wholly within a permanently "protected" area such as:

1. Wildlife refuges or similar habitat protection areas which include but are not limited to Wildlife Management Areas, National parks, State parks, management areas; or,

2. Under permanent conservation easement or Rural Legacy status as determined by consultation with the Rural Legacy Board (Maryland Code Annotated, Natural Resources Article Subtitle 9A §5-9A-03) or easement holder to assure that location meets the intent and needs of ONRW designation as determined by the Department of the Environment; or,

3. Under some other demonstrated protection, by which the Department may be assured that there will be no changes in land use which could result in nonpoint source runoff posing a direct or indirect threat to the biological values proposed in the nomination.

What about the upstream areas that feed the ONRW water body?

To prevent potential degradation within ONRW waters, the watershed upstream of the proposed ONRW area shall have protections in place that are consistent with the maintenance and protection of biological resources in the ONRW segment. These protections can include but are not limited to a county comprehensive plan or other plan that designates the upstream watershed as a no growth area or such as an easement or other legal instrument that protects and maintains the existing landuse.

What about endangered species?

If the "exceptional biological resource" is a federally threatened or endangered wholly aquatic species, the Department may, but is not required to, designate a water body as an ONRW without requiring "protected status". Although the presence of an endangered species may be an indication of a special biological resource, the primary protection for endangered species is provided by the Maryland Nongame and Endangered Species Conservation Act (Natural Resources Subtitle 2A § 10-2A-01 et seq.) and the Federal Endangered Species Act. Where an ONRW is approved for a water body that is not in protected status, any regulated activities in the watershed which would adversely impact the aquatic threatened or endangered species population, or impair the habitat required by the species, will require the maximum practical application of best management practices and implementation of antidegradation policies by the Department. The implementation requirements described below will also apply.

Under what conditions may the Department designate an area as an ONRW?

1. All provisions of the Administrative Procedures Act (Maryland Code Annotated Title 10, Subtitle 1) have been met; and

2. The application is complete and all listed requirements have been met; and

3. Written permission for the nomination has been received from the landowners(s) (e.g., federal or State agency, or private owner) within the proposed area for ONRW designation. (Notice to property owners shall be based on property and tax records in the affected jurisdictions.)

How can the public be involved?

The Department shall provide public notice and opportunity for a public hearing on the proposed designation of an ONRW before that designation is made. Local jurisdictions shall have 60 days after notification of the nomination to comment on the consistency of the nomination with the locality's comprehensive plan.

How will the ONRW requirements be implemented?

1. A wastewater or industrial discharge NPDES permit shall be issued that would allow a new discharge or an increase in an individual discharge only if there is mitigation or offsets elsewhere in the ONRW segment to allow no net increase in any substance which might impact or impair the ONRW values for which the water body was nominated.

2. A discharge allowing increased flow, but not increased loadings, may be allowed only if it can be demonstrated that this would not adversely affect conditions for the "special biological values" for which the area was designated an ONRW.

3. The Water Quality Certification shall permit an impact only if the water quality necessary to maintain and protect the biological resource is maintained and only if there is mitigation or restoration elsewhere in the ONRW water segment.

4. Sources of pollution may be allowed by the Department for temporary degradation, so long as after a minimal period of time (weeks to months) the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

What other regulations may need to be revised to be consistent with this new regulation?

§26.08.02.10B Application for a Water Quality Certification

(h) Discharges to Outstanding National Resource Waters (ONRW) will be certified only if they are *de minimus*, will not impair or impact the special biological values of the ONRW, and all practical actions have been taken to avoid impacts.

§26.023.01.04 Expanded Buffer.

(3) Outstanding National Resource Waters (ONRW).

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IMPLEMENTATION OF ANTIDEGRADATION - *Discussion Draft*

What is antidegradation?

EPA specifies three "Tiers" of water quality protection. Tier I must support fish and aquatic life, sometimes known as "fishable/swimmable" and represents the minimum water quality that must be maintained. Implementation of this Tier of water quality is maintained by the Department's water quality procedures and processes such as NPDES discharge, stormwater permits, water quality certifications, general permits and TMDLs.

Tier II waters are those waters where the water quality is better than the minimum requirement. For example, if the dissolved oxygen standard is 5 mg/l and a stream has a value of 7 mg/l, the State may maximize protection of that good water quality and not arbitrarily allow it to degrade down to 5 mg/l. These procedures require evaluation of alternatives to eliminate or reduce discharges to high quality waters, and require a justification and public review where such discharges are deemed to be in the best interest of the community.

Tier III is called an outstanding national resource water (ONRW) and is the highest level of protection. In general, no new or expanded discharges are allowed to Tier III waters. A separate document is being prepared to describe the procedures for an ONRW.

When is the antidegradation policy implemented?

Upon application for a water quality certification, a new discharge permit, or major modification of an existing discharge permit (i.e., expansion), the Department will determine whether the receiving/affected water body is Tier I, II, or III by consulting a list of water quality designations. As part of its Continuing Planning Process, the Department will also, through its review and approval of County Water and Sewerage Plans (W&S Plans), screen updates and amendments to the W&S Plans for any new or expanded discharges relative to the receiving water body Tier designation. Discharges under 5,000 gallons per day are not required to be listed in the W&S Plans and are excluded from this review.

Similar reviews will be required for water quality certifications, applications for new discharge permits or major modifications of existing permits.

How will this list be compiled?

When the water quality of the receiving stream is better than that required to support propagation of fish, shellfish and recreation in and on the water (i.e., it exceeds water quality standards), the water body

will be listed by MDE as a Tier II water body. Wherever available, the following information, data or data sources (e.g., 305(b), 303(d) or other published reports) will be considered. Depending on the nature of the water body, the Department may require any or all of the following criteria to be met (listed in order of general priority and importance):

1. Impaired waters. If the water body is listed on the 303(d) list as impaired a water body cannot be Tier II.

2. Biological assessments. In general, if a Tier II determination will be made where both the fish and benthic Indices of Biotic Integrity are greater than 4.0 the water body will be listed as Tier II.

   If the IBI is not available for a water body the Department may determine its status based on other existing fish and bottom community data.

3. Chemical assessments. In general, if the concentrations for the substances are less than 80% of the applicable chronic criterion for priority or non-priority pollutants the water body will be listed as Tier II.

4. General Water Quality Criteria. If the general water quality criteria (§26.08.02.03B) and other criteria specified in COMAR are met, including specifically no indication of excessive algal blooms.

5. Pending adoption of numeric nutrient criteria, nutrient concentrations will be less than 50% of the concentration used to determine impairment for the purposes of the 303(d) List.

6. The Department may also consider existing uses, existing water quality, and public use perspective. These may be weighed and balanced against the quantitative biological and chemical findings to make a decision.

7. The Department will maintain a public list of all such waters identified.

8. Tier III waters will be listed separately, according to the ONRW regulations.

9. All waters not listed as Tier II or as an ONRW (Tier III) are Tier I.

What activities will be affected?

Under existing State law, local approval of subdivision plats and issuance of building permits and discharge permits as issued by the Department must be consistent with the County Water and Sewerage Plans (W&S Plans). To assure such consistency with the W&S Plans and conformity with water quality standards, the Department will review all amendments and updates for any new or expanded discharge

for compliance with the antidegradation requirements. Local jurisdictions will be required to certify through the W&S Plan process that updates and amendments are consistent with these antidegradation requirements. The Department will confirm through its review process of expanded or new discharges whether the affected water body is Tier I, II, or III and follow appropriate procedures to approve, deny or revise the local jurisdictions' antidegradation review.

When the Department receives an amendment or update for a plan it will go first to the Water Quality Infrastructure Program. Program staff will consult the list of waters identified as Tier II waters. If the amendment does not affect a Tier II water, the Tier II evaluation is complete.

If the amendment or update involves a new or increased discharge to a Tier II water, the Program will require that the entity submitting amendment consider alternatives and minimization options as described above (under: What issues must be addressed in the antidegradation review?).

What issues must be addressed in the antidegradation review?

When a jurisdiction submits a revision of the W&S Plan, that jurisdiction will indicate whether any of the revisions affect a Tier II water. If a Tier II water is affected:

1. Alternatives that do not require direct discharge to a Tier II water body must be provided for the Department's review (no-discharge alternative). Cost data and estimates in support of cost effectiveness calculations for these alternatives must also be provided to the Department with the alternatives.

2. If cost effective alternatives are possible, they must be selected and implemented in the W & S Plan or in the permit.

3. If the Department finds that available options are not cost effective, the local jurisdiction shall:

    i. Provide the Department with plans to configure or structure the discharge to minimize the use of the assimilative capacity of the water body.

    ii. As described below, provide the Department with a social and economic justification.

It must be recognized that the designation of a receiving water may change between the submission of a revised W&S Plan and a final permit application. A Tier II review that was not required for the W&S Plan revision may still be required as part of the permit approval process. Therefore, the antidegradation review should be updated when an application is made for a new or increased discharge.

What are the responsibilities of the local jurisdictions or permit applicant? If a receiving water is Tier II, what is required of the

discharger?

The local jurisdiction or permit applicant should determine in advance whether the receiving water qualifies for Tier II protection. If it does, the analysis of no-discharge alternatives and cost evaluation should be submitted with the application or amendment. If a discharge is necessary, an analysis demonstrating minimization of use of assimilative capacity and a social and economic justification should then accompany the amendment or application.

How will a permit be determined to be consistent with plans and antidegradation?

Antidegradation review of both W&S plans, and permits will assure that both are consistent with antidegradation requirements, and, as per current practice, permit requests will continued to be reviewed to assure consistency with the W&S plans. The same requirements apply to the Nontidal Wetlands and Waterways Water Quality Certification review.

What will happen if a permit application is inconsistent with antidegradation?

If a permit application or amendment of a W&S Plan is inconsistent with antidegradation requirements the applicant will be notified of the deficiencies and will be asked to submit revisions. This may include: consideration of no-discharge alternatives with accompanying cost evaluation, demonstration that efforts have been made to minimize use of assimilative capacity, and a social and economic justification supporting the need for a water quality impact. The Water Quality Infrastructure Program will then review the revised W&S Plan and approve it if appropriate.

What is the process for review? Provide a specific example.

See attached figure.

What are the possible decisions that can be made?

The most likely possible decisions include:

1. There are cost effective no-discharge alternatives.

   Implement no-discharge alternative.

2. There are no cost-effective alternatives, but there is potential for further minimization of assimilative capacity.

   Reconsider analysis.

3. There are no alternatives, minimization of assimilative capacity is adequate, but the social and economic justification (SEJ) is not adequately prepared.

   Request revision.

4. As in (3) but the SEJ does not justify the water quality impact.

   Deny discharge.

5. There are no alternatives, all reasonable efforts have been made to minimize the use of assimilative capacity, and the SEJ is both adequate and justifies the discharge.

   Allow the proposed activity if existing uses are protected.

A similar process will be followed for Water Quality Certification, and per current rules, mitigation (e.g., stream restoration, stormwater retrofit, re-establishment of fisheries or fish passage) may be required.

How will the objective of maintaining existing water quality be accomplished?

Because no-discharge alternatives and minimization of assimilative capacity must be considered for Tier II waters, degradation of high quality water will be eliminated or reduced. Where some impact is allowed, it will justified. In all waters, existing uses must be maintained and protected.

When is a social and economic justification (SEJ) required, and how will it be used?

An SEJ will be required when, in the Department's opinion:

1. No environmentally sound and cost effective alternatives to the discharge are available;

2. A potential water quality impact is likely; **and**

3. More than 25% of the remaining assimilative capacity, determined for the date the water body was listed as Tier II, will be used.

4. If a water quality certification is required, the SEJ will be part of the purpose/need analysis.

The Water Quality Infrastructure Program will use the SEJ to determine whether the impact to water quality is warranted and should be allowed. Additional guidance on how to conduct the SEJ is available. Each SEJ will be conducted on a case-by-case basis.

How will the objective of maintaining existing water quality be acccomplished?

The Department would:

1. Propose a tentative determination to either issue or deny the permit. If the decision is to issue the permit, the permit notice of

tentative determination shall state that these waters are Tier 2 and shall also specify whether a social and economic justification is available for review.

2. Assure that existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

3. The Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources.

4. Assure that all required nonpoint source controls under the Department's statutory and regulatory responsibility will be achieved.

What must be considered in the preparation of the SEJ?

The level of detail and evaluation in the SEJ will be dependent on the extent and duration of the impact, the existing uses of the water body, and the presence of rare or threatened species.

The economic impacts to be considered are those that result from treatment beyond that required by technology- or water quality-based regulations. The economic analysis should address the cost of maintaining water quality in high quality waters. The first question is whether the costs of the pollution controls needed to maintain the high-quality water would prevent the development. If not, then lower water quality is not necessary for the development to take place. If the costs would prevent with the development and lower water quality is necessary for the development to take place, then the analysis must show that the development would be an important economic and social development.

What are the public participation requirements before the permit for discharge to a Tier II water body may be issued?

Public participation for a permit to discharge to a Tier II water will be the same as for any permit subject to the Administrative Procedures Act requirements or the requirements of the "Public Participation in the Permitting Process" (§1-601), including mention in the notice of tentative determination that the discharge is to a Tier II water and an SEJ is available for review. If the discharge to a Tier II water will use less than 25% of the assimilative capacity, no SEJ is required, but the public notice will reflect the Tier II status of the waterbody and note that an SEJ is not required because less than 25% of the assimilative capacity will be used.

List of Tier II waterbodies.

An initial list of Tier II waterbodies will be developed by the Department based on the State's 305(b) report, MBSS data, chemical and other monitoring data collected by the Department, and NPDES compliance data. This list, after consideration of public comment, will be published and updated as necessary by the Department and the list of

Tier II water bodies in a county or local jurisdiction will be incorporated into the applicable local jurisdictions' water and sewer plan. If the necessary data are available to modify the List of Tier II waters, a permit may be proposed based on that information and the Tier II List modified at a later date.

What if someone disagrees with the List of Tier II waters?

The Department will make Tier I/II determinations based on readily available data. Any person not satisfied with a listing determination may provide additional data for the Department to consider.

Effective date: On publication of the List of Tier II waters and guidance on the preparation of a social and economic justification, but not more than one year from the approval of these procedures.

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Please direct questions or comments to webmaster@mde.state.md.us.
Last updated on: 04/17/2000 01:36 PM

MICHIGAN

ADMINISTRATIVE RULES

PART 4. WATER QUALITY STANDARDS

(Promulgated pursuant to Part 31 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended)

Effective: December 13, 1973
Latest revisions effective: April 2, 1999

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

SURFACE WATER QUALITY DIVISION

R 323.1092 Applicability of water quality standards to dredging or construction Activities
(Effective December 13, 1973; revised December 2, 1986)

R 323.1096 Determinations of compliance with water quality standards
(Effective December 13, 1973; revised December 2, 1986)

R 323.1097 Materials applications not subject to standards
(Effective December 13, 1973; revised December 2, 1986)

R 323.1098 Antidegradation
(Effective December 13, 1973; revised December 2, 1986, July 29, 1997 and April 2, 1999)

R 323.1099 Rescinded
(Effective December 2, 1986; rescinded July 29, 1997)

R 323.1100 Designated uses
(Effective December 13, 1973; revised December 2, 1986, May 20, 1994, July 25, 1996, July 29, 1997 and April 2, 1999)

R 323.1103 Variances
(Effective July 29, 1997)

R 323.1105 Multiple designated uses
(Effective December 13, 1973; revised December 2, 1986)

R 323.1116 Availability of documents
(Effective December 13, 1973; revised January 18, 1985, December 2, 1986, May 20, 1994, July 25, 1996, July 29, 1997 and April 2, 1999)

R 323.1117 Adoption of standards by reference
(Effective May 20, 1994; revised July 29, 1997)

DEPARTMENT OF ENVIRONMENTAL QUALITY

SURFACE WATER QUALITY DIVISION

WATER RESOURCES PROTECTION

Filed with the Secretary of State on March 17, 1999
These rules take effect 15 days after filing with the Secretary of State

(By authority conferred on the department of environmental quality by sections 3103 and 3106 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.3103 and 324.3106 of the Michigan Compiled Laws)

R 323.1043, R 323.1098, R 323.1100 and R 323.1116 of the Michigan Administrative Code are amended as follows:

PART 4. WATER QUALITY STANDARDS

R 323.1041 Purpose.

Rule 41. The purpose of the water quality standards as prescribed by these rules is to establish water quality requirements applicable to the Great Lakes, the connecting waters, and all other surface waters of the state, to protect the public health and welfare, to enhance and maintain the quality of water, to protect the state's natural resources, and to serve the purposes of Public Law 92-500, as amended, 33 U.S.C. §466 et seq., Act No. 245 of the Public Acts of 1929, as amended, being §323.1 et seq. of the Michigan Compiled Laws, and the Great Lakes water quality agreement enacted November 22, 1978, and amended in 1987. These standards may not reflect current water quality in all cases. Water quality of certain waters of the state may not meet standards as a result of natural causes or conditions unrelated to human influence. Where

waters of the state may have been degraded due to past human activities and attainment of standards in the near future is not economically or technically achievable, these standards shall be used to improve water quality. These standards are the minimum water quality requirements by which the waters of the state are to be managed.

R 323.1098 Antidegradation.

Rule 98. (1) This rule applies to any action or activity pursuant to part 31 of Act No. 451 of the Public Acts of 1994, as amended, being §324.3101 et seq. of the Michigan Compiled Laws, that is anticipated to result in a new or increased loading of pollutants by any source to surface waters of the state and for which independent regulatory authority exists requiring compliance with water quality standards.

(2) For all waters, the level of water quality necessary to protect existing uses shall be maintained and protected. Where designated uses of the water body are not attained, there shall be no lowering of the water quality with respect to the pollutant or pollutants that are causing the nonattainment.

(3) Where, for individual pollutants, the quality of the waters is better than the water quality standards prescribed by these rules, that water shall be considered high quality and that quality shall be maintained and protected unless allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. For high quality waters, no action resulting in the lowering of water quality shall occur unless the provisions of this rule have been complied with.

(4) A person applying for a control document in a high quality water or a Lake Superior basin - outstanding international resource water for a new or increased loading of pollutants shall show how the discharge is exempted under subrule (8) or (9) of this rule or provide a demonstration as follows:

(a) The applicant shall identify the social or economic development and the benefits to the area in which the waters are located that would be foregone if the new or increased loading of pollutants is not allowed. The factors to be addressed may include any of the following:

(i) Employment increases.
(ii) Production level increases.
(iii) Employment reductions avoidance.
(iv) Efficiency increases.
(v) Industrial, commercial, or residential growth.
(vi) Environmental or public health problem corrections.
(vii) Economic or social benefits to the community.

(b) For discharges of BCCs that result from operations at the facility, the applicant shall include an identification of the alternatives evaluated and the alternatives to be implemented to comply with the following requirements:

(i) The discharger shall minimize the new or increased loading of the BCC by implementation of any cost-effective pollution prevention alternatives and techniques which have been adequately demonstrated and which are reasonably available to the discharger that would eliminate or significantly reduce the new or increased loading of the BCC.

(ii) If pollution prevention alternatives implemented under paragraph (i) of this subdivision do not eliminate the new or increased loading of the BCC, then the discharger shall evaluate alternative or enhanced treatment techniques which have been adequately demonstrated and which are reasonably available to the discharger that would eliminate the new or increased loading of the BCC and shall implement the techniques that have a cost that is reasonable relative to the cost of treatment necessary to achieve applicable effluent limitations.

(iii) If the new or increased loading is a point source discharge to a Lake Superior basin-outstanding international resource water as defined in subrule (7) of this rule and if the BCC of concern is a LSB-BSIC, then the requirements of paragraph (ii) of this subdivision do not apply. If the pollution prevention alternatives implemented under paragraph (i) of this subdivision do not eliminate the new or increased loading

of the LSB-BSIC to a Lake Superior basin-outstanding international resource water, then the discharger shall evaluate and implement the best technology in process and treatment (BTPT) that would eliminate or reduce the new or increased loading of the LSB-BSIC. BTPT shall be the most advanced treatment techniques which have been adequately demonstrated and which are reasonably available to the discharger. However, innovative or experimental technology shall also be considered if proposed by the discharger. Upon demonstration by the permittee, the requirement to implement BTPT may be waived by the department for new or increased loadings of LSB-BSICs that occur as trace contaminants in naturally occurring raw materials at the facility. If the BTPT requirement is waived, then the requirements of paragraph (ii) of this subdivision shall apply.

(5) If the department determines that the antidegradation demonstration information from subrule (4) of this rule shows that lowering of water quality is necessary to support important social and economic development in the area and that, if applicable, BTPT will be implemented consistent with subrule (4)(b)(iii) of this rule, then the department shall authorize the lowering of water quality through issuance of the control document. In no event may this decision allow water quality to be lowered below the minimum level required to fully support the designated uses. The antidegradation demonstration shall be available to the public for review during any public comment period on the control document.

(6) If high quality water bodies are designated outstanding state resource waters (OSRW) by the department, then controls shall be applied on pollutant sources to the OSRW or tributaries so that the water quality is not lowered in the OSRW. A short-term, temporary, for example, weeks or months, lowering of water quality in the OSRW may be permitted by the department on a case-by-case basis. The following water bodies are designated as OSRWs:

(a) The following water bodies designated as wild rivers pursuant to the Michigan scenic rivers act of 1991, 16 U.S.C. §1271 et seq:

(i) The Carp river (Mackinac county) - the 7.5-mile segment from Michigan state highway 123, T42N, R5W, section 2, to 1/4 of a mile upstream from forest development road 3119, T42N, R4W, section 4.

(ii) The Carp river (Mackinac county) - the 4.9-mile segment from 1/4 of a mile downstream of forest development road 3119, T42N, R4W, section 3, to McDonald rapids.

(iii) The east branch of the Ontonagon river (Houghton and Ontonagon counties) - the 25.5-mile segment from the east branch of the Ontonagon river's confluence with an unnamed stream in T48N, R37W, section 30, to the Ottawa national forest boundary, T50W, R38W, section 33.

(iv) The middle branch of the Ontonagon river (Ontonagon county) - the 17.4-mile segment from Trout creek, T48N, R38W, section 20, to the northern boundary of the Ottawa national forest, T50N, R39W, section 12.

(v) The Sturgeon river (Baraga and Houghton counties) - the 16.5-mile segment from the Sturgeon river's entry into the Ottawa national forest, T48N, R35W, section 12, to Prickett lake.

(vi) The east branch of the Tahquamenon river (Chippewa county) - the 3.2-mile segment from the center of T46N, R6W, section 20, to the boundary of the Hiawatha national forest, T46N, R6W, section 19.

(vii) The Yellow Dog river (Marquette county) - the 4-mile segment from the Yellow Dog river's origin at the outlet of Bulldog lake dam, T50N, R29W, section 31, to the boundary of the Ottawa national forest, T50N, R29W, section 17.

(b) The main, north, south, east, and west branches of the Two-Hearted river and Dawson creek from their headwaters to the mouth of the river at Lake Superior, which are designated as wilderness rivers pursuant to part 305 of Act No. 451 of the Public Acts of 1994, as amended, being §324.30501 et seq. of the Michigan Compiled Laws.

(c) Water bodies within the designated boundaries of the following national parks or national lakeshores:

(i) Sleeping bear dunes national lakeshore.

(ii) Pictured rocks national lakeshore.

(iii) Isle royale national park.

(7) All surface waters of the Lake Superior basin that are not identified as OSRWs are designated as Lake Superior basin - outstanding international resource waters (LSB-OIRW). Under the LSB-OIRW designation, new or increased loadings of any LSB-BSIC from point sources to the surface waters of the Lake Superior basin are prohibited unless the new or increased loading of a LSB-BSIC is consistent with the requirements of this rule.

(8) Except for water bodies designated as OSRWs, or as the department may determine on a case-by-case basis that the application of the procedures in this rule are required to adequately protect water quality, the following do not constitute a lowering of water quality.

(a) The short-term, temporary, for example, weeks or months, lowering of water quality.

(b) Bypasses that are not prohibited by regulations set forth in 40 C.F.R. §122.41(m) (1995).

(c) Response actions undertaken to alleviate a release into the environment of pollutants that may pose an imminent and substantial danger to the public health or welfare under any of the following:

(i) The comprehensive environmental response, compensation and liability act of 1980, (CERCLA), as amended, 42 U.S.C. §9601 et seq.

(ii) The resource conservation and resource recovery act of 1976, as amended, 42 U.S.C. §6901 et seq.

(iii) Part 201 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.20101 to 324.20141 of the Michigan Compiled Laws.

(iv) Part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.21301 to 324.21331 of the Michigan Compiled Laws.

(v) Part 31 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.3101 to 324.3119 of the Michigan Compiled Laws.

(d) Discharges of pollutant quantities from the intake water at a facility proposing a new or increased loading of a pollutant, if the intake and discharge are on the same body of water.

(e) Increasing the sewered area, connecting new sewers and customers, or accepting trucked-in wastes, such as septage and holding tank wastes, by a publicly owned treatment works, if the increase is within the design flow of the facility, there is no increased loading due to nondomestic wastes from a significant industrial user for BCCs that are not specifically limited in the current permit, and there is no significant change expected in the characteristics of the wastewater collected.

(f) Intermittent increased loadings related to wet-weather conditions.

(g) New or increased loadings due to implementation of department-approved industrial or municipal controls on wet-weather related flows, including combined sewer overflows and industrial storm water.

(h) New or increased loadings authorized by certificates of coverage under NPDES general permits and notices of coverage for storm water from construction activities.

(i) Increased non-BCC loadings within the authorized levels of a limit in an existing control document.

(j) Increased BCC loadings within the authorized levels of a limit in an existing control document, except for those BCC loadings that result from actions by the permittee that would otherwise require submittal of an increased use request.

