

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: July 27, 2001

TO: Legislative Rule-Making Review Committee

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

1615 Washington Street, East, Suite 301,

Charleston, WV 25311

(304) 558-4002

LEGISLATIVE RULE TITLE: "Requirements Governing Groundwater Standards"

1. Authorizing statute(s) citation 22-12-4 and 22B-3-4

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

May 29, 2001

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

Published in Charleston Gazette Newspaper on June 6, 2001 and Charleston Daily

Mail Newspaper on June 19, 2001. Also distributed the notice to our internal/e-

mail mailing list of approximately 125 people.

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

Public Hearing held on June 28, 2001, at 7:00 p.m. The end of written comment period was June 29, 2001.

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)

July 27, 2001

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive 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 /lchatfield@aqbeqb.state.wv.us

- 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 12
Requirements Governing Groundwater Standards
July 27, 2001

Summary of Proposed Changes

Appendix A Insert in the table a value for the constituent Arsenic after the constituent Antimony as follows:

<u>Constituent</u>	<u>Not to Exceed (in mg/l)</u>
Arsenic	0.05

46 CSR 12
Requirements Governing Groundwater Standards
July 27, 2001

Statement of Circumstances Requiring Proposed Amendments

The Environmental Quality Board is authorized by the state Groundwater Protection Act to promulgate the legislative rule, 46 CSR 12, "Requirements Governing Groundwater Standards." The Board conducted a review of this regulation to determine whether new Maximum Contaminant Levels (MCL) promulgated by the US Environmental Protection Agency according to the federal Safe Drinking Water Act should be included in the rule. This review was conducted in consultation with the WV Department of Environmental Protection and the WV Bureau for Public Health, both of whom support the Board's proposed amendment.

As a result of the review, the Board has determined that the currently effective federal MCL for arsenic of 0.05 mg/L is appropriate for inclusion in the rule at this time. This MCL for arsenic is currently under review by USEPA. A new criterion is expected to be promulgated by that agency within the next year. The Board recognizes that that action may require an additional revision to 46 CSR 1. However, the Board is proposing adoption of the currently effective MCL to provide a criterion for use in state regulatory programs which implement these groundwater standards. The revision proposed adopts a numeric standard for arsenic of .05 mg/l in Appendix A of the rule.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 46 CSR 12 Requirements Governing Groundwater Standards

Type of Rule: Legislative Interpretive Procedural

Agency: WV Environmental Quality Board

Address: 1615 Washington St., E., Suite 301

Charleston, WV 25311-2126

1. Effect of Proposed rule:

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

2. Explanation of Above Estimates:

The amendment proposed, adoption of a numeric groundwater standard for arsenic, is not anticipated to have a fiscal impact.

3. Objectives of These Rules:

To adopt a new groundwater standard for arsenic which corresponds to the Maximum Contaminant Level (MCL) for arsenic as promulgated by the US Environmental Protection Agency pursuant to the federal Safe Drinking Water Act.

Rule Title: 46 CSR 12 - Requirements Governing Groundwater Standards

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Consultations with the WV Department of Environmental Protection's Division of Water Resources indicate that no economic impact to State government is expected.

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

None Anticipated

C. Economic Impact on Citizens/Public at Large.

None Anticipated

Date: 7/27/01

Signature of Agency Head or Authorized Representative:

Elizabeth Hatfield

**TITLE 46
LEGISLATIVE RULE
ENVIRONMENTAL QUALITY BOARD
SERIES 12
REQUIREMENTS GOVERNING
GROUNDWATER STANDARDS**

FILED
2001 JUL 27 A 8:55
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§46-12-1. General.

1.1. Scope.-- The purpose of this Legislative rule is to establish minimum standards of purity and quality for groundwater located within this State.

1.2. Authority. -- W. Va. Code §§22-12-4 and 22B-3-4.

1.3. Filing Date. --

1.4. Effective Date. --

§46-12-2. Definitions.

As used in this rule:

2.1. "Act" means the Groundwater Protection Act, W. Va. Code §22-12-1 et seq..

2.2. "Board" means Environmental Quality Board.

2.3. "Constituent" means any chemical or biological substance found in groundwater due to either natural or man-made conditions.

2.4. "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

2.5 "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

§46-12-3. Groundwater Standards.

3.1. Except as provided in Sections 3.2 and 3.3, the standards of purity and quality for

groundwater in the state shall be the constituent concentrations found in Appendix A.

3.2. Where the concentration of a constituent exceeds an otherwise applicable groundwater quality standard as a result of natural conditions, the naturally occurring level of that constituent shall become the groundwater quality standard for the affected area.

a. Where the concentration of a certain constituent exceeds an otherwise applicable groundwater quality standard due to human-induced contamination, no further contamination by that constituent shall be allowed, and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination, and to strive where practical to reduce the level of contamination over time to support drinking water use.

3.3. Constituents in groundwater shall not cause a violation of the standards found at 46 CSR Series 1 in any surface water.