(k) New or increased loadings at a site where there is a simultaneous enforceable decrease in the allowed loading of the pollutant under consideration from sources contributing to the receiving water body, such that there is no net increase in the loading of the pollutant to the water body at that site consistent with trading rules established by the department.

(9) Except for water bodies designated as OSRWs, the following do not constitute a lowering of water quality:

(a) Increased loadings within the existing capacity and processes that are covered by the existing applicable control document, including the following:

(i) Normal operational variability.

(ii) Changes in intake water pollutants.

(iii) Increasing the production hours of the facility, for example, adding a second shift.

(iv) Increasing the rate of production.

(b) Changes in a control document that are not a result of changes in pollutant loading, but are the result of any of the following:

(i) Improved monitoring data.

(ii) New or improved analytical methods or sensitivity.

(iii) New or modified water quality values.

(c) Increased loadings of a pollutant which do not involve a BCC and which use less than 10% of the unused loading capacity that exists at the time of the request.

R 323.1099 Rescinded.

R 323.1100 Designated uses.

Rule 100. (1) At a minimum, all surface waters of the state are designated for, and shall be protected for, all of the following uses:

(a) Agriculture.

(b) Navigation.

(c) Industrial water supply.

(d) Public water supply at the point of water intake.

(e) Warmwater fishery.

(f) Other indigenous aquatic life and wildlife.

(g) Partial body contact recreation.

(2) All surface waters of the state are designated for, and shall be protected for, total body contact recreation from May 1 to October 31 in accordance with the provisions of R 323.1062. Total body contact recreation immediately downstream of wastewater discharges, areas of significant urban runoff, combined sewer overflows, and areas influenced by certain agricultural practices is contrary to prudent public health and safety practices, even though water quality standards may be met.

(3) If designated uses are interrupted due to uncontrollable circumstances during or following flood conditions, accidental spillages, or other emergencies, then notice shall be served upon entities affected by the interruption in accordance with procedures established by the department. Prompt corrective action shall be taken by the discharger to restore the designated uses.

(4) All inland lakes identified in the publication entitled "Coldwater Lakes of Michigan," as published in 1976 by the department of natural resources, are designated for, and shall be protected as, coldwater fisheries.

(5) All Great Lakes and their connecting waters, except for the entire Keweenaw waterway, including Portage lake, Houghton county, and Lake St. Clair, are designated for, and shall be protected as, coldwater fisheries.

(6) All lakes listed in the publication entitled "Designated Trout Lakes and Regulations," issued September 14, 1996, by the director of the department of natural resources under the authority of part 411 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.41101 to 324.41105 of the Michigan Compiled Laws, are designated for, and shall be protected as, coldwater fisheries.

(7) All waters listed in the publication entitled "Designated Trout Streams for the State of Michigan," Director's Order No. DFI-101.97, by the director of the department of natural resources under the authority of section 48701(m) of Act No. 451 of the Public Acts of 1994, as amended, being §324.48701(m) of the Michigan Compiled Laws, are designated for, and shall be protected as, coldwater fisheries.

(8) All surface waters of the state that are designated by the department as existing or proposed for use as public water supply sources are protected for such use at the point of water intake and in such contiguous areas as the department may determine necessary for assured protection. In addition, Michigan waters of the Great Lakes and connecting waters and all waters that have been designated for use as public water supply

NEW JERSEY

Surface Water Quality Standards

N. J. A. C. 7:9B

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Office Of Environmental Planning
April 1998

STATE OF NEW JERSEY
Christine Todd Whitman, Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Robert Shinn, Commissioner

ENVIRONMENTAL PLANNING AND SCIENCE
Bob Tudor, Assistant Commissioner

SURFACE WATER QUALITY STANDARDS

Authority
N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq.,and 58:11A-1 et seq.

Effective Date
Readoption - April 17, 1998
Amendments - May 18, 1998

Executive Order No. 66(1978) Expiration Date
Chapter 9B, Surface Water Quality Standards, expires on April 18, 2003

"Ambient temperature" means the temperature of a waterbody beyond the portion of the waterbody that is affected by the localized heated waste discharge or discharge complex; or the temperature of a waterbody that would exist without addition of heated discharges.

"Anadromous fish" means fish that spend most of their life in saline waters and migrate to fresh waters to spawn.

"Aquatic substrata" means soil material and associated biota underlying the water.

"Bioaccumulation" means the increase of the concentration of a substance within the tissues of an organism, to levels in excess of that substance's ambient environmental concentration, directly from the water or through the ingestion of food (usually other organisms).

"Bioassay" means a toxicity test using aquatic organisms to determine the concentration or amount of a toxic substance causing a specified response in the test organisms under stated test conditions.

"Biota" means the animal and plant life of an ecosystem; flora and fauna collectively.

"Calculable changes" means changes to water quality characteristics as demonstrated by any acceptable mathematical, predictive method.

"C1" means Category One waters.

"C2" means Category Two waters.

"Category one waters" means those waters designated in the tables in N.J.A.C. 7:9B-1.15(c) through (h), for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to:

1. Waters originating wholly within Federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated as FW1 at N.J.A.C. 7:9B-1.15(h) Table 6;
2. Waters classified at N.J.A.C. 7:9B-1.15(c) through (g) as FW2 trout production waters and their tributaries;
3. Surface waters classified in this subchapter as FW2 trout maintenance or FW2 nontrout that are upstream of waters classified in this subchapter as FW2 trout production;

4. Shellfish waters of exceptional resource value; or
5. Other waters and their tributaries that flow through, or border, Federal, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings.

"Category two waters" means those waters not designated as Outstanding National Resource Waters or Category One at N.J.A.C. 7:9B-1.15 for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d).

"Chlorine produced oxidants" means the sum of free and combined chlorine and bromine as measured by the methods approved under N.J.A.C. 7:18. In fresh waters the oxidants measured are comprised predominantly of hypochlorous acid (HOCl), hypochlorite ion (OCl^-), monochloramine and dichloramine. In saline waters the oxidants measured are comprised predominantly of the oxidants listed for fresh waters plus hypobromous acid (HOBr), hypobromite ion (OBr^-) and bromamines.

"Chronic toxicity" means death or other adverse impacts that affect the growth, survival, or reproductive success of an organism or its progeny after a relatively long exposure period to toxic substances. Chronic toxicity is measured using intermediate-term or long-term bioassays.

"Criteria" means those elements of the Surface Water Quality Standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When the criteria are met, water quality will generally protect the designated use.

"Cumulative substance" means a substance that may be bioaccumulated within an organism to concentrations that exert a toxic effect on that organism or render it unfit for consumption.

"Department" means the New Jersey Department of Environmental Protection.

"Designated use" means those surface water or ground water uses, both existing and potential, that have been established by the Department for waters of the State.

"Diadromous fish" means fish that spend most of their life in one type of water, either fresh or saline, and migrate to the other type to spawn.

"Disinfection" means the removal, destruction, or inactivation of pathogenic and indicator organisms.

"Dissolved metal" means the concentration of metal that passes through a 0.45 μm membrane filter (as defined in "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1979).

"DRBC" means Delaware River Basin Commission.

"EC50" means the median effective concentration of a toxic substance expressed as a statistical estimate of the concentration that has a specified adverse effect on 50 percent of the test organisms under specified test conditions, based on the results of an acute bioassay.

"Epilimnion" means the freely circulating upper region of a thermally stratified waterbody extending from the surface to the thermocline.

"Existing uses" means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the Surface Water Quality Standards.

"Federal Act" means the "Federal Water Pollution Control Act" (33 U.S.C. § 1251 et seq.), commonly referred to as the Clean Water Act, including all subsequent supplements and amendments.

"Flow-through bioassay" means a toxicity test in which the test solutions flow into and out of the test chambers on a once-through basis for the duration of the test, in accordance with N.J.A.C. 7:18.

"Fresh water(s)" means all nontidal and tidal waters generally having a salinity, due to natural sources, of less than or equal to 3.5 parts per thousand at mean high tide.

"FW" means the general surface water classification applied to fresh waters.

"FW1" means those fresh waters, as designated in N.J.A.C. 7:9B-1.15(h) Table 6, that are to be maintained in their natural state of quality (set aside for posterity) and not subjected to any man-made wastewater discharges or increases in runoff from anthropogenic activities. These waters are set aside for posterity because of their clarity, color, scenic setting, other characteristic of aesthetic value, unique ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s).

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 or Pinelands Waters.

"Groundwater" means that portion of water beneath the land surface that is within the zone of saturation (below the water table) where pore spaces are filled with water.

"Heat dissipation area" means a mixing zone, as may be designated by the Department, into which thermal effluents may be discharged for the purpose of mixing, dispersing, or dissipating such effluents without creating nuisances, hazardous

design flow for health effects occurring after long term exposures and is calculated by

$$n/\sum_{i=1}^{n}(1/Qi)$$

where n is the number of recorded flows and Q is the combined receiving water and effluent flow.

"MA1CD10" means the minimum average one day flow with a statistical recurrence interval of 10 years.

"MA7CD10" means the minimum average seven consecutive day flow with a statistical recurrence interval of 10 years.

"MA30CD5" means the minimum average 30 consecutive day flow with a statistical recurrence interval of five years.

"Measurable changes" means changes measured or determined by a biological, chemical, physical, or analytical method, conducted in accordance with USEPA approved methods as identified in 40 C.F.R. 136 or other analytical methods (for example, mathematical models, ecological indices) approved by the Department, that might adversely impact a water use (including, but not limited to, aesthetics).

"Mixing zones" means localized areas of surface waters, as may be designated by the Department, into which wastewater effluents may be discharged for the purpose of mixing, dispersing, or dissipating such effluents without creating nuisances or hazardous conditions, or violating the provisions of this subchapter.

"Natural flow" means the water flow that would exist in a waterway without the addition of flow of artificial origin.

"Natural water quality" means the water quality that would exist in a waterway or a waterbody without the addition of water or waterborne substances from artificial origin.

"NJPDES" means New Jersey Pollutant Discharge Elimination System.

"Nondegradation waters" means those waters set aside for posterity because of their clarity, color, scenic setting, other characteristic of aesthetic value, unique ecological significance, exceptional recreational significance, or exceptional water supply significance. These waters include all waters designated as FW1 in this subchapter.

"Nonpersistent" means degrading relatively quickly, generally having a half-life of less than 96 hours.

"Nonpoint source" or "NPS" means:

1. Any man-made or man-induced activity, factor, or condition, other than a point source, from which pollutants are or may be discharged;
2. Any man-made or man-induced activity, factor, or condition, other than a point source, that may temporarily or permanently change any chemical, physical, biological, or radiological characteristic of waters of the State from what was or is the natural, pristine condition of such waters, or that may increase the degree of such change; or
3. Any activity, factor, or condition, other than a point source, that contributes or may contribute to water pollution.

"Nontrout waters" means fresh waters that have not been designated in N.J.A.C. 7:9B-1.15(b) through (h) as trout production or trout maintenance. These waters are generally not suitable for trout because of their physical, chemical, or biological characteristics, but are suitable for a wide variety of other fish species.

"NPDES" means National Pollutant Discharge Elimination System.

"NT" means nontrout waters.

"Nutrient" means a chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the growth and development of organisms.

"Outstanding National Resource Waters" means high quality waters that constitute an outstanding national resource (for example, waters of National/State Parks and Wildlife Refuges and waters of exceptional recreational or ecological significance) as designated in N.J.A.C. 7:9B-1.15(i).

"Persistent" means relatively resistant to degradation, generally having a half life of over 96 hours.

"Pinelands waters" means all waters within the boundaries of the Pinelands Area, except those waters designated as FW1 in N.J.A.C. 7:9B-1.15(h) Table 6, as established in the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.) and shown on Plate 1 of the "Comprehensive Management Plan" adopted by the New Jersey Pinelands Commission in November 1980.

"PL" means the general surface water classification applied to Pinelands Waters.

"Point source" or "PS" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

6. The Department shall utilize the parameter specific criteria contained in N.J.A.C. 7:9B-1.14 in the development of chemical specific water quality-based effluent limitations for point source discharges. Whenever parameter specific criteria have not been adopted, the Department will utilize the best available scientific information in the development of chemical specific water quality-based effluent limitations for point source discharges. Ambient criteria published by the United States Environmental Protection Agency pursuant to section 304(a) of the Federal Clean Water Act represent the minimum acceptable best scientific information to be used in the development of water quality-based effluent limitations for point source discharges.

(d) Antidegradation policies are as follows:

1. These antidegradation policies apply to all surface waters of the State.

2. Existing uses shall be maintained and protected. Designated uses shall be maintained or, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions.

3. No irreversible changes may be made to existing water quality that would impair or preclude attainment of the designated uses of a waterway.

4. No changes shall be allowed in waters which constitute an outstanding National or State resource or in waters that may affect these outstanding resource waters.

5. Where water quality exceeds levels necessary to support the designated uses, including but not limited to, propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process as set forth in the Statewide Water Quality Management Plan (see N.J.A.C. 7:15), which includes, but is not limited to, the NJPDES Regulations (N.J.A.C. 7:14A), that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

6. These antidegradation policies shall be applied as follows:

   i. The quality of Nondegradation waters shall be maintained in their natural state (set aside for posterity) and shall not be subject to any manmade wastewater discharges. The Department shall not approve any activity which, alone or in combination with any other

activities, might cause changes, other than toward natural water quality, in the existing surface water quality characteristics.

ii. For Pinelands waters, the Department shall not approve any activity which alone or in combination with any other activities, might cause changes, other than toward natural water quality, in the existing surface water quality characteristics. This policy shall apply as follows:

(1) This policy is not intended to interfere with water control in the operation of cranberry bogs or blueberry production.

(2) Dischargers holding valid NJPDES permits as of May 20, 1985, shall be allowed to continue discharging under the terms of their existing NJPDES permits provided that the discharge is not creating any water quality problems and that the designated uses are being attained. If a water quality problem has been created or the designated uses are not being attained, the NJPDES permit shall be modified to eliminate the water quality problem or attain the designated uses.

(3) Existing dischargers shall be subject to all the provisions of this subchapter when they apply for modification or expansion of their existing discharge.

iii. Category One Waters shall be protected from any measurable changes (including calculable or predicted changes) to the existing water quality. Water quality characteristics that are generally worse than the water quality criteria, except as due to natural conditions, shall be improved to maintain or provide for the designated uses where this can be accomplished without adverse impacts on organisms, communities or ecosystems of concern.

iv. For Category Two Waters, water quality characteristics that are generally better than, or equal to, the water quality standards shall be maintained within a range of quality that shall protect the existing/designated uses, as determined by studies acceptable to the Department, relating existing/designated uses to water quality. Where such studies are not available or are inconclusive, water quality shall be protected from changes that might be detrimental to the attainment of the designated uses or maintenance of the existing uses. Water quality characteristics that are generally worse than the water quality criteria shall be improved to meet the water quality criteria.

7. Where a lower classification of water (including the different antidegradation waters) may impinge upon a higher classification of water the Department shall ensure that the quality and uses of the higher classification water are protected.

8. A waterway or waterbody from which raw water is transferred to another waterway or waterbody shall be treated as a tributary to the waterway or waterbody receiving the transferred water.

9. Modifications of water quality-based effluent limitations established to implement this antidegradation policy may be granted pursuant to N.J.A.C. 7:9B-1.8 and 1.9.

(e) Water quality-based effluent limitation policies are as follows:

1. Water quality-based effluent limitations may be established so as to minimize total expenditures, subject to social and environmental constraints, so that the provisions of the water quality standards (which includes the antidegradation policies) are met. This policy may result in the assignment of different levels of treatment to different dischargers where this proves more beneficial on a study area basis.

2. Modifications of water quality-based effluent limitations established to implement the water quality standards (which includes the antidegradation policies) granted pursuant to N.J.A.C. 7:9B-1.8 and 1.9 , shall provide for effluent limits at least as stringent as those required pursuant to sections 301, 306, and 307 of the Federal Clean Water Act or the minimum BOD5 effluent standards at N.J.A.C. 7:14A-12.4, where applicable, whichever are more stringent.

3. Water quality-based effluent limitations developed in accordance with N.J.A.C. 7:14A-13.6 shall not interfere with the attainment of the Surface Water Quality Standards, including the antidegradation policies.

4. When a discharge is made to a tidal waterway in the reach where the salinity varies from less than 3.5 ppt. to greater than 3.5 ppt., or the salinity data are inconclusive, the Department shall establish as water quality-based effluent limitations the more stringent of the limitations, on a parameter specific basis, required for the upstream, FW, waters or the downstream, SE, waters.

5. Where the effluent limitations developed pursuant to N.J.A.C. 7:14A-13.6 are below the level of detectability of the procedures in N.J.A.C. 7:18 the Department will use an effluent limitation of nondetectable in any NJPDES permit.

NORTH CAROLINA

SUBCHAPTER 2B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0100 - PROCEDURES FOR ASSIGNMENT OF WATER QUALITY STANDARDS

15A NCAC 02B .0101 GENERAL PROCEDURES

(a) The rules contained in Sections .0100,.0200and .0300of this Subchapter which pertain to the series of classifications and water quality standards shall be known as the "Classifications and Water Quality Standards Applicable to the Surface Waters and Wetlands of North Carolina."

(b) The Environmental Management Commission, prior to classifying and assigning standards of water quality to any waters of the state, shall proceed as follows:

(1) The Commission, or its designee, shall determine waters to be studied for the purpose of classification and assignment of water quality standards on the basis of user requests, petitions, or the identification of existing or attainable water uses, as defined by 15A NCAC 2B .0202, not presently included in the water classification.

(2) After appropriate studies of the identified waters to obtain the data and information required for determining the proper classification of the waters or segments of water are completed, the Commission, or its designee, shall make a decision on whether to initiate proceedings to modify the classifications and water quality standards of identified waters. In the case of the Commission's designee deciding to initiate said proceedings, the designee shall inform the Commission of the decision prior to scheduling a public hearing.

(3) In the case of a petition for classification and assignment of water quality standards according to the requirements of General Statute 150B-20, the Director shall make a preliminary recommendation on the appropriate classifications and water quality standards of the identified waters on the basis of the study findings or information included in the petition supporting the classification and standards changes.

(4) The Commission shall make a decision on whether to grant or deny a petition in accordance with the provisions of General Statute 150B-20 based on the information included in the petition and the recommendation of the Director. The Commission may deny the petition and request that the Division study the appropriate classifications and water quality standards for the petitioned waters in accordance with Subparagraph (b)(2) of this Rule.

(5) The Director shall give due notice of such hearing or hearings in accordance with the requirements of General Statute 143-214.1 and G.S. 150B, and shall appoint a hearing officer(s) in consultation with the chairman of the Commission.

(6) The hearing officer(s) shall, as soon as practicable after the completion of the hearing, submit a complete report of the proceedings of the hearing to the Commission. The hearing officer(s) shall include in the report a transcript or summary of testimony presented at such public hearing, relevant exhibits, a summary of relevant information from the stream studies conducted by the technical staff of the Commission, and final recommendations as to classification of the designated waters and the standards of water quality and best management practices which should be applied to the classifications recommended.

(7) The Commission, after due consideration of the hearing records and the final recommendations of the hearing officer(s), shall adopt its final action with respect to the assignment of classifications, and any applicable standards or best management practices applicable to the waters under consideration. The Commission shall publish such action, together with the effective date for the application of the provisions of General Statute 143215.1 and 143215.2, as amended, as a part of the Commission's official rules.

(8) The final action of the Commission with respect to the assignment of classification with its accompanying standards and best management practices shall contain the Commission's conclusions relative to the various factors given in General Statute 143-214.1(d), and shall specifically include the class or classes to which such specifically designated waters in the watershed or watersheds shall be assigned on the basis of best usage in the interest of the public.

(c) Freshwater shall be assigned to one of the following classification:

(1) Class C: freshwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife. All freshwaters shall be classified to protect these uses at a minimum.

(2) Class B: freshwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class C uses.

(3) Class WS-I: waters protected as water supplies which are essentially in natural and undeveloped watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution are required. Suitable for all Class C uses.

(4) Class WS-II: waters protected as water supplies which are generally in predominantly undeveloped watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution shall be required. Suitable for all Class C uses.

(5) Class WS-III: waters protected as water supplies which are generally in low to moderately developed watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution shall be required. Suitable for all Class C uses.

(6) Class WS-IV: waters protected as water supplies which are generally in moderately to highly developed watersheds. Point source discharges of treated wastewater are permitted purs uant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution shall be required; suitable for all Class C uses.

(7) Class WS-V: waters protected as water supplies which are generally upstream of and draining to Class WS-IV waters. No categorical restrictions on watershed development or treated wastewater discharges shall be required. However, the Commission or its designee may apply appropriate management requirements as deemed necess ary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses.

(8) Class WL: waters that meet the definition of wetlands found in 15A NCAC 2B .0202 except those designated as Class SWL.

(d) Tidal Salt Waters shall be assigned to one of the following:

(1) Class SC: saltwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife. All saltwaters shall be classified to protect these uses at a minimum.

(2) Class SB: saltwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class SC uses.

(3) Class SA: suitable for commercial shellfishing and all other tidal saltwater uses.

(4) Class SWL: waters that meet the definition of coastal wetlands as defined by 15A NCAC 2H .0205, and which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by 15A NCAC 2H .0206.

(e) The following are supplemental classifications:

(1) Trout waters (Tr): freshwaters protected for natural trout propagation and survival of stocked trout.

(2) Swamp waters (Sw): waters which have low velocities and other natural characteristics which are different from adjacent streams.

(3) Nutrient Sensitive Waters (NSW): waters subject to growths of microscopic or macroscopic vegetation requiring limitations on nutrient inputs.

(4) Outstanding Resource Waters (ORW): unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses.

(5) High Quality Waters (HQW): waters which are rated as excellent based on biological and physical/chemical characteristics through Division monitoring or special studies, native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Marine Fisheries Commission, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality and all Class SA waters.

(6) Future Water Supply (FWS): waters that have been requested by a local government and adopted by the Commission as a future source for drinking, culinary, or food-processing purposes. Local government(s) requesting this reclassification shall provide to the Division evidence of intent which may include one or a combination of the following: capitol improvement plans, a Water Supply Plan as described in G.S. 143-355(1), bond issuance for the water treatment plant or land acquisition records. Local governments shall provide a 1:24,000 scale USGS topographical map delineating the location of the intended water supply intake. Requirements for activities administered by the State of North Carolina, such as the issuance of

History Note: *Authority G.S. 143-214.1;*
Eff. February 1, 1976;
Repealed Eff. January 1, 1985.

15A NCAC 02B .0108 CONSIDERATIONS IN ASS IGNING THE SHELLFISHING AREA CLASSIFICATION

In determining the safety or suitability of Class SA waters to be used for shellfishing for market purposes, the Commission will be guided by the existing water quality of the area in relation to the standards to protect shellfishing uses, the potential contamination of the area from both point and non point sources of pollution, and the presence of harvestable quantities of shellfish or the potential for the area to have harvestable quantities through management efforts of the Division of Marine Fisheries. Waters willnot be classified SA without the written concurrence of the Division of Health Services, North Carolina Department of Human Resources.

History Note: *Authority G.S. 143-214.1;*
Eff. January 1, 1985;
Amended Eff. October 1, 1989.

15A NCAC 02B .0109 WATERS AFFECTED BY DREDGE AND FILL ACTIVITIES

History Note: *Authority G.S. 143-214.1;*
Eff. October 1, 1989;
Repealed Eff. October 1, 1996.

SECTION .0200 - CLASSIFICATIONS AND WATE R QUALITY STANDARDS APPLICABLE TO SURFAC E WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0201 ANTIDEGRADATION POLICY

(a) It is the policy of the Environmental Management Commission to maintain, protect, and enhance water quality within the State of North Carolina. Pursuant to this policy, the requirements of 40 CFR 131.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars ($13.00). These requirements shall be implemented in North Carolina as set forth in Paragraphs (b), (c), (d), (e) and (f) of this Rule.

(b) Existing uses, as defined by Rule .0202 of this Section, and the water quality to protect such uses shall be protected by properly classifying surface waters and having standards sufficient to protect these uses. In cases where the Commission or its designee determines that an existing use is not included in the classification of waters, a project which shall affect these waters shall not be permitted unless the existing uses are protected.

(c) The Commission shall consider the present and anticipated usage of waters with quality higher than the standards, including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and shall not allow degradation of the quality of waters with quality higher than the standards below the water quality necessary to maintain existing and anticipated uses of those waters. Waters with quality higher than the standards are defined by Rule .0202 of this Section. The following procedures shall be implemented in order to meet these requirements:

(1) Each applicant for an NPDES permit or NPDES permit expansion to discharge treated waste shall document an effort to consider non-discharge alternatives pursuant to 15A NCAC 2H .0105(c)(2).

(2) Public Notices for NPDES permits shall list parameters that would be water quality limited and state whether or not the discharge shall use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers downstream.

(3) The Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.

(4) The Commission and Division shall work with local governments on a voluntary basis to identify and develop appropriate management strategies or classifications for waters with unused pollutant loading capacity to accommodate future economic growth.

Waters with quality higher than the standards shall be identified by the Division on a case -by-case basis through the NPDES permitting and waste load allocation processes (pursuant to the provisions of 15A NCAC 2H .0100). Dischargers affected by the requirements of Paragraphs (c)(1) through (c)(4) of this Rule and the public at large shall be notified according to the provisions described herein, and all other appropriate provisions pursuant to 15A NCAC 2H .0109. If an applicant objects to the requirements to protect waters with quality higher than the standards and believes degradation is necessary to accommodate important social and economic development, the applicant may contest these requirements according to the provisions of General Statute 143-215.1(e) and 150B23.

(d) The Commission shall consider the present and anticipated usage of High Quality Waters (HQW), including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and shall not allow degradation of the quality of High Quality Waters below the water quality necessary to maintain existing and anticipated uses of those waters. High Quality Waters are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The procedures described in Rule .0224 of this Section shall be implemented in order to meet the requirements of this part.

(e) Outstanding Resource Waters (ORW) are a special subset of High Quality Waters with unique and special characteristics as described in Rule .0225 of this Section. The water quality of waters classified as ORW shall be maintained such that existing uses, including the outstanding resource values of said Outstanding Resource Waters, shall be maintained and protected.

(f) Activities regulated under Section 404 of the Clean Water Act (33 U.S.C.1344) which require a water quality certification as described in Section 401 of the Clean Water Act (33 U.S.C.1341) shall be evaluated according to the procedures outlined in 15A NCAC 2H .0500. Activities which receive a water quality certification pursuant to these procedures shall not be considered to remove existing uses. The evaluation of permits issue d pursuant to G.S. 143-215.1 that involve the assimilation of wastewater or stormwater by wetlands shall incorporate the criteria found in 15A NCAC 2H .0506(c) (1)-(5) in determining the potential impact of the proposed activity on the existing uses of the wetland per 15A NCAC 2H .0231.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. October 1, 1995; February 1, 1993; April 1, 1991; August 1, 1990;
RRC Objection Eff. July 18, 1996 due to lack of statut ory authority and ambiguity;
Amended Eff. October 1, 1996.

15A NCAC 02B .0202 DEFINITIONS

The definition of any word or phrase used in this Section shall be the same as given in G.S. 143, Article 21. The following words and phrases, which are not defined in this article, shall be interpreted as follows:

(1) Acute toxicity to aquatic life means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) to a specific chemical or mixture of chemicals (as in an effluent). Short-term exposure for acute tests is generally 96 hours or less. Acute toxicity shall be determined using the following procedures:

(a) for specific chemical constituents or compounds, acceptable levels shall be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985) which is hereby incorporated by reference including any subsequent amendments.

discharged into waters which are to be used for bathing, the Commission shall take into consideration quantity and quality of the sewage and other wastes involved and the proximity of such discharges to the waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be treated to ensure the protection of primary recreation;

(c) Organisms of coliform group: fecal coliforms not to exceed a geometric mean of 200/100ml (MF count) based on at least five consecutive samples examined during any 30 day period and not to exceed 400/100ml in more than 20 percent of the samples examined during such period.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. October 1, 1995.

15A NCAC 02B .0223 NUTRIENT SENSITIVE WATERS

(a) In addition to existing classifications, the Commission may classify any surface waters of the state as nutrient sensitive waters (NSW) upon a finding that such waters are experiencing or are subject to excessive growths of microscopic or macroscopic vegetation. Excessive growths are growths which the Commission in its discretion finds to substantially impair the use of the water for its best usage as determined by the classification applied to such waters.

(b) NSW may include any or all waters within a particular river basin as the Commission deems necessary to effectively control excessive growths of microscopic or macroscopic vegetation.

(c) For the purpose of this Rule, the term "nutrients" shall mean phosphorous or nitrogen. When considering the assignment of this classification, the Commission may specify as a "nutrient" any other chemical parameter or combination of parameters which it determines to be essential for the growth of microscopic and macroscopic vegetation.

(d) Those waters additionally classified as nutrient sensitive shall be identified in the appropriate schedule of classifications as referenced in Section .0300 of this Subchapter.

(e) For the purpose of this Rule, the term "background levels" shall mean the concentration (s), taking into account seasonal variations, of the specific nutrient or nutrients upstream of a nutrient source.

(f) Quality standards applicable to NSW: no increase in nutrients over background levels unless it is shown to the satisfaction of the Director that the increase:

(1) is the result of natural variations; or

(2) will not endanger human health, safety or welfare and that preventing the increase would cause a serious economic hardship without equal or greater benefit to the public.

History Note: *Authority G.S. 143-214.1;*
Eff. October 1, 1995.

15A NCAC 02B .0224 HIGH QUALITY WATERS

High Quality Waters (HQW) are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The following procedures shall be implemented in order to implement the requirements of Rule .0201(d) of this Section.

(1) New or expanded wastewater discharges in High Quality Waters shall comply with the following:

(a) Discharges from new single family residences shall be prohibited. Those existing subsurface systems for single family residences which fail and must discharge shall install a septic tank, dual or recirculating sand filters, disinfection and step aeration.

(b) All new NPDES wastewater discharges (except single family residences) shall be required to provide the treatment described below:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD5= 5 mg/l, NH3-N = 2 mg/l and DO = 6 mg/l. More stringent limitations shall be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes shall not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily

available, evaluations shall assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and PNA's, and to 20 mg/l for all other High Quality Waters.

(iii) Disinfection: Alternative methods to chlorination shall be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.

(iv) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.

(v) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 50 percent of the total instream flow under 7Q10 conditions.

(vi) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.

(vii) Toxic substances: In cases where complex wastes (those containing or potentially containing toxicants) may be present in a discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of 90 percent. Ammonia toxicity shall be evaluated according to EPA guidelines promulgated in "Ambient Water Quality Criteria for Ammonia - 1984"; EPA document number 440/5-85-001; NITS number PB85-227114; July 29, 1985 (50 FR 30784) or "Ambient Water Quality Criteria for Ammonia (Saltwater) - 1989"; EPA document number 440/5-88-004; NTIS number PB89-169825. This material related to ammonia toxicity is hereby incorporated by reference including any subsequent amendments and editions and is available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 at a cost of forty-seven dollars ($47.00).

(c) All expanded NPDES wastewater discharges in High Quality Waters shall be required to provide the treatment described in Sub-Item (1)(b) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.

(2) Development activities which require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218, and which drain to and are within one mile of High Quality Waters (HQW) shall be required to follow the stormwater management rules as specified in 15A NCAC 2H .1000. Stormwater management requirements specific to HQW are described in 15A NCAC 2H .1006.

(3) Listing of Waters Classified HQW with Specific Actions. Waters classified as HQW with specific actions to protect exceptional water quality are listed as follows: Thorpe Reservoir [Little Tennessee River Basin, Index No. 2-79-23-(1)] including all of its tributaries shall be managed with respect to wastewater discharges through Item (1) of this Rule. Item (2) of this Rule shall not be applied in association with this HQW because of the local government implementation of WS-III stormwater management requirements.

If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant may contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. October 1, 1995;
Amended Eff. August 1, 1998; April 1, 1996.

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General. In addition to the existing classifications, the Commission may classify certain unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

(1) there are no significant impacts from pollution with the water quality rated as excellent based on physical, chemical or biological information;

(2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

(1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;

(2) there is an unusually high level of water-based recreation or the potential for such recreation;

(3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;

(4) the waters represent an important component of a state or national park or forest; or

(5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW.

(1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 2H .1007.

(2) Saltwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development shall comply with the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 2H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Environmental Management.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director

DEHNR/Division of Environmental Management
P.O.Box29535
Raleigh, North Carolina 276260535
The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

(1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H.1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).

(2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
- (A) North and South Fowler Creeks,
- (B) Green and Norton Mill Creeks,
- (C) Cane Creek,
- (D) Ammons Branch,
- (E) Glade Creek, and
- (F) Associated tributaries.

(3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
- (A) Ivy Creek,
- (B) Rock Creek, and
- (C) Associated tributaries.

(4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
  - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions;
  - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 2B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
  - (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 2B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH3-N = 2 mg/l;

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;

(iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

(iv) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.

(5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.

(6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 30 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.

(A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21'02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.

(B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.

(C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.

(E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 30 slips, having no boats over 21 feet in length and no boats with heads shall be allowed.

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35° 23'51" and Long. 76°

21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

(C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.

(D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.

(9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 1868-(3.5), 1868(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:

(A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;

(B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH3-N = 2 mg/l;

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;

(iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

(iv) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.

(v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 2B .0206).

History Note: *Authority G.S. 143-214.1;*
Eff. October 1, 1995;
Amended Eff. April 1, 1996; January 1, 1996.

15A NCAC 02B .0226 EXEMPTIONS FROM SURFACE WATER QUALITY STANDARDS

Variances from applicable standards, revisions to water quality standards or site-specific water quality standards may be granted by the Commission on a case-by-case basis pursuant to G. S. 143-215.3(e), 143214.3 or 143214.1. A listing of existing variances shall be maintained and made available to the public by the Division. Exemptions established pursuant to this Rule shall be reviewed as part of the Triennial Review of Water Quality Standards conducted pursuant to 40 CFR 131.10(g).

TENNESSEE

(Rule 1200-4-3-.05, continued)

Benzene (c)	1.0	Nitrobenzene	10.0
Bromoform -		Phenanthrene	0.7
Tribromomethane (c)	1.0	Pyrene	0.3
Carbon tetrachloride (c)	1.0		
Chloroform -		PESTICIDES	
Trichloromethane (c)	0.5	Aldrin (c)	0.5
Dichlorobromomethane (c)	1.0	g-BHC - Lindane (c)	0.5
1,2-Dichloroethane (c)	1.0	Chlordane (c)	0.1
1,1-Dichloroethylene (c)	1.0	4-4'-DDT (c)	0.1
1,3-Dichloropropylene	1.0	4,4'-DDE (c)	0.1
Ethylbenzene	1.0	4,4'-DDD (c)	0.1
Methyl chloride -		Dieldrin (c)	0.05
Chloromethane (c)	1.0	a-Endosulfan	0.1
Methylene chloride -		b-Endosulfan	0.05
Dichloromethane (c)	1.0	Endrin	0.1
1,1,2,2-Tetrachloroethane (c)	0.5	Heptachlor (c)	0.05
Tetrachloroethylene (c)	0.5	Heptachlor epoxide (c)	0.08
Toluene	1.0	PCB-1242 (c)	0.5
1,1,1-Trichloroethane	1.0	PCB-1254 (c)	0.5
1,1,2-Trichloroethane (c)	0.2	PCB-1221 (c)	0.5
Trichloroethylene (c)	1.0	PCB-1232 (c)	0.5
Vinyl chloride (c)	2.0	PCB-1248 (c)	0.5
		PCB-1260 (c)	0.5
ACID EXTRACTABLES		PCB-1016 (c)	0.5
2-Methyl-4,6-dinitrophenol-		PCB, total (c)	0.5
4,6-Dinitro-o-cresol	24.0	Toxaphene (c)	0.5
2,4-Dinitrophenol	42.0		
Pentachlorophenol	5.0		
2,4,6-Trichlorophenol (c)	2.7	(c) - carcinogen	

(9) The criteria shall be applied using the total recoverable method, unless otherwise specified, or the Division conducts or approves a chemical speciation study which determines the bioavailable or toxic fraction of a specific chemical.

Authority: T.C.A. §§4-5-201 et seq., and 69-3-105. ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed December 1, 1975; effective December 30, 1975. Amendment filed November 25, 1977; effective December 26, 1977. Amendment filed March 30, 1983; effective April 29, 1983. Amendment filed July 16, 1991; effective August 30, 1991. Amendment filed May 16, 1995; effective July 30, 1995. Amendment filed July 13, 1999; effective October 11, 1999.*

1200-4-3-.06 TENNESSEE ANTIDEGRADATION STATEMENT

(1) It is the purpose of Tennessee's standards to fully protect existing uses of all surface waters as established under the Act. Existing uses are those actually attained in the waterbody on or after November 28, 1975. In bodies of water identified as Tier I by the Division, existing uses will be maintained by application of the General Water Quality Criteria. In Tier I waters found to not meet water quality standards for a substance, new or increased discharges of that substance will not be allowed.

(2) The Tennessee Water Quality Standards shall not be construed as permitting the degradation (See definition) of high quality surface waters. Characteristics of high quality waters include:

(a) Waters that provide habitat for ecologically significant populations of aquatic or semi-aquatic plants or animals, including those proposed or listed for formal state or federal status.

(b) Waters that provide specialized recreational opportunities related to existing water quality.

(c) Waters that possess outstanding scenic or geologic values.

(d) Waters where existing conditions exceed water quality standards.

(3) The Department may recommend to the Water Qu ality Control Board that certain waterbodies be designated as Outstanding National Resource Waters (ONRWs). These shall be high quality waters which constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance.

Designation of ONRWs must be made by the Water Quality Control Board and will be accomplished in accordance with Section 69-3-105(a)(1) of the Tennessee Water Quality Control Act and through the appropriate rulemaking process.

In surface waters designated by the Water Quality Control Board as ONRWs, no new discharges, expansions of existing discharges, or mixing zones will be permitted unless such activity will not result in degradation of the water quality. Existing water quality will be the criteria in these waters. Existing discharges, including existing upstream discharges, will be allowed at present levels. Physical alterations that cause degradation to the ONRW will not be allowed.

An assessment of environmental, economic, and social impacts will be prepared for each stream or stream segment proposed for Tier 3 ONRW designation. The assessment content and process will be determined by the Division of Water Pollution Control but will contain sufficient data and information to inform the Water Quality Control Board about environmental, economic, and social impact of ONRW designation. Further, the process will provide for comprehensive public participation with a solicitation of position statements from appropriate local government agencies including but not limited to county and municpal governments, Soil Conservation Districts, Utility Districts, as well as other local, state, and federal agencies that may have a responsibility for land and water resource management within the watershed of the proposed stream segment.

The following streams or portions of streams are designated as ONRW

	Waterbody	Portion designated as ONRW
(a)	Little River	Portion within Great Smoky Mountains National Park.
(b)	Abrams Creek	Portion within Great Smoky Mountains National Park.
(c)	West Prong Little Pigeon River	Portion within Great Smoky Mountains National Park
(d)	Little Pigeon River	From the headwaters within Great Smoky Mountains National Park to the downstream boundary of Pittman Center.
(e)	Big South Fork Cumberland River	Portion within Big South Fork National River and Recreation Area.
(f)	Reelfoot Lake	Tennessee portion of the lake and its associated wetlands.

(Rule 1200-4-3-.06, continued)

The portion of the Obed River that is designated as a federal wild and scenic river as of June 22, 1999 is designated as tier 3; provided however, that if the current search for a regional water supply by the Cumberland Plateau Regional Water Authority results in a determination that it is necessary to utilize the Obed River as its source of drinking water, for that purpose the Obed River shall be designated tier 2 and any permit issued for that project, whether state, federal or otherwise, shall be considered under the requirements for tier 2.

Tier 3 ONRW designation for the Conasauga River within the boundaries of the Cherokee National Forest will be considered following preparation of an environmental, economic and social assessment of the public lands involved.

The division will present an interim report to the board regarding the scoping on the social and economic assessment of the Conasauga River and the water supply studies related to the Obed River at the April 1998 board meeting. Final report in order for decision on these two rivers will be presented in the October 1998 WQCB meeting.

(4) In other surface waters identified by the Department as Tier II high quality waters in accordance with 1200-4-3-.06(2), no degradation will be allowed unless and until it is affirmatively demonstrated to the Water Quality Control Board, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that a change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any classified uses existing in such waters. Existing discharges, including existing upstream discharges, will be allowed at present levels. Regulated nonpoint sources will be controlled to the extent possible under the Water Quality Control Act and standards. Nonpoint sources exempted from permit requirements under the Water Quality Control Act should utilize all cost-effective and reasonable best management practices.

(5) All discharges of municipal sewage, industrial waste, or other wastes shall receive the greatest degree of effluent reduction which the Commissioner of the Tennessee Department of Environment and Conservation determines to be achievable through application of stringent effluent limitations and schedules of compliance either promulgated by the Water Quality Control Board; required to implement any applicable water quality standards, including where practicable, a standard permitting no discharge of pollutants; necessary to comply with a State Water Quality Plan; or necessary to comply with other State or Federal laws or regulations.

(6) In implementing the provisions of these rules as they relate to interstate streams, the Commissioner of the Tennessee Department of Environment and Conservation and the Tennessee Water Quality Control Board will cooperate with the appropriate Federal Agency in order to assist in carrying out responsibilities under the Federal Water Pollution Control Act, as amended.

Authority: *T.C.A. §§4-5-201 et seq., and 69-3-105.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed December 1, 1975; effective December 30, 1975. Amendment filed November 25, 1977; effective December 26, 1977. Amendment filed March 30, 1983; effective April 29, 1983. Amendment filed July 16, 1991; effective August 30, 1991. Amendment filed May 16, 1995; effective July 30, 1995. Amendment filed July 13, 1999; effective October 11, 1999.*

1200-4-3-.07 GROUND WATER CLASSIFICATION.

(1) Purpose and Intent. It is one of the primary goals of the Tennessee Water Quality Control Act, T.C.A. 69-3-101 et. seq. (the "Act") to protect our valuable ground water resource. This rule classifies ground water across the state based on the factors stated in the Act, T.C.A. 69-3-105(a)(2) and establishes ground water quality criteria. The quality of ground water varies in Tennessee, some aquifers, or portions thereof, produce water with sufficient quality and quantity to be used by our citizens directly

(Rule 1200-4-3-.04, continued)

(4) Wet Weather Conveyance - Wet weather conveyances are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and which do not support fish or aquatic life and are not suitable for drinking water supplies. [T.C.A. § 4-5-202, T.C.A. § 69-3-105.]

(5) Degradation - The alteration of the properties of waters by the addition of pollutants or removal of habitat. Alterations not resulting in the condition of pollution that are of a temporary nature or those alterations having de minimus impact (no measurable or less than 5 percent loss of assimilative capacity) will not be considered degradation. Degradation will not be considered de minimus if a substantial loss (more than 50 percent) of assimilative capacity has already occurred.

(6) Ecoregion - A relatively homogeneous area defined by similarity of climate, landform, soil, potential natural vegetation, hydrology, or other ecologically relevant variables.

(7) Reference site - least impacted waters within an ecoregion that have been monitored to establish a baseline to which alterations of other waters can be compared.

(8) Atypical consumers are those persons in the vicinity of a stream or lake who due to physiological factors or previous exposure are more sensitive to specific pollutants than is the population in general. Examples of atypical consumers may include, but are not limited to: children; pregnant or nursing women; subsistence fishermen; frequent purchasers of commercially harvested fish; and agricultural, industrial, or military personnel who may have had previous occupational exposure to the contaminant of concern.

(9) Terminology not specifically defined herein shall be defined in accordance with the Tennessee Water Quality Control Act. [T.C.A. §§ 69-3-101, et seq.]

Authority: T.C.A. §§4-5-201 et seq., and 69-3-105. ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed December 1, 1975; effective December 30, 1975. Amendment filed November 25, 1977; effective December 26, 1977. Amendment filed March 30, 1983; effective April 29, 1983. Amendment filed July 16, 1991; effective August 30, 1991. Amendment filed May 16, 1995; effective July 30, 1995. Amendment filed July 13, 1999; effective October 11, 1999.*

1200-4-3-.05 INTERPRETATION OF CRITERIA

(1) Interpretation of the above criteria shall conform to any rules and regulations or policies adopted by the Water Quality Control Board.

(2) The effect of treated sewage or waste discharge on the receiving waters shall be considered after they are mixed with the waters and beyond a reasonable zone of immediate effect. The extent to which this is practicable depends upon local conditions and the proximity and nature of other uses of the waters. Such mixing zones (See definition) shall be restricted in area and length and shall not (i) prevent the free passage of fish or cause aquatic life mortality in the receiving waters; (ii) contain materials in concentrations that exceed recognized acute toxicity levels for biota representative of the aquatic community in the receiving waters; (iii) result in offensive conditions; (iv) produce undesirable aquatic life or result in dominance of a nuisance species; (v) endanger the public health or welfare; or (vi) adversely affect the reasonable and necessary uses of the area; (vii) create a condition of chronic toxicity beyond the edge of the mixing zone; and (viii) adversely affect nursery and spawning areas.

(3) The technical and economical feasibility of waste treatment, recovery, or adjustment of the method of discharge to provide correction shall be considered in determining the time to be allowed for the development of practicable methods and for the specified correction, to the extent allowable under Rule 1200-4-3-.06 (5).

OHIO

Ohio

3745-1-05 Antidegradation.

(A) Definitions.

(1) "Available pollutant assimilative capacity" means the water body pollutant assimilative capacity for a substance, as determined in paragraph (A)(26)(a) of this rule, minus the background pollutant load, or the quantity for a substance as calculated in paragraph (A)(26)(b) of this rule.

(2) "Background pollutant load" means the sum of: the upstream pollutant load of a substance; all tributary loads in the segment; and the pollutant loads from discharges in the segment that discharge the pollutant but are not receiving an allocation or permit limit for that pollutant. All portions of the background pollutant load shall be based upon appropriate methods identified in the total maximum daily load procedures, and shall be determined for all substances that impact the segment receiving the allocation.

(3) "Best available demonstrated control technology" means a wastewater treatment capable of meeting the effluent limitations in paragraph (A)(3)(a) or (A)(3)(b) of this rule, or a treatment designed as in accordance with the provisions of paragraphs (A)(3)(c) to (A)(3)(f) of this rule.

(a) For the discharge of sanitary wastewater from facilities using conventional treatment technologies, the effluent limitations in table 5-1 of this rule.

(b) For the discharge of sanitary wastewater from alternative treatment technologies such as lagoon systems, land application and controlled discharge systems, constructed wetland systems or combined sewer overflow control systems effluent limitations shall be developed on a case-by-case basis.

(c) For industrial direct discharges subject to federal effluent guidelines, the facility shall be designed to meet the most stringent of the new source performance standards, best conventional pollutant control technology, best available technology economically achievable and best practicable control technology currently available for the appropriate categorical guidelines of 40

C.F.R.

(d) For categorical industrial indirect dischargers, the facility shall be designed to meet categorical pretreatment standards for existing sources or categorical pretreatment standards for new sources as contained in Chapter 3745-3 of the Administrative Code.

(e) For non-categorical industrial direct or indirect discharges, effluent limitations will be developed based upon best engineering/professional judgment.

(f) For wastewater discharges resulting from clean-up of response action sites contaminated with volatile organic compounds, the facility shall include air-stripping, carbon columns, both, or equivalent treatment capable of achieving final thirty-day average effluent limits of five micrograms per liter or less for each individually regulated volatile organic compound.

(4) "Control document" means any authorization issued by a state or federal agency to any source of pollutants to waters under its jurisdiction that specifies conditions under which the source is allowed to operate.

(5) "Declining fish species" mean those native species that have declined in distribution across Ohio based on collection records since 1978 compared to historical distributions of fish species documented in "Fishes of Ohio" (Trautman, 1981). No later than ninety days after the effective date of this rule, the director, in consultation with the director of the department of natural resources, shall establish and make available through public notice a registry of declining fish species. In the event that improved water quality results in the decline of any pollutant tolerant native fish species the director may elect not to include such species on the registry if the ecological risks appear minimal. The registry shall be revised periodically if public comments or other circumstances justify.

(6) "Existing discharge" means a direct discharge of pollutants to waters of the state in existence at the time of the applicant's request to transfer pollutant loading.

(7) "Existing effluent quality based permit limitations"

mean discharge limits for specific pollutants specified in national pollutant discharge elimination system permits issued prior to July 1, 1993 that were derived from an analysis of effluent quality reported in monthly operating report data, including any negotiated limits that were based in part upon an analysis of effluent quality reported in monthly operating report data.

(8) "Existing source" means any treatment works that were built and operational under the terms of a national pollutant discharge elimination system permit prior to July 1, 1993, but does not include expansions or upgrades of existing treatment works authorized pursuant to rule 3745-31 of the Administrative Code after July 1, 1993.

(9) "High quality waters" mean all surface waters of the state except limited quality waters. Pursuant to division (A)(2) of section 6111.12 of the Revised Code, five categories of high quality waters are hereby recognized and described in this paragraph. Designations of specific water bodies shall follow the procedures in paragraph (E) of this rule.

(a) "General high quality waters" are wetlands categorized as category 2 or 3 in accordance with rule 3745-1-54 of the Administrative Code and other surface waters that are not specifically designated limited quality waters, superior high quality waters, outstanding national resource waters, outstanding high quality waters, or state resource waters.

(b) "Superior high quality waters" are surface waters that possess exceptional ecological values, exceptional recreational values or both, and that have been so designated pursuant to paragraph (E) of this rule. Except as provided below, exceptional ecological values shall be assessed based upon a combination of the presence of threatened or endangered species and a high level of biological integrity. The following factors shall be considered in determining exceptional ecological value: providing habitat for Ohio or federal endangered species; providing habitat for Ohio threatened species; harboring stable populations of a declining fish species that coincide with the presence of suitable habitat for

that species, or that coincide with an essential migration path between areas of suitable habitat for that species; and displaying a level of biological integrity equivalent to the exceptional warmwater habitat index of biotic integrity and/or invertebrate community index criteria values listed in rule 3745-1-07 of the Administrative Code.

Water bodies that exhibit a pattern of biological integrity equivalent to index of biotic integrity and, where applicable, invertebrate community index scores of fifty-six or greater at most sites are characteristic of a near-pristine aquatic habitat. Such waters, as well as other ecologically unique water bodies that have essentially undisturbed native faunas, but for which the biological criteria in rule 3745-1-07 of the Administrative Code do not apply, may be considered as possessing exceptional ecological values without the presence of threatened or endangered species.

Exceptional recreational values may include providing outstanding or unique opportunities for recreational boating, fishing or other personal enjoyment.

(c) "State resource waters" are surface waters so designated in rules 3745-1-08 to 3745-1-30 of the Administrative Code and all publicly owned lakes and reservoirs.

(d) "Outstanding national resource waters" and "outstanding high quality waters" are surface waters that have a national ecological or recreational significance, and that have been so designated pursuant to paragraph (E) of this rule. National ecological significance may include providing habitat for populations of federal endangered or threatened species or displaying some unique combination of biological characteristics in addition to those factors listed in paragraph (A)(9)(b) of this rule. National recreational significance may include designation in the national wild and scenic river system.