3.4. Groundwater quality standards do not apply:

a. Within areas of geologic formations which are site specific to site production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to W.Va. Code Chapter 22, Articles 6, 7, 8, 9 or 10; and

b. Within areas of geologic formations which are site specific to the injection zones of Class II or III or wells permitted pursuant to the statutes and regulations governing the underground injection control program.

c. To any constituent or any class of activities for which a variance from groundwater quality standards has been granted by the Director pursuant to W. Va. Code §22-12-5(l).

d. To coal extraction and earth disturbing activities directly involved in coal extraction that are subject to either or both article three or eleven (§22-3-2 et seq. or §22-11-1 et seq.) of chapter 22 of the West Virginia Code.

3.5. Measurement of inorganic constituents

a. Compliance with groundwater protection standards for inorganic constituents shall be determined in terms of dissolved concentrations rather than total concentrations except as specified in section 3.5.b.

b. Any groundwater regulatory agency as specified in the Act may determine compliance with groundwater protection standards for inorganic constituents utilizing total concentration values, only as necessary to protect human health or the environment. Appropriate

situations for utilizing total concentrations values include, but are not limited to, the following:

- A. Sample is from a carbonate formation in an area of karst terrane:
- B. Sample is from a collection point for groundwater used for private or public water supply; or where
- C. Sample is from a spring or seep.
- D. Sample is one for which state or federal regulations require that total inorganic concentrations be measured.

§46-12-4 Hazardous Waste Treatment, Storage or Disposal Facilities.

4.1. Nothing in this rule prohibits the Office of Waste Management, acting in accordance with federal regulations, from using criteria other than the standards specified in this rule for purposes of determining the need for corrective action at hazardous waste treatment, storage or disposal facilities, as provided in 40 C.F. R. Parts 264 and 265, Subpart F.

APPENDIX A

<u>Constituent</u>	<u>Not to Exceed (in mg/l except where noted)</u>
Alachlor	0.002
Antimony	0.006
<u>Arsenic</u>	<u>0.05</u>
Asbestos	7 MFL*
Atrazine	0.003
Barium	2.0
Benzene	0.005
Benzo (a) pyrene (PAH)	0.0002
Beryllium	0.004
Cadmium	0.005
Carbofuran	0.04
Carbon tetrachloride	0.005
Chlordane	0.002
Chromium (total)	0.1
Cyanide	0.2
2, 4-D	0.07
Dalapon	0.2
Di(2-ethylhexyl)adipate	0.4

Di(2-ethylhexyl)phthalate	0.006
Dibromochloropropane (DBCP)	0.0002
Dichlorobenzene p-	0.075
Dichlorobenzene o-	0.6
Dichlorobenzene m -	0.6
Dichloroethane (1,2)	0.005
Dichloroethylene (1,1-)	0.007
Dichloroethylene (cis- 1,2-)	0.07
Dichloroethylene (trans - 1,2-)	0.1
Dichloromethane	0.005
Dichloropropane (1,2-)	0.005
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylbenzene	0.7
Ethylene dibromide (EDB)	0.00005
Fluoride	4.0
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001

Hexachlorocyclopentadiene	0.05
Lead	0.015
Lindane	0.0002
Mercury (inorganic)	0.002
Methoxychlor	0.04
Monochlorobenzene	0.1
Nickel	0.1
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate and Nitrite (both as N)	10.0
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated biphenyls	0.0005
Selenium	0.05
Simazine	0.004
Styrene	0.1
2, 3, 7, 8- TCDD (Dioxin)	0.000000005
Tetrachlorethylene	0.005
Thallium	0.002
Toluene	1.0
Toxaphene	0.003

2, 4, 5,- TP (Silvex)	0.05
Trichlorobenzene (1, 2, 4-)	0.07
Trichloroethane (1, 1, 1-)	0.2
Trichloroethane (1, 1, 2-)	0.005
Trichlorethylene	0.005
Vinyl Chloride	0.002
Xylenes (total)	10.0
Radionuclides	
Beta particle and photon activity	4 mrem**
Gross alpha particle activity	15 pCi/L***
Combined Radium 226 and 228	5 pCi/l

*MFL = million fibers per liter

**mrem = millirem (rem = roentgen - equivalent - man)

*** pCi = picocurie

WV Environmental Quality Board

PUBLIC HEARING

JUNE 28, 2001 AT 7:00 P.M.