(10) "Land application and controlled discharge system"

means an innovative technology for the treatment of sewage that balances land application of treated wastewater with controlled discharges of wastewater under conditions that minimize stress on the aquatic environment. The system shall be designed to allow a maximum increase of 0.1 milligram per liter of ammonia-nitrogen in the receiving water body calculated according to methods contained in the total maximum daily load procedures.

(11) "Limited quality waters" mean wetlands categorized as category 1 in accordance with rule 3745-1-54 of the Administrative Code and other surface waters of the state specifically designated in rules 3745-1-08 to 3745-1-30 of the Administrative Code as limited resource water, nuisance prevention, limited warmwater habitat, or modified warmwater habitat.

(12) "Minimal degradation alternative" means an alternative, other than the applicant's preferred alternative, including pollution prevention alternatives, that would result in a lesser lowering of water quality.

(13) "Mitigative technique alternative" means an alternative, other than the applicant's preferred alternative, or other on-site or off-site control measures designed to offset all or part of the lowering of water quality within the same watershed.

(14) "Modification" has the same meaning as defined in paragraph (J) of rule 3745-31-01 of the Administrative Code.

(15) "Net increase" means the amount by which the sum of the following exceeds zero:

(a) The increase in a mass discharge limit attributable to the activity subject to this rule; and

(b) All other contemporaneous increases or decreases attributable to other pollutant source(s) affecting the surface water segment(s) under consideration and which are stipulated as a condition of the applicant's permit and which shall occur during the term of the applicant's permit.

(16) "New source" means any treatment works or disposal

system other than an existing source.

(17) "Non-degradation alternative" means an alternative, other than the applicant's preferred alternative, including pollution prevention alternatives, that would result in the elimination of the need to lower water quality.

(18) "Permit modification" means an application filed by the permit holder pursuant to paragraph (D) of rule 3745-33-04 of the Administrative Code.

(19) "Permitted discharge flow" means the discharge flow specified in the national pollutant discharge elimination system permit, or permit to install application if not specified in a national pollutant discharge elimination system permit, and shall be representative of the typical wastewater flow to be discharged by a facility when the wastewater facility is operating at full capacity, and considering, where applicable, discharge flows during wet weather events. Applicable wet weather flows include, but are not limited to, the increased flows at publicly owned treatment works authorized pursuant to national or state combined sewer overflow strategies and the routing of pre-existing industrial site stormwater runoff to an existing wastewater treatment facility.

(20) "Pollution prevention alternative" means the use of source reduction techniques in order to reduce risk to public health, safety, welfare and the environment and, as a second preference, the use of environmentally sound recycling to achieve these same goals. Pollution prevention avoids cross-media transfers of waste and/or pollutants and is multi-media in scope; it addresses all types of waste and environmental releases to the air, water and land.

(21) "Regulated pollutant" means any parameter for which water quality criteria have been adopted in, or developed pursuant to, Chapter 3745-1 of the Administrative Code with the exception of biological criteria, and any other parameter limited in a national pollutant discharge elimination system permit as a result of new source performance standards, best conventional pollutant control technology, best available technology economically achievable or best practicable control technology currently available for the appropriate categorical guidelines of 40 C.F.R.

(22) "Remaining available pollutant assimilative capacity" means the available pollutant assimilative capacity for a substance minus the load already allocated to existing national pollutant discharge elimination system permits for dischargers in the water body segment receiving the allocation. This term is not used in the application of antidegradation for lake Erie.

(23) "Threatened species" means an indigenous species whose survival in Ohio is not in immediate jeopardy, but to which a threat exists. Continued or increased stress will result in its becoming endangered. No later than ninety days after the effective date of this rule, the director, in consultation with the director of the department of natural resources, shall establish and make available through public notice a registry of threatened aquatic species. The registry shall be revised periodically if public comments or other circumstances justify.

(24) "Total maximum daily load procedures" mean the procedures, policies and guidelines for calculating wasteload allocations used by the director as of July 1, 1993, or subsequent revisions to those procedures established in rules adopted in accordance with Chapter 119. of the Revised Code.

(25) "Trace contaminants of primarily domestic origin" means any non-oxygen demanding substance potentially found in sewage, including, but not limited to, copper, cadmium, lead, chromium and zinc, provided that such substances are not discharged to the disposal system from a new or expanded industrial water pollution control facility.

(26) "Water body pollutant assimilative capacity" means the total maximum allowable load of a substance for a specific water body segment and is calculated as:

(a) For a stream, the water quality criteria for a substance multiplied by the total applicable flow at the end of the segment being studied. The applicable flow is determined using the total maximum daily load procedures; and

(b) For lake Erie, a value equal to the permitted discharge flow times Y, where Y equals eleven times the water quality criteria for a substance minus ten times the background concentration for

the substance.

Water body pollutant assimilative capacity for lake Erie can also be determined by any alternative method which the director determines to be appropriate and consistent with the total maximum daily load procedures.

(B) Applicability; responsibilities of the applicant.

Except as provided in paragraphs (D) and (F) of this rule, projects or activities covered under paragraph (B)(1) of this rule shall be subject to an antidegradation review described in paragraph (C) of this rule.

(1) This rule shall apply to the activities, permits, certifications and other circumstances described in this paragraph.

(a) For existing sources, any re-issuance or modification of a national pollutant discharge elimination system permit that, if approved, would result in a net increase in the discharge of any regulated pollutant as determined using the following criteria:

(i) Net increase of the average thirty-day mass limit specified in the national pollutant discharge elimination system permit, if an average mass limit is specified;

(ii) If no average mass limit is specified, then a net increase above the product of:

(*a*) The average concentration limit specified in the national pollutant discharge elimination system permit, if an average concentration limit is specified, and

(*b*) The permitted discharge flow or the flow used in the wasteload allocation;

(iii) If neither an average mass limit nor an average concentration limit are specified, then a net increase above the product of:

(*a*) An average concentration value derived

from the maximum concentration limit specified in the national pollutant discharge elimination system permit, if a maximum concentration limit is specified, using derivation methods established in the total maximum daily load procedures, and

(*b*) The permitted discharge flow or the flow used in the wasteload allocation;

(iv) If the national pollutant discharge elimination system permit specifies no limit for the pollutant, then the imposition of any effluent limit if the pollutant is present, or present in greater amounts, because of any of the following conditions:

(*a*) A physical change in, or change in the operation of, a publicly owned treatment works; or

(*b*) The addition of a significant industrial user, as defined in rule 3745-3-01 of the Administrative Code; or

(*c*) A physical change in, or change in the operation of, industrial processes and/or wastewater treatment at a significant industrial user as defined in rule 3745-3-01 of the Administrative Code; or

(*d*) A physical change in, or change in the operation of, industrial processes and/or wastewater treatment at a permitted facility other than a publicly owned treatment works.

(b) For new sources not already in existence as of October 1, 1996, any permit to install or national pollutant discharge elimination system permit application that, if approved, would result in a net increase in the discharge of any regulated pollutant.

(c) For new sources already in existence as of October 1, 1996, if the source is discharging to waters of the state under the terms of a national pollutant discharge elimination system permit issued on or after July 1, 1993, or if the new source is comprised entirely of stormwater runoff from an existing site or facility whether under permit or not, the criteria for determining this rule's applicability shall be those specified in paragraph (B)(1)(a) of this rule. Except as provided above for stormwater runoff, if the new source is already in existence and discharging to waters of the state without a national pollutant discharge elimination system permit, the net increase shall be determined based upon the discharge of any regulated pollutant above the product of:

(i) The ninety-fifth percentile of the actual concentrations calculated according to procedures established in the total maximum daily load procedures, and

(ii) The permitted discharge flow or the flow used in the wasteload allocation.

(d) Any section 401 water quality certification application pursuant to Chapter 3745-32 of the Administrative Code.

(e) Any nonpoint source of pollution that results in a net increase in the release of any regulated pollutant, provided the director has separate authority to regulate the activity.

(f) Any permit to install application reviewed pursuant to Chapter 6111. of the Revised Code that involves the placement of fill or any portion of a sewerage system in or near a stream bed, if the director determines that stream habitat alterations caused by the activity would lower the water quality as measured by the applicable biological criteria identified in rule 3745-1-07 of the Administrative Code by more than the following amount(s): index of biotic integrity, four units; or, invertebrate community index, four units; or, modified index of well-being, 0.5 units.

(g) The transfer of all or a portion of the wastewater discharged by a treatment works to a different receiving water body, or to a different treatment works discharging to a different water body, unless the transfer is to a treatment works with capacity to accept the transferred wastewater within the terms of its existing national pollutant discharge elimination system permit, or to an existing outfall at a facility which is subject to best available treatment economically achievable or new source performance standards established under 40 C.F.R. part 420 and for which alternative limitations derived under 40 C.F.R. part 420.03 are being sought.

(2) Except as provided in paragraphs (D) and (F) of this rule, the applicant covered by paragraph (B)(1) of this rule must submit documentation of the following.

(a) Identification of the substances to be discharged, including the amount of regulated pollutants to be discharged in terms of mass and concentration, and, if paragraph (B)(1)(d) of this rule applies, the amount of dredged and fill material to be discharged.

(b) A description of any construction work, fill or other structures to occur or be placed in or near the stream bed.

(c) A description of the applicant's preferred alternative for design and operation of the activity.

(d) Descriptions and analyses of non-degradation alternatives, minimal degradation alternatives and mitigative technique alternatives for the design and operation of the activity that the applicant has considered.

(e) An estimate of the important social, economic and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate, the number and types of jobs created and the tax revenues generated.

(f) An estimate of important social, economic and environmental benefits to be lost if water quality

is lowered, such as lost or lowered recreational opportunities.

(g) To the extent that such information is known to those in the local community or is otherwise public, a listing and description of all government or privately sponsored conservation projects that have specifically targeted improved water quality and/or enhanced recreational opportunities on the water body(ies) affected by the activity.

(C) Antidegradation review requirements.

(1) Protection of water body uses.

Existing instream water uses, as defined in rule 3745-1-07 of the Administrative Code, shall be maintained and protected. There may be no degradation of water quality that results in a violation of the applicable water quality criteria for the designated uses, or the elimination or substantial impairment of existing instream water uses. The director shall, pursuant to paragraph (A)(6) of rule 3745-1-07 of the Administrative Code, prohibit increased concentrations of specific regulated pollutants that are incompatible with the attainment or restoration of the designated use. Existing wetland uses, as defined in rule 3745-1-53 of the Administrative Code, shall be maintained and protected in accordance with rules 3745-1-50 to 3745-1-54 of the Administrative Code.

(2) Required treatment technology, nonpoint source controls.

Except as provided in paragraph (D)(2) of this rule, any net increase in the discharge of a specific regulated pollutant resulting from a modification or new source shall, as a minimum, be controlled through best available demonstrated control technology relative to the specific regulated pollutant. More stringent treatment may be required pursuant to paragraph (C)(8) of this rule, or if needed to meet water quality standards. Feasible management or regulatory programs pursuant to sections 208, 303 and 319 of the Act, 33 U.S.C. Sections 1288, 1313 and 1329, shall be applied to nonpoint sources.

(3) Public involvement.

The director shall provide for public participation and intergovernmental coordination prior to taking action on all activities covered by paragraph (B)(1) of this rule using the provisions of this paragraph.

(a) The director shall publish a public notice within thirty days regarding receipt of any permit to install application, national pollutant discharge elimination system permit application or section 401 water quality certification application covered by paragraph (B)(1) of this rule. The purpose of such notice shall be to inform other potentially affected persons, to allow for inspection and review of the application, to indicate whether any of the exclusions or waivers described in paragraph (D) of this rule apply, to instruct people to contact the director within thirty days, if they want to be on the interested parties mailing list for that application, to advertise the date, time and place of any public hearing required under paragraph (C)(3)(c) of this rule, and, on general high quality waters and limited quality waters, to determine whether there is interest in having a public hearing.

All notices of hearings required by paragraph (C)(3)(c) of this rule shall be published once in a newspaper having general circulation in the county where the source, activity or facility is located. The notice shall be published at least forty-five days before the hearing. Notices shall also be sent by first class mail to all persons on the mailing list created pursuant to paragraph (C)(3)(b) of this rule.

(b) The director shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in antidegradation reviews.

(c) Within ninety days of receipt of the application, the director shall hold a public hearing for any permit to install application, or national pollutant discharge elimination system permit application or section 401 water quality certification application for a category 3 wetland covered by paragraph (B)(1) of this rule whenever a water body designated outstanding national

resource water, outstanding high quality water, state resource water or superior high quality water is affected. This public hearing shall be for the purpose of evaluating issues related to lower water quality and shall be prior to and separate from a public hearing on the proposed or draft action on the application.

(d) For general high quality waters other than category 3 wetlands and for limited quality waters, the director shall hold a public hearing for any permit to install application, national pollutant discharge elimination system permit application or section 401 water quality certification application covered by paragraph (B)(1) of this rule whenever the director determines there is significant public interest. A public notice advertising the date, time and place of the public hearing shall be published once in a newspaper having general circulation in the county where the source, activity or facility is located. The notice shall be published at least forty-five days before the hearing, unless the director determines there are no complex or controversial matters to be addressed in which case the notice requirement is reduced to no less than thirty days. Notices shall also be sent by first class mail to all persons on the mailing lists created pursuant to paragraphs (C)(3)(a) and (C)(3)(b) of this rule.

The director shall hold public hearings relative to issues of lower water quality either as a separate public hearing preceding the proposed or draft action, or as a concurrent hearing at the time of the draft or proposed action, unless the application is covered by paragraph (D) of this rule. If the application is covered by paragraph (D) of this rule and the application is not otherwise covered by paragraph (C)(3)(c) of this rule, the director shall hold concurrent public hearings at the time of the draft or proposed action.

(e) A public notice of the director's proposed or draft action regarding the activity and its potential to lower water quality shall be published following the procedures in Chapter 3745-47 of the Administrative Code. The director

shall provide notification by first class mail to all interested parties identified through the procedures in paragraph (C)(3) of this rule. Additional procedures are described in paragraph (C)(8) of this rule.

(f) The director shall notify the Ohio department of natural resources, the United States fish and wildlife service, the United States environmental protection agency and any affected local areawide planning agencies of all proposed activities that may lower water quality. In addition, for activities covered under paragraph (B)(1)(a), (B)(1)(b), (B)(1)(c) or (B)(1)(g) of this rule, the director shall notify the Ohio department of development and any affected local governmental units. The director or the other agencies may initiate additional intergovernmental coordination.

(4) Outstanding national resource waters.

The director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule that discharge to outstanding national resource waters, or that discharge upstream of outstanding national resource waters.

(a) Present ambient water quality in outstanding national resource waters shall not be degraded for any substance.

(b) The director may re-issue permits for any source discharging to an outstanding national resource water if the source had a national pollutant discharge elimination system permit at the time the water body was designated an outstanding national resource water as described in paragraph (E) of this rule, provided there is no increase in the permitted discharge concentrations or loads.

(c) New sources may not discharge directly to outstanding national resource waters, and may not discharge at points located upstream from outstanding national resource waters unless it can be demonstrated by the applicant that the chemical and biological quality of the outstanding national resource water will not be adversely affected.

(d) Notwithstanding the provisions stated in paragraph (C)(4)(a) and (C)(4)(e) of this rule, activities that result in short-term changes in water quality in outstanding national resource waters may be allowed if the director determines there will be no long-term detrimental impact. Activities resulting in short-term impacts on outstanding national resource waters will be subject to a review of non-degradation alternatives, minimal degradation alternatives, mitigative technique alternatives, economic and social benefits, public participation and intergovernmental coordination.

(e) Notwithstanding the provisions stated in paragraphs (C)(4)(a) and (C)(4)(d) of this rule discharges of dredged and fill material to outstanding national resource waters that are wetlands, and are owned and managed solely for natural area preservation, public recreation, education or scientific purposes, may be authorized provided the discharges and associated activities result in only a short-term disturbance to water quality and will not adversely affect the ecological quality of the wetland or other surface waters. Authorized discharges and associated activities include boardwalk construction, repair and maintenance of dikes and other hydrological controls, and removal of non-native and invasive plant species. For these discharges and associated activities the director may waive the need for the review outlined in paragraph(C)(4)(d) of this rule.

(5) Outstanding high quality waters.

The director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule that discharge to outstanding high quality waters, or that discharge upstream of outstanding high quality waters and measurably affect the water quality of an outstanding high quality water.

(a) The director may re-issue permits for existing sources discharging to outstanding high quality waters, but there may be no net increase in allowable mass loading. There may be no increase in permitted discharge concentration of regulated pollutants unless the increase is the result of water conservation practices at the facility.

This increase in concentration may not exceed a five per cent change in the ambient water quality of the receiving water as projected to occur under appropriate environmental design conditions.

(b) New sources and modifications may not discharge directly to outstanding high quality waters unless the discharge is equivalent to the existing background water quality at the proposed point of discharge.

(c) New sources and modifications may not discharge at points located upstream from outstanding high quality waters unless it can be demonstrated by the applicant that the chemical and biological quality of the outstanding high quality water will not be measurably affected. Measurably affected in this context shall mean a change which can be detected with reasonable scientific certainty using the analytical methods cited in rule 3745-1-03 of the Administrative Code, provided any proposed discharge complies with all applicable water quality standards and will not raise pollutant loading rates to harmful levels.

(d) Activities that result in short-term changes in water quality in outstanding high quality waters may be allowed if the director determines there will be no long-term detrimental impact. Activities resulting in short-term impacts on outstanding high quality waters will be subject to a review of non-degradation alternatives, minimal degradation alternatives, mitigative technique alternatives, economic and social benefits, public participation and intergovernmental coordination.

(6) Other waters.

For waters other than outstanding national resource waters, outstanding high quality waters and limited quality waters, the director shall impose the following requirements on all activities covered by paragraph (B)(1) of this rule except that for section 401 water quality certifications for high quality waters that are wetlands, the director shall impose the requirements specified in rules 3745-1-50 to 3745-1-54 of the Administrative Code in lieu of paragraphs (C)(6) and (C)(8) of this rule. In addition, the director may

apply the items in paragraphs (C)(6)(a)to(C)(6)(f) and (C)(6)(k)to(C)(6)(m) of this rule, may consider cumulative impacts as defined in paragraph (I) of rule 3745-1-50 of the Administrative Code, and shall consider whether the wetland is scarce regionally or statewide and the feasibility of replacing that wetland type, in making a decision whether to allow the lowering of water quality.

The director may approve activities that lower water quality only if there has been an examination of non-degradation, minimal degradation and mitigative technique alternatives, a review of the social and economic issues related to the activity, a public participation process and appropriate intergovernmental coordination, and the director determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the water body is located.

The director may require the applicant to implement a non-degradation alternative, a minimal degradation alternative or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the director determines that the alternative is technically feasible and economically justifiable. Any lowering of water quality shall not exceed the limitations specified in paragraph (C)(7) of this rule.

When making determinations regarding proposed activities that lower water quality the director shall consider the following:

(a) The magnitude of the proposed lowering of water quality;

(b) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;

(c) The anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;

(d) The degree to which water quality may be lowered

in waters located within national, state or local parks, preserves or wildlife areas or waters designated outstanding high quality waters, outstanding national resource waters, superior high quality waters or state resource waters;

(e) The effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;

(f) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;

(g) The cost of the water pollution controls associated with the proposed activity;

(h) The cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;

(i) The availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;

(j) The availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;

(k) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;

(l) The condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the director deems appropriate; and

(m) Any other information regarding the proposed activities and the affected water body that the director deems appropriate.

(7) Set asides to limit lower water quality.

In addition to the other provisions of paragraph (C) of this rule, the director shall not allow water quality to be lowered by more than as specified in this paragraph when acting on applications covered by paragraph (B)(1) of this rule.

(a) Except as provided in paragraphs (C)(7)(b) and (D)(1)(b)(iv) of this rule, present ambient water quality in state resource waters will not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the director.

(b) If the other provisions of paragraph (C) of this rule are followed, the director may allow a lowering of water quality in state resource waters if it is the result of the discharge of oxygen demanding wastewater and other trace contaminants of primarily domestic origin, and the effluent limits are equivalent to or better than those in table 5-1 of this rule. At the time the director acts on the application, he shall reserve a portion of the remaining available pollutant assimilative capacity as it relates to ammonia-nitrogen, dissolved oxygen and biochemical oxygen demand. The reserved portion shall be determined on a case-by-case basis and shall be specified in the public notice, fact sheet and permit associated with the application.

(c) For lake Erie, new and existing sources shall be limited to the water body pollutant assimilative capacity as defined in paragraph (A)(26)(b) of this rule.

(d) For superior high quality waters other than lake Erie, the director shall reserve a portion of the remaining available pollutant assimilative capacity for all regulated pollutants for which water quality criteria have been established in Chapter 3745-1 of the Administrative Code. The reserved portion shall be within the range of ninety to thirty per cent of the remaining

available pollutant assimilative capacity, shall apply to all regulated pollutants and shall not be allocated to any source. The director shall determine the appropriate reserved portion at the time the water body is designated as a superior high quality water under paragraph (E) of this rule. The requirements of this paragraph shall not apply to any water body that is not listed in rules 3745-1-08 to 3745-1-30 of the Administrative Code or to any water body designated as a superior high quality water solely because of its exceptional recreational value.

(e) For general high quality waters and limited quality waters, water quality may not be lower than the applicable water quality criteria for the water body.

(8) Procedures.

(a) The director shall assess each proposed activity covered by paragraph (B)(1) or (F) of this rule on a case-by-case basis. For each proposed activity not otherwise excluded pursuant to paragraph (D) of this rule, the director shall weigh the applicant's information and all comments presented during the public review period, including intergovernmental comments, and make a determination to:

(i) Allow the applicant's preferred alternative and the lower water quality as proposed;

(ii) Deny the applicant's preferred alternative as proposed;

(iii) Allow the applicant's non-degradation alternative(s) in lieu of the applicant's preferred alternative that, if implemented by the applicant, would result in no lowering of water quality; or,

(iv) Allow the applicant's minimal degradation alternative(s) or acceptable mitigative technique alternative(s) in lieu of the applicant's preferred alternative that, if implemented by the applicant, would result in a lesser lowering of water quality.

(b) Any action of the director issuing a permit to install or a national pollutant discharge elimination system permit covered under paragraph (B)(1) or (F) of this rule shall be preceded by a draft action and shall be issued in accordance with Chapter 3745-47 of the Administrative Code.

(c) Any action of the director denying a permit to install or a national pollutant discharge elimination system permit covered under paragraph (B)(1) or (F) of this rule shall be preceded by a proposed action and shall be issued in accordance with Chapter 3745-47 of the Administrative Code.

(d) Any action of the director on a section 401 water quality certification covered under paragraph (B)(1) or (F) of this rule shall be taken in accordance with Chapters 3745-32 and 3745-47 of the Administrative Code.

(D) Exclusions and waivers.

The exclusions and waivers described in paragraphs (D)(1)(a), (D)(1)(b), (D)(1)(d), (D)(1)(e) and (D)(3) of this rule do not apply to bioaccumulative chemicals of concern within the lake Erie basin.

(1) The following situations are excluded from the submittal and review requirements listed in paragraphs (B)(2)(c) to (B)(2)(g), (C)(6) and (C)(8) of this rule.

(a) Any source discharging to limited quality waters.

(b) Any de minimis net increase determined using the following criteria:

(i) For general high quality waters, any net increase in the discharge of a regulated pollutant that does not exceed ten per cent of the wasteload allocation to maintain water quality standards calculated using total maximum daily load procedures, provided the proposed lowering of water quality does not exceed eighty per cent of the wasteload allocation to maintain water quality standards calculated using total maximum daily load procedures.

(ii) For superior high quality waters, other

than lake Erie, any net increase in the discharge of a regulated pollutant that results in less than a five per cent change in the ambient water quality concentration of the receiving water as projected to occur using total maximum daily load procedures, provided the proposed lowering of water quality does not exceed the portion of the remaining available assimilative capacity specified by the director pursuant to paragraphs (C)(7)(d) and (E) of this rule.

(iii) For lake Erie any net increase in the discharge of a regulated pollutant that does not exceed ten per cent of the water body pollutant assimilative capacity.

(iv) For state resource waters, any net increase in the discharge of a regulated pollutant that results in less than a five per cent change in the ambient water quality concentration of the receiving water as projected to occur under total maximum daily load procedures, provided the application of this exclusion is limited to a single exclusion per each five-mile long segment of stream designated as state resource water, or a single exclusion per lake, reservoir or wetland designated as state resource water.

(c) Combined sewer overflow elimination or reduction projects affecting one or more water bodies where there will be a net decrease in the overall pollutant loadings discharged to surface waters of the state.

(d) Any disposal system built and operated exclusively for the treatment of volatile organic compounds at response action clean-up sites and which includes air-stripping, carbon columns, both, or equivalent treatment, and which achieves final effluent limits of five micrograms per liter or less as a thirty-day average for each individually regulated volatile organic compound.

(e) Any disposal system built and operated as a land application and controlled system as defined in

paragraph (A)(10) of this rule.

(f) Any permit to install application for a project designed exclusively to restore, maintain or ensure design capacity and associated pollutant discharge levels already authorized in an effective national pollutant discharge elimination system permit.

(g) Any net increase in the discharge of a regulated pollutant resulting from a change in fuel used by the discharger, provided the discharger was capable of accommodating the new fuel on the effective date of this rule.

(h) Any application approved pursuant to the authorization for storm water discharges associated with construction activity under the national pollutant discharge elimination system permit numbers OHR100000, OHC00001 or any subsequent reissuance of these same permits.

(i) Any application or group application approved pursuant to the general permit authorization to discharge storm water associated with industrial activity under the national pollutant discharge elimination system permit numbers OHR000002, OHG000001 or any subsequent reissuance of these same permits.

(j) Any application approved pursuant to the general permit authorization to discharge wastewater from coal mining activities under the national pollutant discharge elimination system permit number OHM000001 or any subsequent reissuance of this same permit.

(k) Any imposition of mercury effluent limitations in an NPDES permit for an existing source or new source already in existence as of October 1, 1996 where the mercury limitations are based on a variance pursuant to paragraph (D)(10) of rule 3745-33-07 of the Administrative Code.

(2) The director may waive the requirement to install best available demonstrated control technology for new sources discharging sanitary wastewater if:

(a) The modification, new source or national pollutant

discharge elimination system application is for a project designed exclusively to restore, maintain or ensure design capacity and associated pollutant discharge levels already authorized in an effective national pollutant discharge elimination system permit; or

(b) The modification, new source or national pollutant discharge elimination system application is the direct and sole result of a proposed transfer of pollutant loading from an existing discharge, and the director has determined that the transfer will result in overall environmental improvement. The director's determination on this matter shall be based upon the antidegradation review process specified in paragraph (C) of this rule, unless otherwise excluded from such review pursuant to paragraph (D) of this rule.

(3) The director may waive the submittal and review requirements listed in paragraphs (B)(2)(e) to (B)(2)(g), (C)(6) and (C)(8) of this rule if it is determined that:

(a) The proposed net increase in the discharge of a regulated pollutant does not result in an increase in the ambient water quality concentration of the receiving water after mixing as projected to occur under the total maximum daily load procedures;

(b) Any proposed net increase in the discharge of nutrients (such as, but not limited to, phosphorus and nitrogen) or toxic substances complies with all applicable water quality standards and will not threaten environmentally sensitive areas such as downstream lakes, reservoirs, wetlands, exceptional warmwater habitats, coldwater habitats, outstanding national resource waters, outstanding high quality waters, superior high quality waters or state resource waters; and

(c) The requirements of paragraph (B)(2)(d) of this rule have been met and the director determines that none of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives for the design and operation of the activity are technically feasible and economically justifiable.

(4) If the conditions set forth in this paragraph are met, the director may waive the requirements of paragraphs (C)(3)(a), (C)(3)(c) and (C)(3)(d) of this rule for activities covered by paragraph (B)(1) of this rule. The applicant must have previously submitted a general plan for wastewater disposal which included an analysis of non-degradation, minimum degradation and mitigative technique alternatives. The general plan must have been the subject of a public meeting held by the Ohio environmental protection agency after July 1, 1993 and before the effective date of this rule. The director's public notice regarding the public meeting must have followed the procedures in Chapter 3745-47 of the Administrative Code and contained a reference to the potential for the lowering of water quality.

(5) Nothing in this rule shall prohibit the director from approving activities that lower water quality on a temporary basis whenever the director determines that an emergency exists requiring immediate action to protect public health and welfare. The director shall issue any such approval in accordance with division (C) of section 6111.06 of the Revised Code and rule 3745-47-29 of the Administrative Code.

(6) The director may waive the submittal and review requirements listed in paragraphs (B)(2)(e) to (B)(2)(g), (C)(6) and (C)(8) of this rule if the applicant is seeking a revised water quality based effluent limit based upon the results of either a site specific study of the water quality criteria or a change in the water quality criteria found in Chapter 3745-1 of the Administrative Code and the applicant demonstrates that the facility has not complied with the existing water quality based permit limit. The following conditions must be met for this waiver to apply:

(a) Any proposed net increase in the discharge of regulated pollutants complies with all applicable water quality standards and will not threaten environmentally sensitive areas such as downstream lakes, reservoirs, wetlands, exceptional warmwater habitats, coldwater habitats, outstanding national resource waters, outstanding high quality waters, superior high quality waters or state resource waters; and

(b) The requirements of paragraph (B)(2)(d) of this

rule have been met and the director determines that none of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives for the design and operation of the activity are technically feasible and economically justifiable.

(E) Designation of waters.

(1) As of the effective date of this rule, all surface waters shall be designated as general high quality waters except as follows.

(a) Lake Erie is designated as a superior high quality water.

(b) Publicly owned lakes and reservoirs are designated as state resource waters.

(c) All surface waters specifically designated as state resource waters in rules 3745-1-08 to 3745-1-30 of the Administrative Code shall retain the state resource water designation until such time as the water bodies are considered under paragraph (E)(2) or (E)(3) of this rule.

(d) All surface waters of the state meeting the definition of limited quality waters are so designated, unless the water body is the source of drinking water for a public water supply, in which case it shall be considered a general high quality water for the purposes of this rule.

(2) No later than one year after the effective date of this rule, and at least once every three years thereafter, the director, in consultation with the director of the department of natural resources, shall consider available information on water bodies in Ohio and determine appropriate high quality water designations. Each determination shall consider attributes of exceptional recreational or ecological value, the national significance of the water body, and other existing and planned uses of the water body. If the director identifies any waters not properly designated, he shall public notice his intent to designate them to the appropriate category upon consideration of public comment. For all waters considered for designation as superior high quality waters the director shall also public notice his intent to reserve a portion of the

remaining available pollutant assimilative capacity as specified in paragraph (C)(7)(d) of this rule. The director shall designate outstanding national resource waters, outstanding high quality waters and superior high quality waters, and rescind designations of state resource waters, in rules 3745-1-08 to 3745-1-30 of the Administrative Code by rule in accordance with Chapter 119. of the Revised Code.

(3) A person adversely affected by the high quality water designation of a water body pursuant to paragraph (E)(1) or (E)(2) of this rule may petition the director to revise that designation. Any such petition shall detail the basis for the petition and contain, at a minimum, new relevant and factual information, or relevant and factual information not previously available to the director at the time of the designation described in paragraph (E)(1) or (E)(2) of this rule. The petition must contain sufficient information, or such additional information as the director may request, to justify a decision by the director to either revise or retain the designation under paragraph (E)(1) or (E)(2) of this rule. Within three months of receiving a petition containing complete and adequate information, or within such longer time as the director and the petitioner may agree, the director shall either approve or propose to deny the petition in accordance with Chapter 119. of the Revised Code. The director shall subsequently make appropriate revisions to the high quality water designation of the water body in rules 3745-1-08 to 3745-1-32 of the Administrative Code by rule in accordance with Chapter 119. of the Revised Code.

(F) Special provisions for bioaccumulative chemicals of concern in the lake Erie drainage basin.

The following special provisions are applicable to the discharge or release to the environment of any bioaccumulative chemical of concern in the lake Erie drainage basin. Unless otherwise noted, these requirements shall apply in addition to the provisions found in paragraphs (A) to (E) of this rule.

(1) In lieu of the requirements of paragraph (B)(1) of this rule, any significant lowering of water quality as described in paragraph (F)(2) of this rule shall require the applicant to submit the information required by paragraph (B)(2) of this rule and to

complete the demonstration required by paragraph (F)(3) of this rule. The director shall establish conditions in the control document that meet the requirements of paragraph (F)(4) of this rule.

(2) Significant lowering of water quality.

(a) A significant lowering of water quality occurs when there is a new or increased loading of any bioaccumulative chemical of concern from any regulated existing or new facility, either point source or nonpoint source for which there is a control document or reviewable action, as a result of any activity including, but not limited to:

(i) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified control document is required;

(ii) Modification of an existing regulated facility operating under a current control document such that the production capacity of the facility is increased;

(iii) Addition of a new source of untreated or pretreated effluent containing or expected to contain any bioaccumulative chemical of concern to an existing wastewater treatment works, whether public or private;

(iv) A request for an increased limit in an applicable control document; and

(v) Other deliberate activities that, based on the information available, could be reasonably expected to result in an increased loading of any bioaccumulative chemical of concern to any waters of the Great Lakes system.

(b) Notwithstanding the above, changes in loadings of any bioaccumulative chemical of concern within the existing capacity and processes that are covered by the existing applicable control document, are not subject to an antidegradation review. These changes include, but are not limited to:

(i) Normal operational variability including,

but not limited to, intermittent increased loadings related to wet weather conditions;

(ii) Changes in intake water pollutants;

(iii) Increasing the production hours of the facility, (e.g., adding a second shift), provided production hours do not exceed those described in, or used to derive, the existing control document;

(iv) Increasing the rate of production, provided production rates do not exceed those described in, or used to derive, the existing control document;

(v) Discharges of quantities of a bioaccumulative chemical of concern in the intake water at a facility proposing a new or increased discharge, provided that the new or increased discharge is not expected to result in a net increase in the total load of the bioaccumulative chemical of concern in the receiving water body;

(vi) Increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes such as septage and holding tank wastes by a POTW unless, for a bioaccumulative chemical of concern, there is increased loading due to the collection of wastewater from a significant industrial user and, based on the industry's raw materials and processes, the wastewater is expected to have quantifiable concentrations of the bioaccumulative chemical of concern significantly above levels typically associated with domestic wastewater and non-industrial stormwater;

(vii) Increased discharge of a bioaccumulative chemical of concern due to implementation of controls on wet weather-related flows, including, but not limited to, combined sewer overflows and industrial stormwater; and

(viii) Increased discharges of a bioaccumulative chemical of concern resulting from a change

in fuel used by the discharger, provided that the discharger was capable of accommodating the new fuel on the effective date of this rule.

(c) Also excluded from an antidegradation review are new effluent limits based on improved monitoring data or new water quality criteria or values that are not a result of changes in pollutant loading.

(d) Also excluded from the antidegradation submittal and review requirements listed in paragraphs (B)(2)(c) to (B)(2)(g), (C)(6) and (C)(8) of this rule is any imposition of mercury effluent limitations in an NPDES permit for an existing source or new source already in existence as of October 1, 1996, where the mercury effluent limitations are based on a variance pursuant to paragraph (D)(10) of rule 3745-33-07 of the Administrative Code.

(3) Antidegradation demonstration.

Any entity seeking to significantly lower water quality for a bioaccumulative chemical of concern, as defined in paragraph (F)(2) of this rule, in a limited quality water or high quality water must, in addition to the requirement in paragraph (B)(2) of this rule, submit an antidegradation demonstration for consideration by the director pursuant to the review requirements of this paragraph and paragraph (C) of this rule. The antidegradation demonstration shall include the following:

(a) Pollution prevention alternatives analysis. Identify any cost-effective pollution prevention alternatives and techniques that are available to the entity, that would eliminate or significantly reduce the loadings of bioaccumulative chemical(s) of concern; and

(b) Alternative or enhanced treatment analysis. Identify alternative or enhanced treatment techniques that are available to the entity that would eliminate the lowering of water quality and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

(4) For limited quality waters and high quality waters, the director shall ensure that no action resulting in a lowering of water quality occurs unless an antidegradation demonstration has been completed pursuant to paragraphs (B)(2) and (F)(3) of this rule and the information thus provided is determined by the director pursuant paragraph (C) of this rule to adequately support the lowering of water quality.

(a) The director shall establish conditions in the control document applicable to the regulated facility that prohibit the regulated facility from undertaking any deliberate action, such that there would be an increase in the rate of mass loading of any bioaccumulative chemical of concern, unless an antidegradation demonstration is provided to the director and approved pursuant to paragraph (C) of this rule prior to commencement of the action. Imposition of limits due to improved monitoring data or new water quality criteria or values, or changes in loadings of any bioaccumulative chemical of concern within the existing capacity and processes that are covered by the existing applicable control document, are not subject to an antidegradation review.

(b) For bioaccumulative chemicals of concern known or believed to be present in a discharge, from a point or nonpoint source, a monitoring requirement shall be included in the control document. The control document shall also include a provision requiring the source to notify the director of any increased loadings that would be subject to the provisions of the paragraph (F)(2) of this rule and which have not received approval from the director under the conditions specified in this rule. Upon notification, the director shall require actions as necessary to reduce or eliminate the increased loading if the increase is subject to the provisions of the paragraph (F)(2) of this rule. Requirements to reduce or eliminate the increased loading imposed by the director pursuant to this paragraph shall apply unless or until the director approves the increased loadings under the provisions specified in this rule.

(c) Fact sheets prepared pursuant to 40 C.F.R. 124.8 and 124.56 shall reflect any conditions developed under paragraph (F) of this rule and included in a

permit.

Table 5-1. Best available demonstrated control technology for new sources discharging sanitary wastewater.

Parameter	Thirty-day Limit	Seven-day Limit	Maximum/ Minimum Limit
$CBOD_5$	10 mg/l	15 mg/l	n/a
Total suspended solids	12 mg/l	18 mg/l	n/a
Ammonia (summer) (Winter)	1.0 mg/l 3.0 mg/l	1.5 mg/l 4.5 mg/l	n/a
Dissolved oxygen	n/a	n/a	6.0 mg/l (minimum)
Total residual chlorine	n/a	n/a	0.038 mg/l (maximum)

Effective: May 1, 1998
Promulgated under: R.C. Section 119.03
Rule authorized by: R.C. Sections 6111.041 and 6111.12
Rule amplifies: R.C. Sections 6111.041 and 6111.12
R.C. Section 119.032 rule review date: 3/1/02
Prior effective dates: 2/14/78, 4/4/85, 10/1/96, 10/31/97

PENNSYLVANIA

ANTIDEGRADATION REQUIREMENTS

§ 93.4a. Antidegradation.

(a) *Scope.* This section applies to surface waters of this Commonwealth.

(b) *Existing use protection for surface waters.* Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(c) *Protection for High Quality Waters*—The water quality of High Quality Waters shall be maintained and protected, except as provided in § 93.4c(b)(1)(iii) (relating to implementation of antidegradation requirements).

(d) *Protection for Exceptional Value Waters*—The water quality of Exceptional Value Waters shall be maintained and protected.

Authority

The provisions of this § 93.4a issued under sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. § § 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 93.4a adopted July 16, 1999, effective July 17, 1999, 29 Pa.B. 3720.

Cross References

This section cited in 25 Pa. Code § 95.1 (relating to general).

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§ 93.4b. Qualifying as High Quality or Exceptional Value Waters.

(a) *Qualifying as a High Quality Water.* A surface water that meets one or more of the following conditions is a High Quality Water.

(1) *Chemistry.*

(i) The water has long-term water quality, based on at least 1 year of data which exceeds levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water by being better than the water quality criteria in § 93.7, Table 3 (relating to specific water quality criteria) or otherwise authorized by § 93.8a(b) (relating to toxic substances), at least 99% of the time for the following parameters:

dissolved oxygen	aluminum
iron	dissolved nickel
dissolved copper	dissolved cadmium
temperature	pH
dissolved arsenic	ammonia nitrogen
dissolved lead	dissolved zinc

(ii) The Department may consider additional chemical and toxicity information, which characterizes or indicates the quality of a water, in making its determination.

(2) *Biology.* One or more of the following shall exist:

(i) *Biological assessment qualifier.*

(A) The surface water supports a high quality aquatic community based upon information gathered using peer-reviewed biological assessment procedures that consider physical habitat, benthic macroinvertebrates or fishes based on *Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish*, Plafkin, et al., (EPA/444/4-89-001), as updated and amended. The surface water is compared to a reference stream or watershed, and an integrated benthic macroinvertebrate score of at least 83% shall be attained by the referenced stream or watershed.

(B) The surface water supports a high quality aquatic community based upon information gathered using other widely accepted and published peer-reviewed biological assessment procedures that the Department may approve to determine the condition of the aquatic community of a surface water.

(C) The Department may consider additional biological information which characterizes or indicates the quality of a water in making its determination.

(ii) *Class A wild trout stream qualifier.* The surface water has been designated a Class

A wild trout stream by the Fish and Boat Commission following public notice and comment.

(b) *Qualifying as an Exceptional Value Water.* A surface water that meets one or more of the following conditions is an Exceptional Value Water:

(1) The water meets the requirements of subsection (a) and one or more of the following:

(i) The water is located in a National wildlife refuge or a State game propagation and protection area.

(ii) The water is located in a designated State park natural area or State forest natural area, National natural landmark, Federal or State wild river, Federal wilderness area or National recreational area.

(iii) The water is an outstanding National, State, regional or local resource water.

(iv) The water is a surface water of exceptional recreational significance.

(v) The water achieves a score of at least 92% (or its equivalent) using the methods and procedures described in subsection (a)(2)(i)(A) or (B).

(vi) The water is designated as a ''wilderness trout stream'' by the Fish and Boat Commission following public notice and comment.

(2) The water is a surface water of exceptional ecological significance.

Authority

The provisions of this § 93.4b issued under sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. § § 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 93.4b adopted July 16, 1999, effective July 17, 1999, 29 Pa.B. 3720.

Cross References

This section cited in 25 Pa. Code § 93.1 (relating to definitions); and 25 Pa. Code § 95.1 (relating to general).

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§ 93.4c. Implementation of antidegradation requirements.

(a) *Existing use protection.*

(1) *Procedures.*

(i) Existing use protection shall be provided when the Department's evaluation of information (including data gathered at the Department's own initiative, data contained in a petition to change a designated use submitted to the EQB under § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), or data considered in the context of a Department permit or approval action) indicates that a surface water attains or has attained an existing use.

(ii) The Department will inform persons who apply for a Department permit or approval which could impact a surface water, during the permit or approval application or review process, of the results of the evaluation of information undertaken under subparagraph (i).

(iii) Interested persons may provide the Department with additional information during the permit or approval application or review process regarding existing use protection for the surface water.

(iv) The Department will make a final determination of existing use protection for the surface water as part of the final permit or approval action.

(2) *Endangered or threatened species.* If the Department has confirmed the presence, critical habitat, or critical dependence of endangered or threatened Federal or Pennsylvania species in or on a surface water, the Department will ensure protection of the species and critical habitat.

(b) *Protection of High Quality and Exceptional Value Waters.*

(1) *Point source discharges.* The following applies to point source discharges to High Quality or Exceptional Value Waters.

(i) *Nondischarge alternatives/use of best technologies.*

(A) A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters shall evaluate nondischarge alternatives to the proposed discharge and use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge. If a nondischarge alternative is not environmentally sound and cost-effective, a new, additional or increased discharge shall use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

(B) A person proposing a new, additional or increased discharge to High Quality or

Exceptional Value Waters, who has demonstrated that no environmentally sound and cost-effective nondischarge alternative exists under clause (A), shall demonstrate that the discharge will maintain and protect the existing quality of receiving surface waters, except as provided in subparagraph (iii).

(ii) *Public participation requirements for discharges to High Quality or Exceptional Value Waters.* The following requirements apply to discharges to High Quality or Exceptional Value Waters, as applicable:

(A) The Department will hold a public hearing on a proposed new, additional or increased discharge to Exceptional Value Waters when requested by an interested person on or before the termination of the public comment period on the discharge.

(B) For new or increased point source discharges, in addition to the public participation requirements in § § 92.61, 92.63 and 92.65 (relating to public notice of permit application and public hearing; public access to information; and notice to other government agencies), the applicant shall identify the antidegradation classification of the receiving water in the notice of complete application in § 92.61(a).

(iii) *Social or economic justification (SEJ) in High Quality Waters.* The Department may allow a reduction of water quality in a High Quality Water if it finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. A reduction in water quality will not be allowed under this subparagraph unless the discharger demonstrates that the High Quality Water will support applicable existing and designated water uses (other than the high quality and exceptional value uses) in § 93.3, Table 1 (relating to protected water uses).

(2) *Nonpoint source control.* The Department will assure that cost-effective and reasonable best management practices for nonpoint source control are achieved.

(c) *Special provisions for sewage facilities in High Quality or Exceptional Value Waters.*

(1) *SEJ approval in sewage facilities planning and approval in High Quality Waters.* A proponent of a new, additional, or increased sewage discharge in High Quality Waters shall include an SEJ impact analysis as part of the proposed revision or update to the official municipal sewage facilities plan under Chapter 71 (relating to administration of sewage facilities planning program). The Department will make a determination regarding the consistency of the SEJ impact analysis with subsection (b)(1)(iii). The determination will constitute the subsection (b)(1)(iii) analysis at the National Pollutant Discharge Elimination System (NPDES) permit review stage under Chapter 92 (relating to National Pollutant Discharge Elimination System), unless there is a material change in the project or law between sewage facilities planning and NPDES permitting, in which case the proponent shall recommence sewage facilities planning and perform a new social or economic justification impact analysis.

(2) *SEJ for sewage facilities in High Quality Waters correcting existing public health or pollution hazards.* A sewage facility, for which no environmentally sound and cost-effective nondischarge alternative is available under subsection (b)(1)(i)(A), proposed to discharge

into High Quality Waters, which is designed for the purpose of correcting existing public health or pollution hazards documented by the Department, and approved as part of an official plan or official plan revision under § 71.32 (relating to Department responsibility to review and act upon official plans), satisfies the SEJ requirements in subsection (b)(1)(iii).

(3) *Public participation requirements for official sewage facilities plans or revisions to official plans in High Quality or Exceptional Value Waters.* A proponent of a sewage facility in High Quality or Exceptional Value Waters seeking approval of an official plan or revision shall comply with the public participation requirements in § 71.53(d)(6) (relating to municipal administration of new land development planning requirements for revisions).

Authority

The provisions of this § 93.4c issued under sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. § § 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 93.4c adopted July 16, 1999, effective July 17, 1999, 29 Pa.B. 3720; corrected July 30, 1999, effective July 16, 1999, 29 Pa.B. 4063.

Cross References

This section cited in 25 Pa. Code § 93.4a (relating to antidegradation); and 25 Pa. Code § 95.1 (relating to general requirements).

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§ 93.4d. Processing of petitions, evaluations and assessments to change a designated use.

(a) *Public notice of receipt of evaluation, or assessment of waters, for High Quality or Exceptional Value Waters redesignation.* The Department will publish in the *Pennsylvania Bulletin* and in a local newspaper of general circulation notice of receipt of a complete evaluation which has been accepted by the EQB recommending a High Quality or Exceptional Value Waters redesignation, or notice of the Department's intent to assess surface waters for potential redesignation as High Quality or Exceptional Value Waters. The assessments may be undertaken in response to a petition or on the Department's own initiative. The notice will request submission of information concerning the water quality of the waters subject to the evaluation, or to be assessed, for use by the Department to supplement any studies which have been performed. The Department will send a copy of the notice to all municipalities containing waters subject to the evaluation or assessment.

(b) *Combined public meeting and fact-finding hearing.* As part of its review of an evaluation or performance of an assessment, the Department may hold a combined public meeting and fact finding hearing to discuss the evaluation or assessment, including the methodology for the evaluation or assessment, and may solicit information, including technical data, to be considered in the Department's evaluation or assessment.

(c) *Submission to EQB to alter designated use.* Upon the completion of its assessment or review of a complete evaluation, and the satisfaction of the other applicable requirements of this section, the Department will submit the results of its assessment or review to the EQB for proposed rulemaking following review and comment by the petitioner, if applicable, in accordance with Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy).

Authority

The provisions of this § 93.4d issued under sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. § § 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 93.4d adopted July 16, 1999, effective July 17, 1999, 29 Pa.B. 3720.

Cross References

This section cited in 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements); and 25 Pa. Code § 95.1 (relating to general).

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VIRGINIA

M E M O R A N D U M

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION OF WATER

OFFICE OF WATER RESOURCES MANAGEMENT

SUBJECT: **OWRM GUIDANCE MEMO NO. 93 - 021**
Antidegradation Implementation Guidance for Surface Waters

TO: **Regional Directors**

FROM: **Larry G. Lawson and Alan J. Anthony**

DATE: July 27, 1993

COPIES: **Bob Burnley, John Roland, Dave Paylor, Martin Ferguson, Jean Gregory, Regional Office Water Resource Managers, Ron Gregory**

INTRODUCTION

These antidegradation procedures provide guidance to the Water Division of the Department of Environmental Quality (DEQ) for implementing the State antidegradation policy for surface waters found in Section VR680-21-01.3 of the water quality standards regulation.

Antidegradation requirements are triggered whenever a regulated activity is proposed that may have some effect on surface water quality. Such activities are reviewed to determine, based on the level of antidegradation protection afforded to the affected waterbody segment, how the proposed activity should be addressed.

Regulated activity means activities that require a DEQ Water Division permit. Dischargers covered by General Permits, individual VPDES permits for corrective action plans, individual storm water permits for existing dischargers not covered by storm water general permits, and existing point source discharges to surface waters not previously issued a VPDES permit have been determined to achieve the intent of the antidegradation policy. Thus, these dischargers are not considered as regulated activities for purposes of this guidance. For the purpose of this guidance, the term "proposed activity" means a proposed activity that is also a regulated activity.

All state surface waters are provided one of three different levels of antidegradation protection. At a minimum, all waters are subject to a base level of protection (known as tier 1 or existing use protection); some waters may qualify only for this level of protection. In these Tier 1 waters, existing uses of water bodies, and water quality to protect those uses must be maintained. In water bodies where the quality of the waters is better than the standards (sometimes referred to as Tier 2 or high quality waters), a significant lowering of water quality of these high quality waters cannot be allowed without an evaluation of the economic and social impacts. Waterbodies in the third level of protection (Tier 3) are designated by regulatory amendment to the standards to be exceptional waters due to environmental settings and aquatic communities or recreational opportunities.

Separate guidance is provided in this document for each of the three types of surface waters protected. The source documents for this guidance are: the 1989 draft revised economic (Section 5.5) and antidegradation (Chapter 4) chapters in the EPA Water Quality Standards Handbook, EPA's 1985 Questions on Antidegradation, EPA's draft Economic Guidance Workbook for Water Quality Standards, and the antidegradation section of the December, 1991 draft of the EPA/States Great Lakes Initiative.

DETERMINATION OF APPROPRIATE ANTIDEGRADATION CATEGORIES FOR WATERBODIES

The sequence of steps to be completed by the Water Division in conducting an antidegradation review is presented in Figure 1. The first task that will be addressed by the Water Division is to determine to which tier the waters belong.