Sign-In Sheet

NAME:

SPEAKING:

- | | |
|----------------------------|----------------|
| 1.) Nathan Felty | Yes |
| 2.) Cindy Rosh | Yes |
| 3.) Deana Smith | No |
| 4.) Ker Ward Jr | No |
| 5.) Dave Yaussey | No |
| 6.) Karen Price | Yes |
| 7.) Scott D. Goldman | Yes |
| 8.) Gretchen Taylor | Yes ? |

- 9.) TOM Rodd Yes.
- 10.) Karen Price Yes-
- 11.) STEVE HANNAH YES
- 12.) Tim Mallon No
- 13.) Doyle Coakley yes
- 14.) Jennie Henthorn No
- 15.) _____
- 16.) _____
- 17.) _____
- 18.) _____
- 19.) _____
- 20.) _____
- 21.) _____
- 22.) _____
- 23.) _____
- 24.) _____
- 25.) _____
- 26.) _____

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

CHARLESTON, WEST VIRGINIA

REQUIREMENTS GOVERNING GROUNDWATER STANDARDS

CITE AUTHORITY 22B-3-4

AND

REQUIREMENTS GOVERNING GROUNDWATER STANDARDS

CITE AUTHORITY 22-12-4 and 22B-3-4

The following is a transcript of a hearing held in the above-entitled action, on the 28th day of June, 2001, commencing at approximately 7:00 a.m. and concluding at approximately 7:55 a.m., at 1615 Washington Street, East, 2nd Floor Conference Room, Charleston, West Virginia, before Karen D. King, Certified Court Reporter and Notary Public.

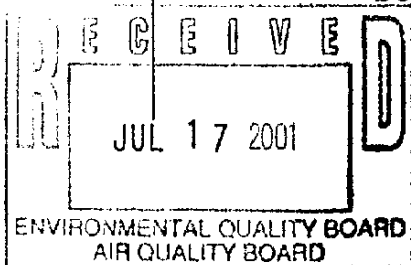
JANET T. SURFACE COURT REPORTERS

Attending Reporter: Karen D. King

145 Belle Acres

Scott Depot, West Virginia 25560-9432

(304) 757-0622



APPEARANCES:Board Members:

Edward Snyder, Chairman
Cameron Hackney, Board Member
Dr. David Samuel, Board Member

Staff Members:

Libby Chatfield, Chairperson
Melissa Carte, Clerk
Becky Charles, Staff Member

Speakers:

Mr. Nathan Fetty
Ms. Cindy Rank
Mr. Scott Goldman
Mr. Tom Rodd
Ms. Karen Price
Mr. Steve Hannah
Mr. Doyle Coakley
Mr. Lewis Baker
Ms. Gretchen Taylor
Mr. Tim Mallan

EXHIBITS:

Sign-In Sheet
Statement by Scott D. Goldman

Reporter's Certificate.....55

1 June 28, 2001 - 7:00 p.m.

2 PROCEEDINGS

3 CHAIRMAN SNYDER: Well, good evening. It
4 still looks like day. We're going to be getting
5 started with the West Virginia Environmental Quality
6 Board public hearing on the proposed rules for
7 categorizing groundwater.

8 We have Board Members here this evening,
9 Dr. Cameron Hackney from West Virginia University,
10 Dr. David Samuel from West Virginia University,
11 emeritus and from around the globe lately. I'm Ed
12 Snyder here from Shepard College, and Chair. To my
13 immediate left is Libby Chatfield. Melissa Carte,
14 Clerk of the Board, and Rebecca Charles. And I think
15 most of you recognize most of us.

16 What we would like to start out with this
17 evening then is a brief summary of where we are with
18 Category A. First, I believe Libby. I think that's
19 where we should go first. And Libby will give a
20 synopsis and then we will open up for comment.

21 MS. CHATFIELD: Yes, we have two rules
22 tonight that we are going to take comments on:

1 46 C.S.R. 1 is requirements governing water quality
2 standards.

3 Notice of both of these hearings was filed
4 in the Secretary of State's office on May 29th, 2001,
5 and those filings included the requisite summaries,
6 and statement of circumstances, and fiscal notes.
7 And those are available if anybody would like them.

8 We will be taking oral comments tonight.
9 You can submit written comments if you have them.
10 The deadline for written comments is tomorrow at
11 five o'clock. So if you can get them in by fax or
12 e-mail or hand delivery by five o'clock, we will
13 accept them.

14 We will take comments on the water quality
15 standards first. And there are actually two issues
16 that we have proposed changes to in the water quality
17 standards. One, as Dr. Snyder said, is the public
18 drinking water designated use, Category A.

19 And what the Board has proposed in the rule
20 is to clarify that the drinking water use applies to
21 all waters of the State unless it's been removed.
22 There are certain waters from which Category A has

1 already been removed, and they are outlined in
2 Section 7 of the rule.

3 We are also considering developing a
4 procedural rule to remove -- in the future, to remove
5 the Category A use on a case-by-case basis. And,
6 obviously, we don't have that rule -- the text of
7 that rule proposed yet, but we will be working on
8 that over the next several months and hope to
9 coordinate the completion of that rule with the
10 legislative process where these changes will occur.

11 We've changed two or three sections of the
12 rule to reflect the fact that Category A will apply
13 to all waters, and this is consistent with the way
14 DEP, the West Virginia Department of Environmental
15 Protection, has been implementing the rule for a
16 number of years.

17 The other change that we've proposed in
18 this rule is to remove the appendices F through F3.
19 Those appendices include the antidegradation
20 implementation procedures that were recently passed
21 in the 2001 legislative session.

22 We're removing those because, also, in the

1 2002 legislative session, Senate Bill 3240 passed.
2 That bill shifted the authority for promulgating the
3 antidegradation implementation procedures from the
4 Board to the DEP.

5 We're proposing to remove these provisions
6 from our rule, obviously, that won't become effective
7 until after the legislative session. We understand
8 and believe that DEP is going to be filing those same
9 provisions, the exact provisions that we have in our
10 rule, as an emergency rule after the 1st of July when
11 that authority shifts. So we're anticipating that
12 shift in authority and proposing to remove them from
13 our rule at this time.

14 So with that, do you want to open it up for
15 comments?

16 CHAIRMAN SNYDER: Yes. And the first
17 speaker will be Nathan Fetty.

18 THEREUPON came,

19 NATHAN FETTY,

20 MR. FETTY: Is there a time limit? I'm
21 just curious.

22 CHAIRMAN SNYDER: The answer is, of course

1 there is a time limit. What do we do about -- Well,
2 we'll just see how long he goes on.

3 MR. FETTY: I don't have that much. I
4 promise.

5 CHAIRMAN SNYDER: I think we -- Was it ten
6 minutes maximum, and if we had a large group, we kept
7 it at five?

8 BOARD MEMBER SAMUEL: Last year, when there
9 was 3,400 million people, we --

10 MS. CHATFIELD: (Interrupting.) It was
11 three minutes.

12 BOARD MEMBER SAMUEL: -- it was three
13 minutes.

14 CHAIRMAN SNYDER: Five minutes, I think,
15 sounds very controllable.

16 MR. FETTY: I'm Nathan Fetty with the West
17 Virginia Rivers Coalition. On the Category A, issue
18 we're happy to see that the EQB wants to apply the
19 Category A standard to all of the states surface
20 waters.

21 We're glad that the Board and the DEP and
22 the Bureau for Public Health realize that protections

1 like these are an asset to the quality of life in the
2 state. And we're glad that these entities realize
3 that the State's fortunate to have so many waters
4 that, with relatively little treatment, can be and
5 are used as drinking water sources.

6 The State needs to continue accounting for
7 those households and small communities that aren't
8 served by municipal providers or public service
9 districts, but who do use the surface waters for
10 drinking water.

11 We have concerns about EQB's proposal for
12 Category A and that exemptions to the standard
13 wouldn't go through the legislative process. We
14 realize that the legislature has asked each of you to
15 re-examine how Category A is applied, but we believe
16 that there has been no problem with how the standard
17 has been applied for decades in West Virginia.

18 We hope this proposal won't be an avenue by
19 which exemptions to the Category A standard are given
20 more frequently and in greater numbers. In some
21 ways, it feels like we're being asked to come in on a
22 proposal that's incomplete, since we have yet to see

1 a procedural rule that would dictate exactly how
2 exemptions would or would not be given.

3 We're hopeful that the Board will allow for
4 full public review and comment, not only in the
5 development of this procedural rule, but also in each
6 and every exemption the Board is asked to give.

7 Now, on the groundwater/arsenic issue, I
8 have a couple of points I wanted to make. We're
9 encouraged that the Board is examining the State's
10 arsenic standard for groundwater and is concerned
11 about the public health effects of arsenic.

12 Long-term exposure to low concentrations of
13 arsenic in drinking water can lead to skin, bladder,
14 lung, and prostate cancer. Noncancerous effects of
15 ingesting arsenic at low levels include,
16 cardiovascular disease, diabetes, anemia, as well as
17 reproductive developmental immunological and
18 neurological effects.

19 The 50 parts per billion standard for
20 arsenic in drinking water is based on a 1942 study by
21 the Public Health Service, and that is science that
22 is nearly 60 years old. The PHS, itself, in 1962

1 recommended lowering the arsenic standard to 10 parts
2 per billion, but over the decades the Federal
3 Government has repeatedly missed deadlines for a new,
4 more protective standard.

5 We understand that the Board is looking at
6 EPA to enact a new arsenic standard within the next
7 year, and we ask that the Board propose an arsenic
8 standard that is much more protective than 50 parts
9 per billion.

10 Further, we're hopeful that the Board will
11 propose a more protective arsenic standard for West
12 Virginia even if EPA continues to fail to do so.

13 A 1999 study by the National Academy of
14 Sciences states that the current EPA arsenic standard
15 at 50 parts per billion could easily result in a
16 cancer risk of 1 in a hundred, which is about 10,000
17 times higher a cancer risk than EPA would allow for
18 carcinogens in food.

19 The report concludes: (Reading.) "Upon
20 assessing the available evidence, it is the
21 subcommittee's consensus that the current EPA maximum
22 contaminant level for arsenic in drinking water of 50

1 ppb does not achieve EPA's goal for public health
2 protection, and, therefore, requires downward
3 revision as promptly as possible.

4 It would seem to Rivers Coalition that the
5 arsenic level of 50 parts per billion is not
6 scientifically supportable, and the justification for
7 establishing an arsenic level at 50 would be to avoid
8 the cost of clean up.