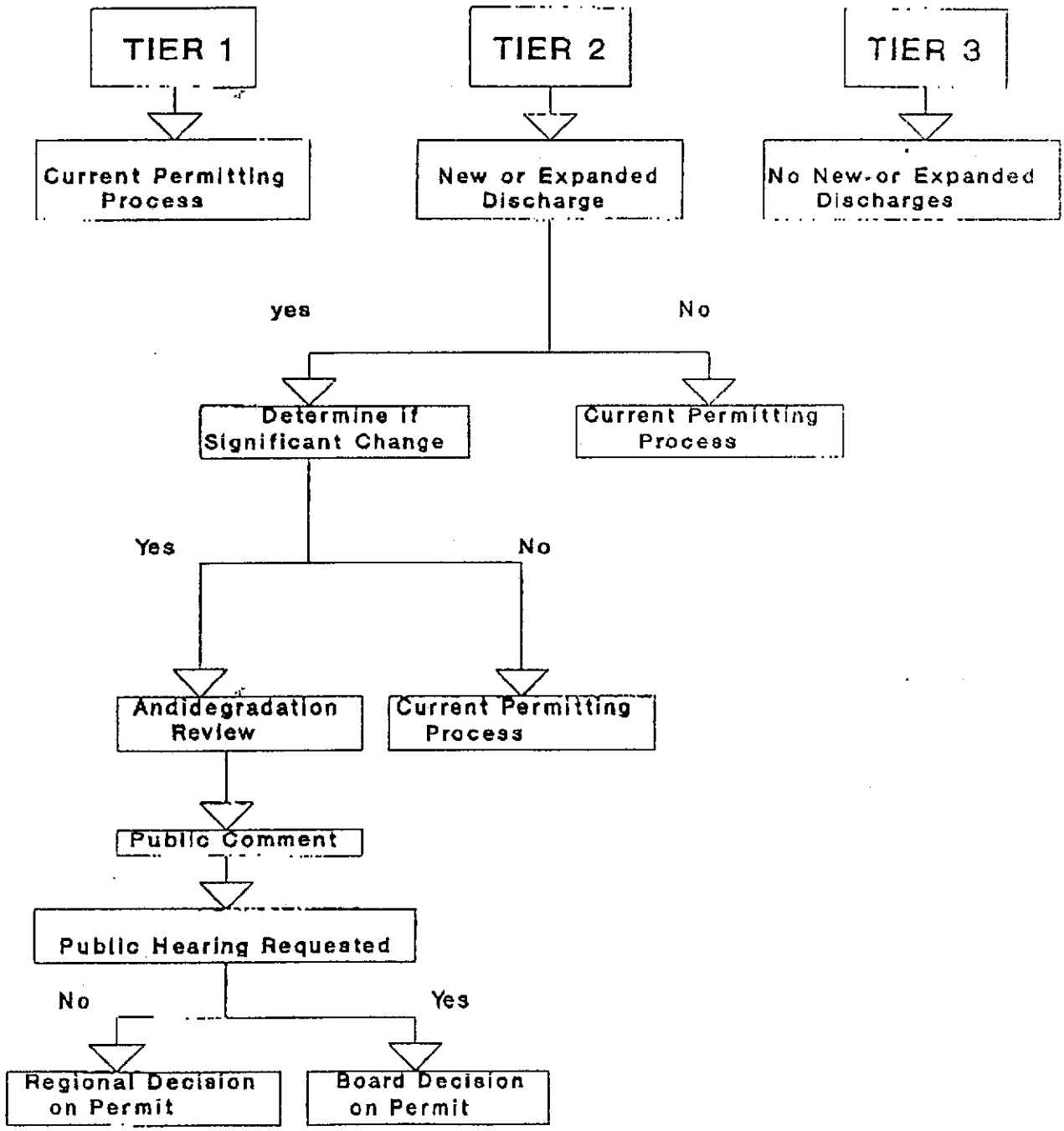
Tier 3

Staff should check VR680-21-01.3.C.3 to determine whether the water body in question is listed in this category. If it is not listed then it is not a tier 3 water.

Tier 2

If the waterbody is not listed in VR680-21-01.3.C.3, then staff must determine whether the waterbody is either a Tier 1 or Tier 2 category. This determination is based on a comparison of the available receiving stream data (collected in the stream outside of any mixing zones) to the table of numerical standards in VR680-21-01.14.B. If available water quality data indicate that all of the parameters measured in the water body are better than the standards in the table of numerical standards in VR680-21-01.14.B, then the waterbody falls into the Tier 2

IMPACT OF ANTIDEGRADATION WATERBODY CATEGORY ON REGULATED ACTIVITIES REQUIRING PERMITS



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category. Violation of the fecal coliform standard is not to be sufficient justification to lower the water to tier 1. If accurate and technically sound receiving stream data are not available, the applicant/permittee may be required by DEQ staff to provide sufficient information for a determination of the appropriate tier to be made. If real in stream data are not available at the time of the Division's antidegradation review of the water body, engineering judgment of DEQ staff may be substituted. Receiving stream information that may be used as a basis for this judgement include:

1. Modeling predictions (existing discharges and mixing zones) for the waters being considered.

2. Existing permit limits that were designed to just barely meet the standard in the waters being considered.

3. Biological data that demonstrate in stream toxicity. This is true even if the numerical standards are met due to the independent application of biological and numerical criteria and standards.

4. Judgement based on the absence or presence of definitely identified sources of pollutants or a demonstrated use impairment. Such judgement must be completely justified and documented.

If sufficient information is not available, the default is to impose high quality VR680-21-01.3.B (Tier 2) waters requirements.

Unless there are actual in stream data to indicate otherwise, a water body also falls into this category if the water is located within an area classified in VR680-21-08 as a public water supply or the water is subclassified as i or ii natural trout waters in VR680-21-08.

Tier 1

If available water quality information indicate that one or more of the water quality parameters violate or just barely meet the numerical standards in the table, the waterbody is considered VR680-21-01.3.A (Tier 1). All surface waters of the Commonwealth must be afforded at least Tier 1 protection. Violation of the fecal coliform standard is not to be sufficient justification to lower the water to tier 1.

IMPLEMENTATION OF ANTIDEGRADATION FOR TIER 1, 2, AND 3 WATERS

Tier 3

If the water body is classified as tier 3, no new, additional or increased discharge of sewage, industrial wastes or other pollution shall be allowed to these waters. Mixing zones from upstream or tributary discharges shall not extend into the exceptional waters designated area. Only temporary, short term impacts shall be allowed on a case by case basis.

Tier 1

If a water is classified as tier 1 then no additional staff antidegradation review or public participation over that currently required for permit issuance or modification is required.

Tier 2

The existing water quality shall be maintained and protected with no <u>significant</u> lowering of water quality from the allowance of new or increased discharges of pollutants unless the State finds, after full satisfaction of intergovernmental coordination and public participation, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

Once it is determined that tier 2 protection applies to a waterbody, the next step in the review process is to determine whether the proposed activity will result in significant degradation to the Tier 2 waters.

If the draft permit for a new or increased discharge to a Tier 2 waterbody is written to comply with the following guidelines, the change in water quality conditions will be considered to be insignificant and no further antidegradation review is required as specified in Section VR 680-21-01.3.B. If the draft permit for a new or increased discharge to a Tier 2 waterbody results in one or more of the in stream parameters exceeding any of the following conditions, the change in water quality conditions will be considered significant and an antidegradation review is required as specified in Section VR 680-21-01.3.B.

1. The BOD limit is based on a predicted dissolved oxygen concentration that is no more than 0.2 mg/l below that currently existing in the stream under 7Q10 flow conditions.

2. The temperature limit is predicted to comply with the standard.

3. The fecal coliform limit is in conformance with the standards.

4. The pH limit is predicted to comply with the standard.

5. The predicted change in the concentration (or other measure specified by the standard) for the parameters for aquatic life protection in the table in VR680-21-01.14 is not more than twenty five percent of the difference between the existing quality and that allowed by the standards.

6. The predicted change in the concentration (or other measure specified by the standard) of the parameters for human health protection in the table in VR680-21-01.14 is not greater than ten percent of the difference between the existing quality and that allowed by the standards.

In multiple discharge situations, the assimilative capacity available must be allocated among the dischargers. The aggregate predicted lowering of water quality must be within the bounds set forth in 1 through 6 above.

Repeated or multiple small changes in water quality can result in significant water quality degradation. Therefore, when it is determined that a water is tier 2, a water quality baseline that is equal to the existing quality plus the insignificant changes allowed in 1 through 6 above should be established and maintained for future reference. The baseline should remain fixed unless some action improves water quality. If water quality improves, then the baseline should be adjusted accordingly. Both the current and all subsequent proposed discharge increases are then evaluated against the baseline rather than the standard. This procedure ensures that multiple small water quality changes will not inadvertently add up to significant water quality degradation without adequate water quality and economic impact analyses.

Additional review for a significant lowering of water quality:

If the proposed regulated activity would significantly lower water quality, a letter must be sent to the director of the Division of Soil and Water of the Department of Conservation and Recreation notifying them of this designation and requesting that they undertake the appropriate non point source control activities to maintain water quality. The Division of Soil and Water will be asked to provide comments back to the DEQ by the close of the public notice comment permit for the proposed VPDES permit. This action will be made part of the file and considered in the final permit process.

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MEMORANDUM

DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER DIVISION
Office of Water Resources Management

4900 Cox Road P. O. Box 11143 Richmond, Virginia 23230

SUBJECT: OWRM GUIDANCE MEMO NO. 94 -003
Classification of Effluent/Water Quality Limiting Segments and Relationship with Antidegradation Tiers

TO: Regional Directors

FROM: Larry Lawson and Alan J. Anthony AJA

DATE: March 22, 1994

COPIES: Bob Burnley, Dave Paylor, Martin Ferguson, Jean Gregory, Richard Ayers, Ron Gregory, Regional Water Resource Managers, Water Resource Development Supervisors

INTRODUCTION:

The purpose of this guidance is to clarify the procedure for classification WQL segments and the relationship between WQL/EL segments and the tier 1, 2, and 3 designations for antidegradation.

There are similarities and differences in the criteria used for tier designations and segment classifications, however, **there is no definite relationship between the two** criteria. Because of the differences, a particular tier designation does not indicate a particular segment classification for a stream, nor does a particular classification of stream segment indicate a particular tier designation. Tier designations and segment classifications must be based only on the definitions for each concept and must be done separately on a case by case basis.

DEFINITIONS:

Water Quality Limited (WQL) Segments:

1. Any segment where it is known that water quality does not meet all water quality standards, and/or is not expected to meet all water quality standards (WQS), even after the application of technology based effluent limitations.

2. Any segment where limitations more stringent than technology based effluent limitations are required to meet the water quality standards or to comply with antidegradation. Note that antidegradation is a water quality standard.

Effluent Limited (EL) Segments:

Any segment where it is known that water quality currently meets and will continue to meet applicable water quality standards (including antidegradation), even after the application of technology based effluent limitations.

Tier 1:

Water quality information indicates that the water quality is **less than or equal** to the standards (standard just barely met) for one or more parameters for which standards exist with the exception of fecal coliform.

Tier 2:

Water quality information indicates that the water quality is **better** than standards for all parameters for which standards exist. If no information exists, the waters are assumed to be tier 2. Public water supplies and natural trout streams are also tier 2 waters regardless of existing quality.

Tier 3:

Waters which have been **designated** by the Board are in accordance with VR680-21-01.3.C.3. If it has not been so designated then it is not a tier 3 water!

Basis for Tier Designation and Segment Classification:

Water quality data collected from the stream segment, existing permit limits, water quality models, effluent data, etc. may be used to provide the information to determine if WQS are violated, are just barely being met or are being violated in a stream segment. Data used to make these determinations should be collected by the agency or approved by the agency.

The procedures to determine WQS violations for toxic parameters are found in OWRM Guidance Memorandum # 93-015 and violations for conventional parameters in the procedures manual for water quality assessment report (OWRM Guidance memorandum # 93-025.)

Segments with a violation of the fecal coliform standard should be classified WQL. However, fecal coliform information alone cannot be used as the basis for designating waters as tier 1 or 2 (see OWRM Guidance memorandum #93-015).

Antidegradation tier 1 waters (existing quality less than or just equal to WQS for one or more parameters, fecal coliform excluded):

When permit evaluation shows that water quality based limits are needed to maintain WQS, the segment should be classified WQL for those parameters with water quality based limits. The WQL classification is triggered when the decision is made that water quality based limits are needed. The fact that the permit is in draft, or the limits are in total recoverable, or the effective date of the limits is 3 or 4 years in the future do not alter the WQL classification.

If the permitting process shows that technology based limits are going to applied, then the segment should be classified EL.

Antidegradation tier 2 waters (existing quality better than WQS for all parameters, fecal coliform excluded):

These segments can be classified either as WQL or EL in the WQMP based on the following conditions:

1. If existing WQS or the antidegradation requirements can be maintained with effluent based limits, the segment classification should be EL.
2. If water quality based limits are needed to maintain existing WQS or to comply with antidegradation, the segment classification should be WQL.
3. If there is a violation of the fecal coliform standard, the segment should be classified WQL.

Related Concepts:

In the past, a number of WQL segment classifications were based on stringent BOD limits for application of antidegradation for DO sag. New information sometimes shows that some other WQS is violated which would make the stream tier 1 and limits more stringent than technology guidelines for BOD may no longer be needed. In these cases anti-backsliding would apply, the stringent BOD limits should be retained, the segment should be designated tier 1 and classified WQL because of the water quality based limits that must be maintained in the permit.

From OWRM Guidance Memorandum #92-015, **waters which are tier 1 for any parameter are be tier 1 for all parameters** in the effluent. Effluents to waters which are tier 1 need only meet the standards for all parameters regardless of the current situation (but note antibacksliding). They should not have tier 2 requirements applied for any parameter in the effluent!

RESPONSES TO COMMENTS and EXPLANATION OF PROPOSED AMENDMENTS
46 CSR 1
Requirements Governing Water Quality Standards
September 1, 2000

This document describes the changes proposed in the Water Quality Standards rule. For each proposed change, the following are provided: a description of the existing rule; the amendment proposed by the Board in it's July 3, 2000 Notice of Public Hearing; a summary of the comments received on the proposed amendment and the Board's response to the comments and the final action taken by the Board on the proposed amendment.

Please note that the Board received some written comments on sections of the rule for which no change was proposed. The Board recognizes the importance of many of these comments. However, to comply with the WV Administrative Procedures Act the Board must limit the changes to those which logically flow from a change actually proposed in the July 3, 2000 notice to the Secretary of State. The Board will make every effort to address these comments during the next triennial review, or before if appropriate.

An additional note: several changes were made to correct typographical errors and revise formatting. All of these revisions are noted by strike-throughs and underlines. These changes do not affect the substance of the rule, and are not discussed in this document.

SECTION 46-1-2

This section provides definitions for terms used throughout the rule.

Proposed Changes

The Board proposed adding several new definitions in this section for terms used in the proposed Antidegradation Implementation Procedures in Appendix F. They include the following:

Section 2.1. The proposed definition in this section provides:

> "Ambient concentration" is that measured value or level of water quality upstream of the proposed activity (discharge point for point source, discharge area for nonpoint source) for any parameter of concern determined through EPA-approved collection and analytical methods in 40 CSR 136. In the absence of a suitable upstream location, the ambient concentration will be measured at a point closest to the discharge or activity during precipitation events and at a point immediately downstream of the discharge or activity during non-precipitation events where adequate stream flow is available.

This term is used in section 4C.2.a.1 of Appendix F, which describes how the Director

determines whether a proposed activity will result in significant degradation of water quality in Tier 2 waters.

Section 2.2. The proposed definition in this section provides:

> "Ambient Water Quality Conditions" (AWQC) are those physical, chemical, biological and radiological conditions of the receiving waters of the state existing at the time of review of a regulated activity.

This term is used in section 4D of Appendix F to describe the assessment of activities occurring in Waters of Special Concern (Tier 2.5 waters).

Section 2.8. The proposed definition in this section provides:

> "Director" is the Director of the West Virginia Division of Environmental Protection.

This term is used in the Antidegradation Policy (Section 4.1.b) and in the proposed language in Appendix F of the rule.

Section 2.17. The proposed definition in this section provides:

> "Parameter of concern" means any parameter for which numeric water quality criteria have been adopted in 46 CSR 1 and any other parameter for which numeric criteria are not established but where the discharge of such parameter has a reasonable potential to either cause or contribute to a violation of the narrative criteria outlined under 46 CSR 1, section 3.

This term is used throughout Appendix F to describe the applicability of the Antidegradation Implementation Procedures.

Section 2.20. The proposed definition in this section provides:

> "Reasonable less-degrading or non-degrading alternatives" shall be identified based on case specific information (as outlined in section 4C.4.a. of Appendix F, herein). Generally speaking, less-degrading or non-degrading pollution control alternatives shall be considered reasonable where the costs of such alternatives are less than 110% of the costs of the pollution control measures associated with the proposed activity.

This term is used in section 4C.4 to explain the antidegradation review required where an activity is determined to result in significant degradation of a High Quality Water (Tier 2).

Section 2.21. The proposed definition in this section provides:

"Regulated Activity" includes 1) any activity that requires a permit or a water quality certification pursuant to state or federal law (e.g., Clean Water Act §402 NPDES permits, Clean Water Act §404 dredge and fill permits, or any activity requiring a Clean Water Act §401 certification), 2) any activity subject to nonpoint source control requirements or regulations, and 3) any activity which is otherwise subject to state requirements and regulations developed to protect water quality. For the purposes of this implementation procedure, the term "proposed activity" means a proposed activity that is also a regulated activity.

This term is used in section 4A.1, and elsewhere in Appendix F to describe the activities to which the antidegradation procedures apply.

Section 2.25. The proposed definition in this section provides:

"Trading" means establishing upstream controls for a parameter of concern to compensate for new or increased downstream sources for the same parameter resulting in improved water quality for the parameter traded. More than one parameter of concern may be traded on a given stream. Trading may involve point sources, nonpoint sources or a combination of point and nonpoint sources. Unused permitting capacity cannot be traded.

This term describes the basic elements of trading, which may be used to offset the effects on water quality from a proposed activity. Trading provisions are included in sections 4B.4 (Tier 1), 4C.2.a.2.N (Tier 2) and 4D.4 (Tier 2.5) of Appendix F of the rule.

Section 2.26. The proposed definition in this section provides:

"Trading Assessment Procedure" means methodologies to be used by the Director to document the basis for any trade allowed in sections 4B, 4C and 4D of Appendix F, herein, are EPAs Total Maximum Daily Load Procedures (40 CFR 130.2(i)), wasteload allocation procedures outlined in EPAs Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991), wasteload allocation methodologies outlined in EPAs Draft Framework for Watershed-Based Trading (EPA/800-R-96-001, May 1996) or other EPA approved wasteload allocation methodologies as long as these methodologies are consistent with the trading provisions of this rule.

This term describes procedures which are required to be employed in establishing trades as outlined in sections 4B.4 (Tier 1), 4C.2.a.2.N (Tier 2) and 4D.4 (Tier 2.5) of Appendix F of the rule.

Comments Received

The Board received comments in support of the new definitions related to the

antidegradation implementation procedures: "ambient concentration", "parameter of concern", "trading", "trading assessment procedure" and "reasonable non-degrading and less degrading alternatives". No comments were received on the definition of "Director". In addition, the following specific comments were received:

Section 2.1. "Ambient concentration." WVDEP suggested that the term "discharge area" be changed to "runoff area" for nonpoint source discharges. That agency also suggested correction of the reference to "40 CSR 136" to "40 CFR 136".

Section 2.17. Parameter of concern." One commenter expressed support for this definition.

Section 2.20. "Reasonable less-degrading or non-degrading alternatives." Numerous comments were received requesting revision of this definition. Those commenters indicated that describing "reasonable" as less than 110% of the pollution control measures is arbitrary, and could foreclose the use of alternatives with even slightly higher costs, but which could result in greater improvement in the discharge.

USEPA suggested striking the term "reasonable" altogether, indicating that "the inclusion of the term "reasonable" implies that there are socioeconomic considerations, in which case would lead us to question the relationship between this exclusion and a socioeconomic analysis."

Several commenters expressed support for the definition, including the 110% language, indicating that in combination with the introductory statement of "Generaly speaking" the percentage gives a general guideline to the agency in determining what "reasonable" means. The commenter also indicated that the Director still has the authority to consider any factors that may be pertinent to the decision; it is not limited to economic factors.

Section 2.21. "Regulated activity." WVDEP suggested deleting the words "For the purposes of this implementation procedure" from the last sentence of this definition. Other commenters expressed support for this new definition.

Section 2.25. "Trading." WVDEP suggested changing the word "permitting" to "permitted" in the last sentence of this definition. Several commenters expressed support for this definition.

Section 2.26. "Trading Assessment Procedure." Several commenters expressed support for this new definition.

Additional definitions.

"Water of Special Concern" WVDEP suggested adding this definition because the rule includes definitions for High Quality Waters (Tier 2) and Outstanding National Resource Waters (Tier 3).

"Baseline water quality" The Board adopted changes to the Tier 2 implementation procedures,

in section 4C, which include the use of that term. We therefore propose adding the definition in this section.

Responses to Comments

The Board agrees with the suggestions WVDEP proposed as outlined above.

Regarding section 2.20 ("reasonable less-degrading or non-degrading alternatives") the Board believes retention of the 110% cost cap provides guidance to the agency regarding the term "reasonable" while the introductory words "Generally speaking" provide the agency some discretion in implementing the 110% provision.

Board Action

The Board proposes amending the definitions to include suggestions made by WVDEP, as outlined above, and further to include definitions for "baseline water quality" and "Waters of Special Concern".

SECTION 46-1-4

This section outlines the antidegradation policy which provides requirements for retaining the existing quality of the waters of the State. Note that additional revisions regarding the antidegradation policy are included in Appendix F, which is discussed elsewhere in this document.

Proposed Amendments

Section 4.1.a. The Board proposed adding the words "Tier 1 Protection" to this section as a heading to adopt the language of the tiered classification system used by USEPA in describing levels of antidegradation protection.

Section 4.1.b. The Board proposed adding the words "Tier 2 Protection" to this section as a heading to adopt the language of the tiered classification system used by USEPA in describing levels of antidegradation protection.

Based on recommendation from the stakeholder group, the Board also proposed adding the following language to this section:

> The Director shall assure that BMPs are sufficient to satisfy the requirements of the Water Quality Standards. If BMPs are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards or shall require the activity causing the nonpoint source pollution to cease.

NOTE: See discussion in Appendix F, section 4A.1 regarding this proposed change.

Section 4.1.b.1. The Board proposed revising this section to add a reference to the appropriate provisions in the Antidegradation Implementation Procedures in Appendix F.

Section 4.1.c. The Board proposed adding the words "Tier 2.5 Protection" to this section as a heading to adopt the language of the tiered classification system used by USEPA in describing levels of antidegradation protection.

Section 4.1.d. The Board proposed adding the words "Tier 3 Protection" to this section as a heading to adopt the language of the tiered classification system used by USEPA in describing levels of antidegradation protection.

Comments Received

Comments received on the proposed language regarding application to BMPs are discussed in Appendix F, Section 4A.1.

No other comments were received on this section.

Board Action

Action on the proposed language regarding application to BMPs is discussed in Appendix F, Section 4A.1.

Regarding the other changes outlined in this section, the Board adopted the changes as proposed.

SECTION 46-1-7

This section provides a list of the waters of the state and exemptions from the application of numeric water quality criteria.

Proposed Amendments

Section 7.2.c.4. This section outlines an exemption from the application of numeric criteria in waters where natural conditions prevent water quality from meeting the criteria. The Board revised this section to address the disapproval of this section by USEPA in letters dated November 9, 1995 and June 22, 1999.

The proposed revisions clarify that an exemption based on natural conditions may be granted after an application is filed by the Board, reviewed and made subject to public notice, and submitted to the West Virginia Legislature for approval. This section outlines the information to be provided in the application to be submitted to the Board.

Comments Received

Several commenters indicated approval of the revised language, indicating that it is consistent with EPAs policy on the issue.

Additional commenters expressed concern regarding establishing natural conditions as the "prevailing highest value measured during an annual season", indicating that it fails to incorporate temporal water quality variability as well as analytical and sampling variability into the derived value, resulting in potential compliance liabilities to the NPDES permitee.

Additional comments indicated that the proposed language is borrowed from the Alaska water quality standards and suggests that the rulemaking process in that state is significantly less time consuming than the legislative approval process in West Virginia. They object to the proposed language because it will require modification of the standards each time natural background concentrations are determined to be lower than a water quality criterion for the use classes and subclasses. Other commenters expressed concern about USEPAs disapproval, indicating that they had approved this provision in the past. A suggestion was made that the Board consider the procedures for determining background concentrations developed to implement the West Virginia Voluntary Remediation and Redevelopment Act, W. Va. Code section 22-22-1 et seq.

WVDEP questioned the meaning of the term "prevailing highest quality" and sought clarification of the number of samples required in determining background concentration. The agency also suggested that the Board include a statement indicating that the Chief may still consider natural background concentrations when making decisions regarding a stream's health for 305(b) reporting and 303(d) listing purposes absent a formal criteria change by the Board.

Responses to Comments

The Board acknowledges the concerns raised regarding use of the term "prevailing highest quality" The intent of this provision is to establish alternate numeric criteria which reflect site-specific natural background concentrations and which also ensure the protection of the aquatic life designated use. The revised protocol intends that this be accomplished on a case-by case basis, considering site-specific circumstances. Upon review of the comments, the Board has decided to remove the reference to the "prevailing highest quality" in order to avoid a circumstance where an alternate criterion is established that cannot be met consistently by the natural background concentration. However, to make clear that protection of aquatic life is paramount in establishing the alternate criteria, the Board is revising the section to make that clarification.

Regarding the requirement to establish natural background concentrations by rulemaking, while the Board acknowledges the commenters concern, we have proposed this protocol to be consistent with USEPAs recommendations as well as with our own practices in establishing alternate site-specific criteria. The Board is not persuaded that the fact that our rulemaking

process is time consuming justifies a waiver of the requirement to include such criteria in the WQS rule. We intend to make every effort to respond to requests for alternate criteria based on this section as efficiently as possible.

We acknowledge the suggestion regarding the use of procedures for determining background concentrations developed to implement the West Virginia Voluntary Remediation and Redevelopment Act, W. Va. Code section 22-22-1 et seq. Because these applications will be addressed on a case-by-case basis, we will have the opportunity to consider such procedures when an application is received.

Regarding WVDEP's suggested language regarding 305(b) reporting and 303(d) listing activities, the Board takes no action at this time. We are willing to review that issue in consultation with WVDEP and USEPA during the triennial review and consider appropriate changes at that time.

Board Action

The Board revised the second paragraph of this section to read as follows:

> **Upon application or on its own initiative, the Board will determine whether a natural condition of a waterbody should be approved as a site-specific water quality criterion. Before it approves a site specific water quality criterion for a natural condition, the Board must find that the natural condition will fully protect existing and designated uses and ensure the protection of aquatic life. If a natural condition of a waterbody varies with time, the natural condition will be determine to be the actual natural condition of the waterbody measured prior to or concurrent with discharge or operation. The Board will, in its discretion, determine a natural condition for one or more seasonal or shorter periods to reflect variable ambient conditions; and require additional or continuing monitoring of natural conditions.**

Section 7.2.d.8.1. This section outlines alternate site-specific numeric criteria for Daugherty Run and another, unnamed, tributary of the Cheat River.

The proposed revision removes the existing site specific criterion for selenium of 15.24 ug/l, reinstates the 5 ug/l chronic selenium criterion and adopts the following alternate frequency and duration requirements for the selenium criterion: the four day average concentration shall not be exceeded more than three times every three years on average.

Comments Received

Allegheny Power Company, who applied for the site-specific relief, expressed support for this change, indicating that the proposed allowance for three exceedances of the limitation over three years is an equitable and reasonable solution that will not harm the receiving system.

Further, they indicate that to ensure that no impact will occur, Allegheny has committed to continue chemical and biological monitoring of both tributaries..

One commenter submitted an extensive review of the site-specific numeric criteria in this section, addressing the criteria for aluminum, iron, manganese and selenium. The only revision proposed by the Board to this section, however, was to the selenium criterion. In fact, that revision deletes a less protective criterion of 15.25 ug/l, and reinstates the statewide criterion of 5 ug/l. And as described above, revises the frequency and duration requirements for that parameter. The commenter did not provide any comments on that change.

Response to Comments

While acknowledging the comments received (other than those from Allegheny Power Company) on this section, the Board finds that they were not directed to the current revision. We would be willing to discuss the concerns with the commenter during the next triennial review.

Board Action

Adopt amendments proposed.

Section 7.2.d.9. This section proposes a reclassification of the Blackwater River below Davis, West Virginia from Category B1, Warm water fishery to Category B2 - Trout water. This is proposed based on recommendations from the West Virginia Division of Natural Resources and the West Virginia Rivers Coalition.

Comments Received

Several commenters expressed support for this reclassification. One commenter indicated that while they do not necessarily disagree that the Blackwater River should be classified as a trout water, they do object to the manner in which the Board proceeded in the reclassification. They suggested that a detailed analysis is required before such use reclassification is considered.

Response to Comments

The Board disagrees with the commenter regarding the type of analysis required for reclassification of this water. This reclassification is moving the water from a less protective category to a more protective category. Under those circumstances, it is the Board's understanding that a Use Attainability Analysis is not required under the federal Clean Water Act. Only when a water is being "downgraded" to a less protective category is that required.

Board Action

Adopt the language as proposed.

Section 7.2.d.16.2. This section outlines variances from numeric criteria for free cyanide, total phenolic materials, fluoride, lead, zinc, iron and temperature on Harmon Creek, a tributary of the Ohio River.

The proposed revision removes the variance criteria for free cyanide, total phenolic materials and fluoride. This revision means that the discharger, Weirton Steel, will meet the applicable statewide numeric criteria for those parameters. Variance criteria for lead, zinc, temperature and iron will be retained. Reporting deadlines for the facility for submissions of reports to OWR are amended. Monitoring requirements will be revised to include monitoring of turbidity, oil and grease, and to remove free cyanide and total phenolic material.

Comments Received

EPA submitted comments indicating that, while they do not oppose the continuation of the socio-economic variance for Weirton Steel, that they hope to see continued improvement in the discharges from the facility. They provide a reminder that socio-economic variances are not intended to be permanent.

Another commenter expressed concerns about the alternate criteria established in this section, and the removal of the Category A designation from Harmon Creek. This commenter did not address the specific changes proposed by the Board.

Response to Comments

The Board acknowledges the concerns raised by the commenters on this section and also encourages Weirton Steel to continue its efforts to improve its discharges to come into compliance with the statewide water quality criteria as expeditiously as possible. We understand from our review of the information provided by the facility, that further improvements are anticipated during our next review of the variance. We look forward to working with WVDEP and USEPA in reviewing the reports to be submitted by the facility as required in the variance and in monitoring the facility's progress regarding the variance parameters.

Board Action

Adopt the language as proposed.

Section 7.2.d.32.1. This section provides a use reclassification (removal of Category E use) and alternate temperature requirements for Bluestone Lake. The Board is proposing to delete this section. The history of this provision is unclear, and DEP staff has indicated that the basis for the use reclassification and alternate temperature criteria is unknown. The result of the change will be that the applicable temperature criteria in Appendix E will apply to Bluestone Lake.

Comments Received

No comments were received on this section.

Board Action

The Board deleted this section, as proposed.

APPENDIX E

This section establishes numeric criteria for protection of the designated uses outlined in the rule.

Section 8.1. This section outlines numeric criteria for aluminum. Changes proposed include providing for use of dissolved concentrations of aluminum for the aquatic life numeric criteria. A conversion factor of 1 is proposed for establishing effluent limits using the dissolved criteria (see Appendix E, Table 2). Additionally, the Board is proposing to adopt USEPAs recommended chronic numeric criterion of 87 ug/l, in addition to the existing acute value of 750 ug/l.

Comments Received

Several commenters indicated support for the change from total concentration to dissolved, and adoption of the conversion factor, reiterating that the dissolved portion of the metal is that which is harmful to aquatic life.

The US Fish and Wildlife Service expressed concern about using dissolved concentrations for metals criteria, citing concerns that such change could result in increased loadings of metals and further citing research on the sensitivity of unionid mussels to particulate metal.

One commenter expressed concern about adopting the chronic value of 87 ug/l for aluminum, indicating that in developing that value, that EPA did not follow its established protocol, and further relied on flawed publications.

USEPA indicated that while they don't disagree with the concept of using the dissolved form, they note a statement in the Federal Register of December 10, 1998, indicating that "total recoverable (may be) a more appropriate measurement than dissolved" in the case of aluminum. Further they state that if the Board chooses to maintain an aluminum criterion expressed as dissolved, EPA would expect that the formal submission of this revision would be accompanied by supporting rationale.

Responses to comments

The Board acknowledges the concerns expressed regarding use of dissolved criteria instead of total or total recoverable values. However, the Board has provided for the use of dissolved concentrations for other metals in Appendix E, using USEPA Guidance and also using

appropriate conversion factors as developed by USEPA. The Board looks forward to working with the USFWS and USEPA in the future to continue to review this issue, and, if necessary, revise the numeric criteria to ensure protection of aquatic life.

Regarding the adoption of EPAs recommended chronic criterion of 87 ug/l, the Board acknowledges the commenters concerns. Use of this value has been debated in discussions of the WQS for at least 10 years. At this time, the Board believes that inclusion of this value is necessary to ensure protection of aquatic life species in areas of low pH, where certain forms of aluminum can cause toxicity to fish species. In reviewing this issue, the Board has worked with USFWS and interested parties and has reviewed recent studies and publications regarding such toxicity. We believe that adopting the 87 ug/l value, combined with the allowance for the use of dissolved concentrations, will address the majority of the concerns related to aluminum that have been brought forward in the past several years. Where those changes do not provide relief, existing provisions for establishing site-specific criteria, as well as the proposed revisions allowing criteria to be established based on natural background conditions will be available for use by affected parties.

Board Action

The Board adopts the amendments, as proposed.

Section 8.2.1. This section outlines aquatic life criteria for ammonia. The Board has proposed revising this section to adopt the provisions in the National Criterion for ammonia in Fresh Water from USEPA's 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA-822-R-014, December, 1999). To ensure protection of the early life stages of fish species, the Board proposed that the "early life stage equation" in the National Criteria be used throughout the state unless the applicant demonstrates that no early life stages occur in the stream (see footnote d in section 8.2.21)

Comments Received

Several commenters indicated support for this update.

USEPA, Region 3 suggested that footnote d be revised to clarify that the "early life stage" equation be used only for developing chronic criteria, not acute.

WVDEP suggested that the footnote be amended to provide that the applicant demonstrates that no early life stages occur in the "affected waters" rather than "stream".

Responses to Comments

The Board agrees with the comments submitted by USEPA and WVDEP.

Board Action

Adopt language with revisions proposed by USEPA and WVDEP.

Section 8.9.2. and 8.9.3. Chromium, trivalent. New acute and chronic criteria for the protection of aquatic life (categories B1, 2, and 4) are proposed. The criteria added are those published in USEPA's National Recommended Water Quality Criteria - Correction (EPA 822-Z-99-001, April 1999).

Comments Received

No comments received

Board Action

Adopt changes as proposed.

Section 8.17.1. Manganese. The language in this section provides for a variance from the manganese criteria where a stream is not being used for drinking water. This language is proposed to be deleted, due to changes to section 6.2.d made in the 2000 legislative session which establish a variance for manganese " where the discharge point of manganese is located more than five miles upstream from a known drinking water source."

Comments Received

Two commenters expressed concern about limited application of the manganese criteria in the revisions outlined, particularly in light of the antidegradation implementation provisions. By limiting the application of the manganese criterion to a five mile zone above intakes, large areas of the state's waters are left without methods for regulating manganese discharges. The commenters expressed concerns that this situation could result in significant impacts to those not being served by public water treatment systems. Further, unregulated discharges further upstream could result in high loadings at the public treatment systems, which could result in expensive treatment. The effect is to shift the burden of treating for manganese from the discharger to the treatment facility.

WV Bureau for Public Health commented that Appendix E establishes reasonable instream standards for manganese (and iron) and that if higher levels are permitted, public drinking water supply systems can incur great cost removing those parameters to meet secondary Maximum Contaminant Levels. Further it is likely that the cost of increased treatment at drinking water utilities due to less stringent industrial and/or municipal discharge requirements will be passed on the consumer. This would in effect, cause an inappropriate shift in pollution control from the outfall to the drinking water intake. Increased metals may also result in interference with the disinfection process.

Other commenters expressed support for the cleanup of the two provisions and of the substance of the language in section 7.2.a.2.

Responses to Comments

The Board acknowledges the comments regarding concerns about the regulation of manganese which is an issue that has been debated before it for many years. The Board believes that the limitation of the application to manganese criterion to the 5-mile zone above intakes is a compromise which will provide adequate protection to the majority of the public. In recognition of the long-standing concerns expressed regarding this issue, the Board intends to continue to review other available options and to work with the WV Bureau for Public Health and WVDEP to ensure that appropriate protection is provided by this proposal. We will also revisit this language after final decisions are made regarding the application of Category A waters throughout the state.

Board Action

Adopt changes as proposed.

Section 8.22. Organics. Existing aquatic life criteria for chloroform and 1, 1, 2, 2-tetrachloroethane are proposed to be removed from this section. The existing values represent the Lowest Observed Effect Levels for those parameters, which USEPA has indicated are not appropriate values to use for aquatic life protection. USEPA has not developed aquatic life limits for these two parameters. The Board is removing these limits and will consider replacing them with values from USEPA as they are developed.

Comments Received

No comments were received in opposition to this change.

Board Action

Adopt changes as proposed.

Section 8.22.2. This section outlines body burden (fish tissue) criteria for 8 parameters. The proposed revision would delete this section. This change is proposed based on disapproval of these values by USEPA in 1997. The Board acknowledges the concern raised by EPA that the existing body burden values in this section are not consistent with the instream criteria for those parameters. In response to EPAs disapproval the Board developed, with the input of a committee of stakeholders, proposed alternative language to establish methodologies for dealing with situations where the numeric criteria for a parameter are lower than its detection limit. The alternative proposal was proposed to the legislature in 1998, but was not adopted. The Board has decided therefore, to delete the body burden values in this section.

Comments Received

Several commenters expressed concern about deleting these body burden values,

indicating that such numbers can be important in implementing the instream values for the parameters. Suggestions were made regarding adoption of fish tissue values published in EPAs "Risk-Based Concentration Table".

Responses to Comments

Regarding the use of the Risk-based Concentration Table, EPA has advised us that they do not support the use of those values as fish body burden limits in the WQS. We also find that the body burden values in section 8.22.2 are flawed, and cannot justify retaining them as body burden values.

The Board, however, acknowledges the concerns identified by the commenters. As described above, this is an issue which we have sought, unsuccessfully, to resolve through stakeholder involvement. We intend to continue to seek solutions to the dilemma raised by discrepancies between criteria and detection limits, with the help of the appropriate state and federal agencies, and the involvement of the public.

Board Action

Adopt changes as proposed.

Section 8.24.2. - 8.24.7. Phenols. USEPAs recommended values for phenol, 2-Chlorophenol, 2, 4-Dichlorophenol, 2,4-Dimethylphenol, 2,4-Dinitrophenol, Pentachlorophenol and 2, 4, 6-Trichlorophenol are proposed for adoption in these sections. This proposal is made based on recommendations by USEPA and the WVDEP.

Comments Received

Several commenters indicated support for adoption of these criteria. One of those commenters indicated that the values for Category A and C are transposed and suggested correction.

Responses to Comments

The Board agrees with the commenter regarding the transposition of the Category A and C numbers and will make that correction.

Board Action

Adoption of the new criteria, with the correction noted above.

APPENDIX F: Antidegradation Implementation Procedures.

This entire section is new language. Note that the public notice of the rule included

preliminary comments from EPA regarding this section. The Board encouraged those reviewing and commenting on this section to provide input on EPAs comments. Where such input was received, it is noted. Also, a stakeholder group provided assistance to the Board in the development of these procedures. Their recommendations are noted in several sections of this proposal.

General Comments

EPA commented that the procedures do not explain how West Virginia will assure the achievement of the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

One commenter expressed concerns about the stakeholder process, indicating that an alternate proposal submitted was allowed to drive the stakeholder process. That commenter also indicated that the final stakeholder document submitted to the Board included votes other than those where consensus was reached which they believed undermined the consensus process.

Section 4A.1. Applicability. This section explains the activities that are subject to the antidegradation implementation procedures. New and expanded regulated activities that have the potential to affect existing water quality are covered. The intent of the language proposed is that existing discharges will not be subject to the procedures, even if an existing NPDES permit comes up for renewal. Only if such renewal included a request for an expansion resulting in increased discharges would the review would be triggered.

NOTE: See also discussion of section **4C.2.a.2.E**, which specifically addresses this issue for activities in Tier 2 waters.

Comments Received

Numerous commenters expressed concern about "grandfathering" existing activities under this section, and allowing such activities to continue without the review outlined in these procedures. One commenter indicated that the proposed applicability to only new and expanded regulated activities is counter to the requirement that "the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources. Commenters further expressed concern that grandfathering gives existing dischargers a clear and permanent advantage over new activities, and rewards existing activities that may not be in the public interest or capable of passing an antidegradation review. Grandfathering penalizes new an environmentally cleaner industries and places them at a competitive disadvantage relative to existing dischargers. One commenter suggested changing the language of 4A.1 to read "The antidegradation implementation procedures herein apply to all activities".

Numerous commenters supported the proposed language and expressed concern about expanding the applicability to existing discharges that do not expand or add new discharges or to

existing permits upon permit reissuance unless that reissuance would allow new or increased discharges. Those commenters noted that the antidegradation implementation procedures of surrounding states do not apply to existing permits, and note that in New Jersey, has specific language allowing existing discharge to continue even in the highest classification of waters.

Region 3, EPA expressed concern about this section. Regarding Tier 1 waters, EPA stated that the concept of "grandfathering" is inconsistent with the concept underlying both WV and federal antidegradation policy of maintaining and protecting water quality. Application of the procedures to only new and expanded dischargers would exempt existing discharges from an antidegradation review. Tier 1 establishes a baseline of protection that existing uses and the level of water quality to protect those uses be maintained and protected. Tier 1 applies to all waters regardless of the source of the discharge, including existing discharges.

Regarding application to Tier 2 waters, EPA suggests that the regulation should clearly mandate Tier 2 review, or require the Director to exercise his discretion to require Tier 2 review for all currently permitted discharges, unless the applicant, at the time of renewal, demonstrates substantial progress in reducing permit limits or pollutant loadings. Further the Director could retain flexibility and discretion in applying this standard, which might be met by substantial reductions in one or more permit parameters, or incremental reductions in a range of permit parameters. Their comments indicated that such requirement is important for creating a margin of safety in protecting water quality and providing assurance that current dischargers will not completely foreclose the possibility of permitting new activities on Tier 2 waters. Furthermore, this approach will remove uncertainty for the regulated community as to when Tier 2 review will occur, while properly rewarding regulated parties who demonstrate continuing progress in reducing discharges to Tier 2 waters.

Responses to comments

The Board acknowledges the concerns raised by all commenters on this issue. Deciding the activities to be covered by these procedures has been one of the most difficult issues to resolve as the document was developed. Consensus was not reached on this issue by the stakeholders. A majority of the stakeholders favored "grandfathering" of existing permits, unless the discharge limit is increased. Those opposing the grandfather provision felt very strongly that allowing existing discharges to escape review is inconsistent with the letter and spirit of the antidegradation provisions. One concern raised in this regard is that this rule has included an antidegradation policy since 1982, but the specific provisions requiring a socio-economic evaluation for Tier 2 waters have never been implemented. A large number of permits, therefore, have been issued by the state without compliance with this requirement.

In its final decision on this issue, the Board gave weight to the position of the WVDEP, the agency responsible for implementing these procedures. The agency maintained the position throughout its involvement in the development of the procedures, that the cost of conducting a "full-blown" Tier 2 review (including the non-degrading, less-degrading alternatives analysis and the socio-economic evaluation) each time a permit is renewed would be prohibitive, both

financially and in terms of the agency's time.

Further, the Board relies on language in section 4C.2.a.2.E, which specifically provides that reissuances of NPDES permits with no new increase in permitted levels will not be subject to further tier 2 review. That exemption states further:

> Provided that the Director may require antidegradation review procedures be applied where individual circumstances warrant

This language provides the Director fairly broad discretion to require a review in a Tier 2 water on a case-by-case basis if a concern is identified. The Board believes that this language would provide the agency the leeway to implement the procedures consistent with the suggestions offered by the Region 3, EPA and certainly encourages those two agencies to coordinate efforts in implementing these procedures.

The Board intends to keep the concerns raised about this issue in mind as we conduct our triennial reviews in the future. We believe that the agency will continue to monitor the effectiveness of these procedures and assess the need to revise them. We look forward to working with the DEP in this process in the future.

Section 4A.2. This section explains how nonpoint source activities are deemed to be in compliance with the antidegradation implementation procedures. It provides that those activities will be in compliance with the achievement of cost effective and reasonable best management practices in accordance with section 4.1.b (of the Policy). The language of section 4.1.b of the policy was also amended by adding the following language:

> The Director shall assure that BMPs are sufficient to satisfy the requirements of the Water Quality Standards. If BMP's are demonstrated to be inadequate to meet Water Quality Standards, the Director shall work with the appropriate authorities to require that BMPs be revised or adopted to assure compliance with those standards or shall require the activity causing the nonpoint source pollution to cease.

This language was added to clarify how the state will meet the requirement to "assure the achievement of cost-effective and reasonable best management practices (BMPs) for non-point source control" which is outlined in the second paragraph of section 4.1.b.

Regarding the proposed language in §4.1.b, commenters suggested removing the proposed language, indicating that it is does not reflect the intent of "several, if not most, of the stakeholders" who were involved in drafting the language. The commenter expressed concerns that the proposed language in this section provides that BMPs will meet water quality standards and that the technical feasibility of such requirement was not discussed by the stakeholders. The commenter indicated that without numerical effluent limitations, allowing a calculation of impact on water quality predicting whether nonpoint source discharges will meet is difficult. The

commenter further suggested that the proposed language is superfluous and is fundamentally a restatement of the existing language in that section.

Another commenter expressed support for the proposed language in §4A.2 and §4.1.b., indicating that water quality standards were meant to apply to all waters on a waterbody by waterbody approach. Further, the commenter explained that the stakeholder group thoroughly discussed this issue, and that there was agreement by the stakeholders to this language at the time that the language was proposed.

The Division of Environmental Protection, Office of Water Resources expressed concern about the implementation of the proposed language in 4.1.b, citing several examples of situations where requiring BMP's to meet Water Quality Standards would be difficult if not impossible to meet. The agency suggested that the language in 4.1.b. be amended to read as follows:

> Best Management Practices that have been implemented, applied, or installed at a specific site should be evaluated to determine whether the BMPs are sufficient to reduce or minimize impacts to water quality. Where appropriate, the Director may require application or implementation of BMPs sufficient to prevent violations of water quality standards. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts the Director may require that more appropriate BMPs be developed and applied or, alternatively, may require that the activity causing the pollution cease.

Response to Comments

The Board has long recognized the challenges posed by the application of the Water Quality Standards, including the antidegradation provisions, to nonpoint source discharges into the waters of the state. Therefore, the Board was pleased to find that efforts made in the stakeholder group to draft language to address that issue were successful, and we proposed that "agreed to" language in the document that was sent to notice (see proposed language at beginning of this section). During the public comment period, however, at least two of the stakeholders identified potential problems that could be encountered in implementing the agreed to language, and made note of them in their comments. Upon review of those comments, and the other comments received on this section, the Board decided to amend the proposed language in section 4.1.b, to adopt the language proposed by the Division of Environmental Protection.

Board Action

Delete the proposed language in section 4.1.b; replace with language proposed for this section by the WVDEP.

Section 4A.3. (Of EPA's proposal) EPA suggested (6/9/00) and several commenters agreed, that the language in proposed section 4B.1 be moved to this section to clarify that the Director is identified as reviewing the activities in all Tiers, not just Tier 1.

Response to comments

The Board agrees with the commenters that the language of 4B.1 would be appropriate in the Applicability section. However, to make clear that Tier 1 protection is intended to apply to all waters of the state, the Board intends to retain the language in section 4B.1, and add it to section 4A.3. It will therefore be included in both sections.

Board Action

Add the language of 4B.1 as a new section 4A.3.

Section 46-1-4B. This section outlines Tier 1 Review Procedures, which require the protection of existing uses and the level of water quality to protect those uses.

Comments Received

EPA suggested reorganization of sections 4B.1.a and 4B.1.c., for clarification This would not result in a change in substance.

Section 4.B.1.c. This section sets out a step in the review process which determines whether the water currently supports an existing use. EPA suggested and several commenters agreed that deleting the following language at the end of the section "unless there are physical problems, such as substrate or flow that prevent the use from being attained", indicating that it is unnecessary and that if there is a physical problem, it stands to reason that it is factored into the existing use.

DEP and several other commenters generally agreed with EPAs comments. However, regarding the deletion of language in 4B.1.c, DEP explained that the source of that language is EPAs Water Quality Standards Handbook, and that it was added during stakeholder process based on review of EPAs language. Other commenters supported EPAs suggested change to 4B.1.c.

Responses to Comments

The Board agrees with EPAs comments regarding reorganization of this section. The Board does not agree with the suggestion to delete the language in 4B.1.c., based on the inclusion of this language in EPAs WQS Handbook.

Board Action

Reorganize these sections by incorporating the language in section 4B.1.c into 4B.1.a.

Section 4B.4. This section outlines allowable pollution trading provisions for Tier 1 Waters. It provides that an activity that will result in a new or expanded discharge in a water subject to Tier

1 protection may be allowed where it will not pose significant degradation based on the applicant's agreement to implement upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity. A number of limitations are placed on trades in both this section and in the definition of trading provided in section 2.

Comments Received

USEPA Region 3 expressed support for this section with some suggested revisions. They suggested clarifying the term "watershed" by adding "8-digit Hydrologic Unit Code" in front of it. In addition they suggested the following changes:

(1) The effluent trade must be for the same form of the parameter (2) Where uncertainty exists regarding the effluent trade, at least a 2:1 offset ratio will be required; (3) Dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) Offsets must be enforceable.

One commenter suggested that the last clause in the last sentence of this section be changed to provide:

. . . provided that no net degradation results to any stream within the watershed.

Response to Comments

The Board acknowledges comments received and notes that the trading language was the subject of much discussion in the stakeholder group. While consensus was not reached on the trading language for Tier 1, it was not because of any provision included in this section, but because a provision recommended by Region 8 USEPA, which required that water quality sufficient to protect existing uses be maintained as a result of the trade, was omitted from the rule.

The Board supports, with one exception, the changes to this section proposed by USEPA, Region 3. We believe that the requirement for 2:1 offsets limits the trading provisions needlessly. As proposed this provision requires the trade to result not merely in maintenance of water quality, but its improvement. The extent of improvement necessary and possible can be assessed by the DEP on a case-by-case basis during its review of the permit application.