9 In light of these facts, we hope that EQB
10 will consider a more protective arsenic standard, and
11 we recommend that the EQB adopt an arsenic level of
12 at least 10 parts per billion if not a standard
13 that's more protective.

14 Thank you for the opportunity to comment.

15 CHAIRMAN SNYDER: Thank you, Mr. Fetty.

16 MR. FETTY: Oh, and I also have some
17 comments to submit.

18 CHAIRMAN SNYDER: Okay.

19 MR. FETTY: Thank you.

20 CHAIRMAN SNYDER: Thank you. The next
21 speaker, Cindy Rank.

22 MS. CHATFIELD: And I'm sorry if I didn't

1 make clear, we will be separating the comments for
2 the water quality standards and the groundwater
3 standards. Mostly so that we can have the transcript
4 separated for submission to the legislature. So
5 we're doing water quality standards now, and we'll
6 move to groundwater after.

7 CHAIRMAN SNYDER: We won't forget what
8 you've said though.

9 MR. FETTY: Does that mean I get to say it
10 again?

11 MS. CHATFIELD: We'll photo copy your page.

12 MS. RANK: I'm Cindy Rank, and I'm here on
13 behalf of the West Virginia Highlands Conservancy and
14 our smaller community group, Friends of the Little
15 Kanawha, as well as myself as a user -- a direct user
16 of surface water and someone who knows other people
17 in our area who use service water and spring water
18 directly connected with service water with very
19 little, minimum treatment of settling chlorination
20 and things like that.

21 As in the past, since the late -- well,
22 since the early 80's, I come here in support of the

1 designation of all waters of the State, at least the
2 fall back designation as drinking water, because
3 those standards are most protective or contain most
4 protections or met a lot of chemical parameters,
5 which we have to be very careful of.

6 We support the whole proposal with some
7 trepidation about the procedural rule that has yet to
8 be developed. We would hope that it is at least as
9 strong as the Board is now in terms of accepting
10 comments and proposing changes in use for whatever
11 stream segments that you are talking about.

12 Our support of the proposal is based on the
13 fact, even though I understand the Manufacturers
14 Association is going to disagree wholeheartedly with
15 that in the comments that they have submitted, that
16 it is indeed, at least my understanding, for the past
17 20 years of coming to the Board meetings, it has been
18 the historic practice of applying this as the minimum
19 standard for all waters of the State.

20 We also have the belief that the future
21 well-being of West Virginia is directly tied to our
22 ability to provide the best water quality for future

1 growth and development, whether that be industrial,
2 residential, and so the most protective standards are
3 most important for that development, and, also, on
4 the recognition that the state agencies will never
5 have sufficient, at least not in our opinion, a
6 sufficient amount of monies, time, or personnel, to
7 go out and adequately assess every stream segment
8 that we're talking about or will come up for
9 discussion at this Board, especially the small head
10 water stream areas that I come from and am most
11 familiar with as opposed to the Ohio river, which
12 friends in the audience frequently talk about.

13 Unless there is an affirmative
14 demonstration to the contrary, we believe that the
15 Board is correct to assume that most protective use
16 categories and to apply them to all waters of the
17 State.

18 And we think that it's important to include
19 Category A as well as B and C here mainly because of
20 the protection levels for those metals and other
21 chemical compounds that aren't applicable to those
22 other categories -- use categories B, C or A or the

1 others.

2 Whether or not -- I truly believe because
3 if my water wasn't considered accurate for drinking
4 water when I moved here, I wouldn't be able to use it
5 in -- with as little treatment as we do at this point
6 in time.

7 And I think that it is important for us,
8 whether we're going to have technology based effluent
9 limits or water quality based effluent limits, that
10 we adequately assess the true nature of those streams
11 before either of those effluent limits are applied in
12 whatever NPDES permits that we're talking about,
13 because we're protecting for the future -- the
14 ability of these water sources to support, you know,
15 other uses other than whatever industry might propose
16 with them today.

17 Our main concerns, of course, with the
18 proposal are two fold, and that's the addition of
19 this abbreviated process for changing the use
20 designation and the underdescribed or unspecified
21 process that will be used.

22 Our greatest fear, of course, is that the

1 process itself will go the same way that the
2 antidegradation implementation policy has gone, and
3 in many ways, to me anyway, maintaining -- it will be
4 as detrimental to maintaining Category A use as the
5 recently enacted antidegradation implementation
6 policy perhaps will be to maintain the high quality
7 of some of the waters I'm most concerned about and
8 are least paid attention to in some of the NPDES
9 permitting processes that go on.

10 We are also concerned about the
11 eliminations of current language in 6.2 that
12 specifically include and recognizes the private
13 domestic water systems and all other surface water
14 intakes used as human consumption as well as larger
15 community and municipal sources are recognized as
16 truly drinking water sources and adequate protection
17 measures then can be afforded to them.

18 And without that specific recognition,
19 again, some of my friends in the audience will
20 certainly say that that's not something that we have
21 to pay attention to in some of these smaller areas,
22 that people don't believe that it's used for human

1 consumption.

2 Of course, we continue to object to the
3 elimination of manganese, and I will have to keep
4 repeating that, from the human health criteria. And
5 certainly I still think that the five-mile rule for
6 manganese in drinking water -- around drinking water
7 sources, is inadequate. And I would hope that
8 sometime in the next 20 years, we can see that
9 reversed and put back in.

10 In brief, I guess, we would have to say
11 that we support the proposal, generally, although we
12 have great reservations about the unknowns with the
13 process that is being proposed.

14 And we thank you for trying to put into the
15 regs what we have known for 20 years, that indeed
16 Category A was one of the basic assumptions in the
17 minimum levels that we have accepted for all of these
18 years for all waters.

19 Thank you.

20 CHAIRMAN SNYDER: Thank you, Ms. Rank. The
21 next speaker, Scott Goldman.

22 MR. GOLDMAN: Good evening. My name is

1 Scott Goldman, and I am an attorney with the law firm
2 of Jackson & Kelly. I am here this evening to
3 present a brief statement on behalf of the West
4 Virginia Chamber of Commerce. In addition to this
5 oral statement, the Chamber will be providing written
6 comments to the Board by tomorrow's deadline.

7 The Environmental Quality Board has once
8 again proposed to amend the State water quality
9 standards by designating all waters of the State as
10 Category A drinking waters even though a conservative
11 estimate has suggested that only 2 percent of surface
12 streams are used as sources for public drinking
13 water.

14 Although the Board historically has
15 received lengthy comments from the Chamber, as well
16 as from other trade organizations and individual
17 companies describing the inherent regulatory
18 difficulties of designating all of the state's waters
19 as Category A waters, the Board has elected to adopt
20 the statewide designation.

21 However, the Board, acknowledging the
22 difficulty the regulated community will have if all

1 waters of the State are considered Category A, also
2 voted to develop an "expedited use removal process"
3 as outlined by Libby Chatfield in a March 28, 2001,
4 memorandum to the Board.

5 The Chamber is disturbed by the Board's
6 proposal to move forward on part of the Board's
7 May 16, 2001, vote that has designated all State
8 waters as Category A without moving forward on the
9 remaining portion of the Board's May 16, 2001, vote
10 developing an expedited use removal procedure.

11 The Board has acknowledged the numerous
12 difficulties a statewide designation of public
13 drinking water will cause but has refused to address
14 the problem until a later date.

15 Further, the Chamber questions whether the
16 federal water quality standards even authorize the
17 Board to develop such an expedited use removal
18 procedure. The Chamber urges the Board to not
19 designate all waters of the State as Category A.

20 Regardless of the "expedited use removal"
21 question, though, this broad-brush approach of
22 developing a statewide Category A use designation

1 creates a legal generalization that takes reality and
2 turns it on its head.

3 Waters upon which there are no drinking
4 water uses will now be designated as such without
5 having undergone even the first analytical assessment
6 of actual uses.

7 In fact, such a designation is specifically
8 prohibited by the federal water quality standards.
9 As the Chamber will further elaborate in its written
10 comments, the federal water quality standards
11 specifically require a State to perform a formal use
12 attainability analysis if the State designates uses
13 other than, quote, fishable or swimmable.

14 Even if the Board is legally authorized to
15 declare all waters of the State as public drinking
16 water supplies without performing a use attainability
17 analysis, which the Chamber does not concede,
18 addition of the overly broad use designation to the
19 entire state will result in increased regulation, but
20 not increased protection.

21 With increased regulation will come
22 increased operational costs for both the State and

1 the regulated community. Ultimately, this will
2 result in an unwarranted expense to the public at
3 large. West Virginia and it's residents are not so
4 well-endowed with extra finances as to justify
5 unnecessary regulation.

6 One specific example of how the State will
7 be significantly and negatively impacted by a
8 statewide Category A designation is the increased
9 number of streams which will be placed on the State's
10 303(d) list as not meeting the current water quality
11 standards.

12 In addition, by removing the qualifying
13 phrase "after conventional treatment" from
14 Section 6.2 of the water quality standards, the Board
15 has provided the public with a false sense of
16 security that the waters of the State may be consumed
17 simply by dipping your cup in the local stream.

18 What the Board would do by removing the
19 phrase "after conventional treatment" is tell the
20 general public that all waters of the State which are
21 meeting Category A water quality standards would be
22 acceptable to drink without further treatment.

1 The Safe Drinking Water Act and its
2 implementing regulations require extensive and
3 thorough treatment of surface waters to reduce and/or
4 eliminate the public's exposure to these contaminants
5 before the water treatment system can deliver the
6 treated water to the public.

7 However, neither the state water quality
8 standards nor the Clean Water Act and its
9 implementing regulations were designed to ensure that
10 raw surface water is free from the naturally
11 occurring microbes referenced -- or that it is
12 otherwise safe for human consumption prior to
13 conventional treatment.