The Board acknowledges the commenters suggestion to include the term "net" degradation in this section, however believes that such change is not consistent with the stakeholder's intent regarding this section.

Board Action

Adopt proposed language with EPA revisions with the exception of the language regarding 2:1 offsets.

Section 46-1-4C. This section outlines Tier 2 Review Procedures, which address the protection of High Quality Waters.

Section 4C.2a.1.A. This section provides that an activity that any activity that would degrade the ambient concentration of any parameter of concern by more than 5% at critical flow conditions or reduce the assimilative capacity by more than 5% will be presumed to pose significant degradation.

This provision has been termed a "deminimus" allowance and is also referred to as a "trigger" in comments addressing this section. It is intended to establish a minimum discharge which would be subject to the complete antidegradation review, including the a review of less or non-degrading alternatives and the review of the socio-economic value of the activity proposed. This deminimus provision does not establish any limit to the actual level discharge allowed, but merely clarifies which activities will be subject to the review process in Tier 2 waters.

Comments and Responses.

Numerous commenters asked the Board to remove this deminimus provision entirely. They expressed concern regarding a policy that would allow a certain amount of pollution to occur without review, and indicated that such allowance is contrary to the philosophy of antidegradation. Concerns were also expressed that this provision could allow cumulative impacts from successive 5% allowances, without the necessary review.

Other commenters requested that the deminimus allowance be increased. Citing higher values from the rules of several other states, these commenters maintain that West Virginia will be at a competitive disadvantage if the 5% deminimus is adopted. Many commenters suggested a 10% deminimus value.

Many commenters suggested that the deminimus value be based solely on the assimilative capacity of the stream rather than considering the change to ambient concentration. Other commenters supported the use of either assimilative capacity or ambient concentration, whichever results in the most protective limit.

Response to Comments

The Board recognizes this issue as one of the most contentious in the procedures. Efforts to reach a compromise on this issue during the stakeholder process were unsuccessful. The Board acknowledges that a 5% value is among the lowest trigger found in procedures adopted in other states. The Board notes, however, that there are other states with more restrictive triggers, such as Pennsylvania, which has no "deminimus" value. The Board cautions that comparisons with other states are very difficult to make, due to a number of differences in wording of the deminimus provisions and other sections of the WQS rules, differences in permitting procedures and a number of other factors which would affect how these rules are implemented.

Based on its review of the comments received, the Board agrees to amending the 5% deminimus value to 10% and clarified that it will apply to the ambient concentration or assimilative capacity, whichever is the most protective. Further, in response to the concern raised by many of the potential cumulative effect of this provision, the Board decided to limit the allowance of deminimus discharges once such discharges result in a 20% change to the ambient concentration or assimilative capacity of a stream. After that point is reached, all new discharges will be subject to the full review process.

Board Action

Amend section by changing 5% to 10%; clarification that it applies to ambient concentration or assimilative capacity, **whichever is most protective**; and providing for a 20% cap to deminimus allowances (these amendments are made in sections 4C.2.a.1.A, 4C.3, 4C.4 and 4C.4.a).

Sections 4C.2.a.2.A - 4C.2.a.2.M. These sections outline activities or circumstances which are exempt from further antidegradation review provisions in Tier 2 waters.

Comments Received

Numerous commenters requested the removal of all of these exemptions, reiterating the concern that all activities which degrade water quality should be required to undergo the proposed review required for Tier 2 waters.

EPA expressed concern about inclusion of these exemptions, indicating generally that the exemptions would allow discharges which could cause degradation of instream water quality and therefore should be subject to the full Tier 2 review procedures.

4C.2.a.2.A This section provides that an activity that will not cause a violation of the applicable temperature criteria in appendix E, or where the discharge is consistent with section 316(a) of the Federal Clean Water Act, shall not be subject to further Tier 2 Review requirements. This exemption was originally included in the rule to because the numeric criterion includes a range of applicable temperatures which rather than a discrete numeric value. DEP suggested that a significant degradation for those parameters would be difficult or inappropriate to address by a % change as provided by the "deminimus" allowance. The reference to section Clean Water Act section 316(a) was included based on it being referenced in the federal rule outlining antidegradation requirements.

In addition to the numerous commenters calling for the removal of all exemptions, EPA suggested removal of this exemption. The basis of that position is that a thermal discharge different from that of the receiving stream could cause degradation of a stream and should therefore be subject to Tier 2 review. Without an acceptable demonstration as outlined in section 316(a) of the Clean Water Act) they do not agree with the exemption.

Responses to Comments

The Board is persuaded by the original intent of the inclusion of this exemption; that is to allow for discharges falling within the allowable temperature range established in Appendix E to not be required to undergo the full Tier 2 review procedures. Further, the Board believes that if a discharge is consistent with section 316(a), and has made that showing, that there is no need for further antidegradation review.

Board Action

Adopt section as proposed.

4C.2.a.2.B This section provides that any new or expanded activity resulting in a discharge with fecal coliform concentrations established as 200/100 ml monthly average or 400/100 ml daily maximum are exempt from further antidegradation review. As described in 4C.a.2.a, above, this exemption is intended to address the problem of establishing significant degradation levels for parameters with a range of values for which compliance is measured.

Comments received

In addition to the numerous commenters who sought removal of all exemptions, EPA also specifically requested deletion of this exemption. They indicated that a fecal coliform meeting the identified concentration could cause degradation and therefore should be subject to Tier 2 review. DEP suggested that in an effort to respond to concerns about this exemption, that the following proviso be added: "provided that necessary and appropriate treatment (disinfection) or control is required".

Response to Comments

The Board believes that if an activity meets the criteria outlined in this section, that further antidegradation review is not necessary. The Board agreed, however, that the additional language offered by DEP strengthens this exemption, and voted to include that language in this section.

Board Action

Adopt the proposed language, as amended with DEP's suggested language.

4C.2.a.2.C This section provides that any new or expanded activity resulting in a discharge where the pH is in the range of 6.0 to 9.0 units shall not be subject to further Tier 2 review requirements. Further exempted are activities where pH is permitted at greater than 9.0 units and the sole purpose of the discharge is to improve the quality of the receiving stream and the discharger demonstrates and the Director finds that such improvement would occur.

This is another exemption which was including based on difficulty applying a percentage deminimus value, because the criterion is expressed as a range of values. The second part of the exemption is intended to address situations such as the liming stations established to treat acid mine drainage. Because improvement, rather than degradation is intended to result from such treatment, application of antidegradation review procedures were deemed to be unwarranted.

Comments Received

Numerous comments were received requesting removal of all exemptions.

EPA recommended striking this exemption, indicating that although this provisions would only exempt dischargers within a more neutral pH range, any pH discharge different from that of the receiving stream could cause degradation and be subject to a Tier 2 review.

Responses to Comments

The Board supports the original intent of this exemption, finding that if a discharge occurs within the range established as an acceptable instream limit, that no further antidegradation review is necessary. Further, we support the exemption for treatment of acid mine drainage without further antidegradation review.

Board Action

Adopt the language as proposed.

4C.2.a.2.D This section outlines an exemption for discharges resulting where any reduction of water quality of less than 0.4 ppm at maximum dissolved oxygen (DO) sag based upon an appropriate wasteload allocation model is not subject to further review unless the reduction is projected to cause a violation of 46 CSR 1-8.11 through 8.11.2 in Appendix E. Again, this exemption is intended to allow discharges complying with the DO criteria to not be subject to further review under the circumstances provided.

Comments Received

Numerous commenters requested that all the exemptions in this section be striken.

EPA suggested that the rationale for this exemption is unclear, and absent further explanation, that it be striken.

DEP suggested clarification of Appendix E, to Table 1 of Appendix E.

Responses to comments

The .04 ppm represents 5% of the initial dissolved oxygen assumed in typical DO

modeling procedures (95% of DO saturation values at temperatures between 21^0 and 27^0 C). This provision, and the inclusion of the language regarding maximum DO sag, are intended to limit the application of this exemption. The Board believes, as written, the exemption would apply only in situations where DO changes would not constitute significant degradation.

The Board agreed to DEPs cleanup suggestion.

Board Action

Adopt language as proposed with inclusion of reference to Table 1.

4C.2.a.2.E This section provides an exemption for reissuances of individual NPDES permits where no new increase in permitted levels will occur, Provided that the Director may require antidegradation review procedures be applied where individual circumstances warrant.

This section is intended to clarify the intent of the Applicability section regarding Tier 2 waters. No additional Tier 2 review will apply in a Tier 2 water where no new increase in permitted levels will occur. It includes a proviso giving the Director discretion to require further review where individual circumstances warrant.

Comments Received

A number of commenters suggested striking all the exemptions outlined in this section.

EPA provided the following comments regarding this exemption:

> The Region feels that West Virginia should fully exercise the authority provided under the discretionary clause in the second sentence. Of particular concern would be those dischargers whose permits are up for reissuance and may be posing cumulative degradation to water quality, either spatially or temporally. Thus, West Virginia could consider the collective degradation resulting from multiple discharges within a similar geographic area, or the degradation resulting from a single discharge over time. The concept of cumulative impacts becomes especially important where there are existing point or nonpoint control compliance problems. Where such compliance problems exist, it would be inconsistent with the philosophy of the antidegradation policy to authorize the discharge of additional pollutants in the absence of adequate assurance that any existing compliance problems will be resolved. However, without any consideration to cumulative impacts, or procedures for tracking allowed reductions in water quality, it would be difficult to provide this type of assurance.

Response to Comments

Board Action

Section 4C.2.a.2.F. This section provides that addition of chemicals used for the treatment of drinking water or sanitary wastewater that do not otherwise violate water quality standards are not subject to further Tier 2 review. The exemption is limited to public drinking water and municipal waste water systems, and shall not apply to parameters of concern.

Comments Received

As noted above, numerous commenters suggested removal of all of the exemptions as being inconsistent with the Clean Water Act.

Other commenters expressed support for this exemption, indicating that new discharges of such chemicals is subject to review by the DEP to insure that no harm will come to the receiving water. Commenters explained that requiring an antidegradation review for additions that have already received a technical review by the agency delays improvements in water quality to be gained by innovative ind improved treatment technology.

EPA suggested deleting this exemption, expressing concern that the addition of such chemicals could cause a degradation of instream water quality and therefore should not be exempted from a Tier 2 review.

Response to Comments

The Board acknowledges the concerns raised, but believes that the limited scope of this exemption should allay those concerns. The intent of this exemption is to avoid requiring a full review of a water treatment facility which is adding a new treatment chemical or merely changing treatment chemicals.

Board Action

Adopt language as proposed.

Section 4C.2.a.2.G This section provides that discharges used to treat zebra mussels or asiatic clams in an intake water pipe or structure will not be required to undergo further tier 2 review if the discharge will not cause adverse effects on human health and aquatic life outside mixing zones. The exemption does not apply in areas where federally threatened and endangered species are known to occur.

Comments Received

As noted above, numerous commenters suggested deletion of all exemptions. Several commenters expressed support for all of the exemptions included in this section

EPA expressed concern about exempting treatment for these two nuisance species indicating that the new or increased discharge of such a substance could cause a degradation of

instream water quality and therefore should not be exempted from a Tier 2 review.

Response to Comments

The Board believes that based on the need to eradicate these nuisance species without delay, and the understanding that DEP reviews these activities closely to ensure water quality problems do not occur, that this exemption is warranted.

Board Action

Adopt language as proposed.

Section 4C.2.a.2.H This section provides that new discharges of by-products from the treatment of ammonia are not subject to further Tier 2 review if the new discharge is necessary to accomplish a reduction in the discharge of ammonia and the Director determines that the action will result in a net improvement of water quality in the waterbody, where the new byproducts will cause less degradation than the discharge of the ammonia to be treated and that all reasonable and cost effective methods for avoiding the new discharge will be used.

Comments Received

Numerous commenters suggested removing all exemptions, as explained above.

Other commenters expressed support for this exemption, indicating that it is simply a recognition of the type of wastewater treatment that is required to treat ammonia, and that the removal of the byproducts of ammonia treatment is expensive and difficult. The subsequent byproduct is also the subject of a relatively high water quality standard and has minimum potential stream or health impacts.

EPA suggested deleting this exemption, stating that they assume that the treatment of ammonia would primarily involve the conversion of ammonia to nitrate. They indicated that the new or increased discharge of such a parameter could cause degradation of instream water quality and therefore should not be exempted from a Tier 2 review.

Response to Comments

The Board agrees with the concerns expressed about this exemption. Because the resulting by-products could result in degradation of water quality for a parameter of concern, subjecting those activities to Tier 2 review is warranted.

Board Action

Delete language in this section.

4C.2.a.2.I This section provides that activities that quality for coverage under a Nationwide Corps of Engineers Permit, its subsequent reissuance for state water quality certification has been granted or conditionally approved are not subject to further tier 2 review except Nationwide permit #21 (Surface Coal Mining Activities and #26 (Headwaters and Isolated Waters Discharges)

Comments Received

Numerous commenters suggested deleting this section.

Several commenters supported revision of the amendment to delete the language requiring review of Nationwide Permits #21 and #26. They indicated that carving those permits out of the exemption is unfair, and will place an unnecessary burden on the activities seeking coverage under those permits. They suggested that carving those two Nationwide permits out of the exemption is arbitrary and capricious, and further indicated that Congress authorized the issuance of Nationwide Permits for such activities which "will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effect on the environment. On that basis, they expressed support for the exemption of all activities covered under Nationwide Permits from further antidegradation review.

DEP indicated that such activities undergo scrutiny similar to the review outlined in the procedures for Tier 2 waters, and that requiring an additional review would be costly and time-consuming from the agency's perspective.

USEPA Region 3 suggested deletion of this exemption, suggesting that permits issued by the US Army Corps of Engineers, like other activities that result in the discharge of pollutants to waters of the United States and the State, must comply with the antidegradation policy. The Region interprets 40 CFR 131.12(a)(1) to be satisfied with regard to fills in wetlands if the discharge did not result in significant degradation to the aquatic ecosystem as defined under 230.10(c) of the 404(b)(1) Guidelines. These guidelines list some effects that could contribute to significant degradation. The Board should consider procedures for ensuring that the individual and cumulative impacts of discharges approved for coverage under U.S.. Army Corps of Engineers Nationwide permits will not result in degradation.

Response to Comments

The Board acknowledges the concerns raised by all parties on this exemption. We note that consensus was reached on this language during the stakeholder process, although the stakeholder representing point sources indicated that one of the organizations he represented would likely express concerns about the carving out of Nationwide Permits #21 and #26. Further, when EPA expressed concern about including the exemption at all, the stakeholder representing the environmental community changed his position to support EPAs recommendation that the entire exemption be deleted.

The Board understands that many people have serious concerns about exempting activities subject to Nationwide Permits, particularly those related to coal mining activities. However, we were ultimately persuaded by the concerns expressed by the DEP on this issue. We recognize that the workload to the permitting agency will increase significantly as a result of the changes outlined by these procedures. We support the agency's judgment that the additional effort required to conduct reviews of each application for coverage under the Nationwide permits, even if limited to Permit #21 and #26, is not necessary in light of the current review conducted of those activities, and in fact could result in significant delays in these activities.

Again, we note that these implementation procedures will be reviewed every three years, and we are committed to thoroughly analyzing the success of the rule as drafted during those reviews. We encourage the DEP to continue to provide comments and suggestions about how these implementation procedures are working and particularly whether they ensure the appropriate levels of protection of the state's waters.

Board Action.

Amended the language to exempt all Nationwide Permits, including #21 and #26 from further antidegradation review under Tier 2.

4C.2.a.2.J This section exempts any application approved for coverage under an applicable WV/NPDES General permit or subsequent coverage under such permit from further antidegradation review under Tier 2.

Comments Received

Numerous commenters requested removal of this and all exemptions from this section.

Other commenters expressed support for this exemption, indicting that general permits are usually established for specific, low impact activities where the potential for stream impact does not justify individual technical review. The commenter further indicated that several other states specifically exclude general permit registration review from antidegradation review.. They support this provision to ensure that the purpose of the general permit program, to streamline the permit process, is upheld.

Response to Comments

While acknowledging the concerns raised, the Board agrees with the comments in support of this section. The DEP intends to conduct an antidegradation review as it reviews each General Permit on its regular 5-year schedule. The Board believes that that review will be sufficient for the purposes of these procedures. Therefore the exemption of each application for coverage under the general permit is unnecessary and will defeat the purpose of the General Permit program, which is to provide an expedited review of the minimally impacting activities which these permits address.

Board Action

Adopt the language as proposed.

4C.2.a.2.K. This section outlines an exemption from further Tier 2 review for waivers granted by the Director allowing the approval of activities that lower water quality in the case of an emergencies requiring immediate action to protect public health and welfare. Provided that once the Director determines that the emergency is over, the exemption shall no longer apply.

Numerous commenters expressed concern about all of the exemptions in this section and requested that they be deleted.

Other commenters expressed support for this provision, indicating that emergency situations should never be the subject of antidegradation review.

EPA requested justification for how the exemption is anticipated to work and provide assurance that economic emergencies would not be included. They further suggested that a specific length of time be provided so that the burden is not placed on the Director to lift the waiver.

Response to Comments

The Board supports this exemption. We anticipate that the specifics of its implementation will be established on a case-by-case basis by the Director. While we acknowledge that a time period could be helpful to the Director in determining when an emergency is over, we are reluctant at this time to establish a time period until more information is available about appropriate time frames.

Board Action

Adopt the language as proposed.

4C.2.a.2.L This section outlines an exemption for proposed new discharges from sanitary wastewater treatment plants constructed or operated to alleviate public health concerns associated with failing septic systems or untreated or inadequately treated sewage. This exemption would include Combined Sewer Overflow elimination or reduction projects affecting one or more waterbodies and shall apply only where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters.

Comments Received.

Numerous commenters expressed concern about all of the exemptions in this section and requested that they be deleted.

The Board received a number of comments, not specifically directed to this section of the

rule, but indicating the need for a waiver of these provisions to the expansion of public sewer service into unserved areas. WV Municipal Water Quality Association, who was represented on the stakeholder group, maintained that requiring antidegradation review to such expansions would impose yet another hurdle to impede progress of extending public infrastructure to underdeveloped areas of our state. They explained that Publicly Owned Treatment Works (POTWs) do not create pollution but instead collect and clean pollution discharged from many different sources. As proposed, the commenters indicated, the rule will promote the continued operation of undesirable septic systems, subdivision package plants and straight pipes discharging directly into our waters POTWs should be exempt from antidedegradation procedures when expanding an existing facility.

EPA suggested that the exemptions seems unnecessary because the justification behind it closely resembles that of a socioeconomic analysis.

Response to Comments

The Board supports this exemption, for the reasons identified in the comments from the WVMWQA. The intention of this exemption is to allow new discharges from wastewater treatment plants in the very circumstances outlined in their comments. Where an expansion is intended to alleviate a public health concern associate with failing septic systems or inadequately treated sewage in tier 2 waters, no further antidegradation review will be required. The exemption further addresses combined sewer overflow elimination projects and provides that such projects will be exempt where there will be a net decrease in the overall pollutant loading discharged to the combined receiving waters.

Board Action

Adopt language as proposed.

4C.2.a.2.M This section provides an exemption from further Tier 2 review requirements for groundwater remediation efforts proposed for existing contaminated sites which do not constitute a new point source where there are or may be ongoing surface water impacts from contaminated groundwater not associated with point sources. The exemption provides that review will be required for groundwater remediation efforts where there is a potential for new or increased surface water or groundwater impacts r from activities associated wit the treatment of contaminated groundwater.

Comments Received

Numerous commenters expressed concern about all the exemptions in this section and suggested that they be removed from the rule. Other commenters expressed support for this exemption, one noting that it is the only exemption for which Region 3 EPA failed to provide a criticism.

Responses to Comments

The Board acknowledges the comments supports the inclusion of this exemption. This exemption was originally suggested to the Board by the DEP, and was revised by the stakeholders to address concerns identified by several parties. We believe that, as proposed, the exemption will allow for appropriate review of groundwater remediation efforts.

Board Action

Adopt language as proposed.

4C.2.a.2.N. This section outlines provisions for "trading" pollutant discharges. It provides an exemption to further Tier 2 review where an activity will not pose significant degradation based on the applicant's agreement to implement upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity. A number of limitations are placed on trades in both this section and in the definition provided in section (?????).

Comments Received

Numerous commenters suggested deletion of this and all of the other exemptions in this section.

Several commenters expressed support for the trading provisions.

See EPA comments in discussion of section 4B.4, above.

Response to Comments

As noted in section 4B.4 above, the Board agrees with all of USEPAs recommendations with the exception of requiring a 2:1 offset (improvement) in water quality as a result of the trade.

Board Action

Adopt language as amended with USEPAs comments.

Sections 4C.6 through 4C.8. These sections outline the process for evaluating whether a proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located (according to section 4.1.b of the antidegradation policy. Two alternative approaches were proposed by the Board. Option 1 provides for a preliminary determination to be made by the Division of Environmental protection, which is forwarded to chosen intergovernmental coordination agencies for input. Option 2 establishes an intergovernmental coordination panel, which would provide recommendations to the DEP prior to the agency's decision on the issue.

Comments Received

Many commenters expressed concern about both options, indicating that these steps should be outlined in the Continuing Planning Process document which the state is required to prepare by the federal Clean Water Act. Others suggested that none of the proposed language is necessary. One commenter suggested that the WVDEP coordinate with the West Virginia Council for Community and Economic Development to assist it in making determinations about social and economic necessity. Another indicated that several of the criteria outlined in making the determination were inappropriate.

WVDEP also expressed concerns about both options, but provided some suggestions to improve the guidance offered by Option 1.

Responses to Comments

The Board acknowledges the criticisms of the proposed options. In developing Option one, USEPA Region 8's Antidegradation Guidance Document was used. The stakeholders reviewed that proposal and several participants expressed concern about the process. While we recognize that both options leave something to be desired, we believe that choosing Option 1, with some modifications, will be consistent with the language of the Policy and with federal requirements. We note that WVDEP indicates in its comments that they are in the process of updating the CPP and in order to avoid future conflicts between the CPP and Appendix F, they suggest making reference to the CPP in this section. We anticipate that the updated CPP will provide additional guidance on this issue. We intend to work with WVDEP to review these provisions as they are implemented and will revise as necessary at the first opportunity.

Board Action

Adopt Option 1 with revisions outlined by DEP.

Appendix F1. This appendix provides a list of state and federal agencies which are designated to assist the WVDEP in the intergovernmental coordination activities associated with the socio-economic evaluation, describe in sections 4C.6 through 4C.7, above.

Comments Received

Some commenters indicated that the list of agencies in this section is needlessly long.

Response to Comments

The Board agrees with the commenter and agreed to remove the following agencies from the list: WV Division of Culture and History, Public Service Commission, National Park Service, Federal Energy Regulatory Commission, US Geological Survey and Regional Planning Commissions.

Board Action

Adopt list with revisions noted above.

Section 46-1-4D. This section outlines Tier 2.5 Review Procedures, which address the protection of Waters of Special Concern

Comments Received

Numerous commenters indicated that the list of Tier 2.5 waters is too broad, encompassing numerous waters and expressed concern that prohibiting activities that would result in degradation of ambient water quality will have a negative impact to any new development activities on those streams. Some commenters expressed concern that the limits placed on activities upstream of such designated segments (no discharges that would result in the degradation of ambient water quality in the portion designated as 2.5) could also result in unintended limits on development activities throughout such watersheds. Many of those commenters suggested that the Board develop a procedure for review of the classification of any water as a Water of Special Concern.

DEP provided several clean-up suggestions in 4D.5 and 4D.5.b. They expressed support for the nomination process established in section 4D.6, but suggested that complete lists need to be developed for waters currently described by the categories of waters identified in section 4.1.c of the rule. They suggested that a definition of Waters of Special Concern be included in section 2 of the rule.

One commenter suggested adding the language in section 4E.2 (addressing short-term temporary changes ONRW implementation) to this section.

Response to Comments

The Board acknowledges the concerns raised by the commenters. The Board notes, however that the categories of waters included in this section were originally designated as Outstanding National Resource Waters, Tier 3. In 1996 the Board revised the Antidegradation Policy by creating an intermediate tier of protection which was higher than tier 2, but which does not include an absolute prohibition to new discharges, as is required in Tier 3. Discharges in Tier 2.5 waters can result in no change to the ambient water quality. The revision was made by the Board to acknowledge the potential impacts of such prohibition in what the Board recognizes is a substantial list of rivers. The Board believes that protecting these waters by disallowing any change in ambient water quality is appropriate, given the categories that are included: Wild and Scenic Rivers, naturally reproducing trout streams, National Rivers (designated in the National Parks and Recreation Act of 1978), State and National Forests and Recreation Areas.

Additional provisions have been included in this section which may provide some relief in certain circumstances. A procedure for reclassification of a water of Special Concern has been

included in section 4D.6. This will provide a mechanism for recategorizing a water identified as Tier 2.5. Such reclassification can be accomplished by application to the Board.

Board Action

Adopt changes as proposed, including cleanup suggestions by WVDEP.

Section 46-1-4E. This section outlines Tier 3 Review Procedures, which address the protection of Outstanding National Resource Waters.

Comments Received

EPA suggested changing "new discharges" to "lowering of water quality"

One commenter suggested removing reference to 1 month in section 4E.1.a.

WVDEP concurred with EPAs comment and also suggested several clean-up suggestions.

Responses to Comments

The Board disagrees with EPAs suggestion to change "new discharges" to "lowering of water quality. Such change would render the protection levels the same for tiers 2.5 and 3. Further, in establishing the protection level for Tier 3, the Board relied on EPAs long-standing position that Tier 3 waters were intended to be protected to the maximum extent possible.

The Board agrees with the cleanup suggestions identified above.

Board Action

Adopt with changes identified by commenters.