14 For the Board or anyone else to imply that
15 after designating all State waters as Category A all
16 waters can be consumed without additional treatment
17 would be misleading to the public and may
18 inadvertently result in a continuation of a number of
19 people drinking untreated surface water because the
20 individuals engaging in the activity may falsely
21 perceive they are not placing themselves at risk.

22 In the end, the Board's decision to either

1 keep or remove the Public A use will do little to
2 protect the health and welfare of the individuals
3 drinking untreated surface water.

4 With regard to the Board's proposed use
5 designation, the Chamber would finally like to
6 request the Board to answer a question posed by one
7 of the Board's own members.

8 On April 19, 2001, Betsy Dulin posed the
9 question as to why the State has more than one use
10 category if the State proposes to apply only one use
11 across the State. The Chamber feels that this is an
12 important question which must be addressed before
13 passing such a drastic measure as it is proposing to
14 do.

15 The Chamber strongly urges the Board to
16 withdraw the current rule in favor of allocating
17 appropriate time for all Board members to thoroughly
18 study this issue and arrive at a public policy
19 decision that will create a regulation that is
20 well-founded in law, as well as fact.

21 Finally, the Chamber would like to request
22 that the Board amend the State water quality standard

1 for chloroform to conform to the current federal
2 chloroform standards.

3 The current State water quality standard
4 for the public water supplies for chloroform of
5 .19 ug/l is causing regulatory problems for
6 facilities which discharge water treated with
7 chlorine.

8 The EPA's recommended human health
9 criterion for chloroform is 5.7 ug/l, greater than
10 the .19 current standard. By leaving in place a
11 criterion that has been revised by EPA, the Board
12 leaves the State open to increased and unnecessary
13 risk of non-compliance with federal permitting
14 requirements for both industrial facilities as well
15 as municipalities.

16 The Chamber urges the Board to include in
17 its current rule making an update to this standard.
18 The Chamber provides this comment to put the Board on
19 notice that it is an issue of increasing importance
20 which the regulated community will be pursuing as
21 timely a resolution as can be developed to include
22 coordination with the Department of Water Resources

1 to promote revision thereto.

2 Thank you for this opportunity to present
3 these comments, and as previously stated, the Chamber
4 will provide a copy of this oral statement this
5 evening and a more detailed written comment tomorrow.

6 CHAIRMAN SNYDER: Thank you, Mr. Goldman.

7 Next speaker, Gretchen Taylor.

8 MS. TAYLOR: I pass at this time?

9 CHAIRMAN SNYDER: You certainly can,
10 Ms. Taylor. Next speaker, Tom Rodd.

11 MR. RODD: Thank you. And to the extent
12 that anything I say has something to do with the
13 groundwater issue, I hope you will remember it
14 because I've got to go in a minute.

15 CHAIRMAN SNYDER: We won't have our ears
16 plugged to either. Okay?

17 MR. RODD: And I want to echo what Cindy
18 Rank and Nathan Fetty said and just simply state that
19 I think that was very well taken. And while I
20 appreciate what the gentleman from the Chamber of
21 Commerce said, I think that this Board and too often
22 people in the regulatory world are accustomed to

1 hearing folks cry wolf a little bit in western
2 civilization -- as we know -- going to fall apart if
3 we adhere to some particularly high -- but it never
4 seems to. We seem to carry on and the costs of
5 adhering to very high standards are spread very
6 widely, most to our economy.

7 My suggestion is that since the vast
8 majority of West Virginians, at least those who vote
9 in poll after poll after poll, identify themselves as
10 strong environmentalists. The vast majority of
11 people in very recent polls -- They're strong --
12 People will pay the incremental slight costs of
13 adhering to the tougher standards.

14 They're happy to do it, as a matter of
15 fact. That's why people -- That's why they have
16 organic food sections in super markets and those are
17 growing broadly. People want to, with their purses,
18 in the best ways they can, support very strong
19 environmental regulations.

20 And I think that's one of the reasons I
21 think this Board has been willing to take good steps
22 in that direction because of the sense that this is

1 something that is very important to folks, including
2 folks who work at the factories that are run by --
3 and businesses that are run by people whose
4 executives and owners belong to the Chamber of
5 Commerce.

6 I live in rural Preston County. I get my
7 water from a spring and don't treat it at all, but
8 maybe when some of the mud settles out of the spring
9 box. And my neighbors get their water from that
10 source, a lot of them, some of them from drilled
11 wells, but the spring water is much better quality.

12 We have a high quality stream that runs
13 through our property. My neighbors water their
14 cattle from it. And at times of a drought and low
15 water, people use it for household water as well.

16 There are thousands of miles of such
17 streams just in my immediate area and it would be, as
18 Cindy Rank said, just literally impossible to
19 quantify the drinking water or uses that people have
20 that require high quality water.

21 Therefore, a presumptive standard of
22 drinking standards makes a lot of sense for people.

1 I want to just say that protecting -- Using the
2 highest quality for stream water and groundwater,
3 highest standards, is really an extremely
4 conservative position.

5 In my county, you can just look on the map
6 where the streams are degraded, property values are
7 weak. People who have money and who can afford to
8 move out of those communities where the streams are
9 degraded, often time from mining, do so.

10 People who have got money who are looking
11 for someplace to live, don't go to those areas. And
12 so degraded streams is a recipe for creating rural
13 slums. And it's consistent, you can see that
14 everywhere we go.

15 So to support property values and the
16 highest and best use of property protecting water is
17 probably one of the single most important things you
18 can do, that and transportation, and access to jobs,
19 and those sorts of things.

20 But, I mean, it's just remarkable and
21 anybody in the real estate business around the
22 Morgantown and north central West Virginia area will

1 tell you, that where the water is good, that is where
2 people are going to go, and where the water is bad,
3 that's where people are going to get out of if they
4 can afford to. It really makes a big difference.

5 Frankly, it was when the real estate people
6 started realizing this sort of stuff that we started
7 developing some even stronger coalitions for clean
8 water in north central West Virginia where I'm from.

9 The other thing I want to say is that high
10 environmental standards are an extremely important
11 economic development tool. To locate the kinds of
12 industries and jobs that are really the long-term
13 future of economic development means that you have to
14 have attractive areas for people to settle.

15 People want good schools. They want clean
16 streams. I mean, these is the things that people
17 want. These are the things that executives want who
18 are going to manage these kinds of factories and who
19 are going to come here looking for people to work in
20 their factories and invest their capitol here.

21 So high environmental standards -- The
22 perception is almost as important as the reality,

1 frankly. But if you can't sustain that perception
2 with facts, it's not going to hold up.

3 But if you can advertise yourself and show
4 yourself as a place that fights fiercely for the
5 environment, people are going to say, "Okay." But if
6 you're a place where you are just a bunch of -- where
7 there is a lot of people that see there is a lot of
8 pollution it's a down-hill thing.

9 So from a very conservative economic
10 development point of view, I think the highest
11 possible water quality standards make a lot of sense.
12 And that supports what the Board is largely doing.

13 The other thing, of course, is that it's
14 the absolute duty of the government to support
15 people's property rights. And I have a clean stream.
16 And I have a right to have a clean. That's the way
17 that nature delivers it.

18 And for anybody upstream to degrade that is
19 something that I demand the assistance of the
20 government in protecting. I shouldn't have to do it
21 myself. I shouldn't have to be suing them. It's not
22 my job to prove that I've been injured. It's the job

1 of the government to enact standards that protect my
2 property values to the extent that is feasible.

3 So I commend the Board for what they are
4 doing, and I support what other people were saying.

5 CHAIRMAN SNYDER: Thank you, Mr. Rodd.
6 Next on our list of speakers, Karen Price.

7 MS. PRICE: Thank you. My name is Karen
8 Price, and I'm president of the West Virginia
9 Manufacturers' Association. The WVMA has provided
10 the Board with written comments about the Board's
11 proposed changes to West Virginia's water quality
12 standards, but I would like to emphasize two
13 particular concerns in those standards, the statewide
14 application of Category A public water use and the
15 change in the definition of that use.

16 The purpose of the Category A use is to
17 protect water supplies. We believe that this is most
18 logically done by identifying public water supply
19 intakes and setting permit limits so that the water
20 drawn into those intakes meet water quality
21 standards.

22 We do not understand why the criteria for

1 protecting water supplies would apply anywhere other
2 than where a stream is used as a water supply. We
3 believe the Board should specify that the Category A
4 use must be protected at a public water supply intake
5 and let the DEP set permit limits accordingly.

6 The Board is proposing that the Category A
7 criteria applied throughout the State that would make
8 removing the use easier. While this is attractive in
9 concept, we have not seen the statutory language that
10 would shorten the use removal process, the rule that
11 would explain how the use removal occurs, or any
12 commitment from EPA to support such statutory or
13 regulatory changes.

14 Until we can review the details of the
15 Board's proposal for removing the Category A use, we
16 cannot support the Board's application of the
17 Category A use throughout the State.

18 We also oppose deletion of the term "after
19 conventional treatment" in the definition of public
20 water supply in Section 6.2. Without that language,
21 each stream in the State must be drinkable without
22 boiling, settling, or any other conventional

1 treatment.

2 We believe that this is impractical. The
3 Board is effectively asking industrial and municipal
4 dischargers to produce drinkable effluent, but this
5 is not an issue that effects only them. Roads run
6 beside the streams and from them pollutants such as
7 oil, grease, and salt run-off.

8 Homeowners have septic tanks and apply lawn
9 care chemicals that impact water bodies. The Board
10 cannot expect to keep each stream in the State in
11 pristine condition in light of these and other
12 activities and should not attempt to do so by
13 changing the Category A definition.

14 The WVMA also urges the Board to adopt
15 EPA's recommended human health criterion for
16 chloroform and to adopt harmonic main flow as a
17 design flow for carcinogens. These changes are
18 consistent with EPA guidance and are long overdue.

19 We thank you for the opportunity to
20 comment, on behalf of the West Virginia
21 Manufacturers' Association.

22 CHAIRMAN SNYDER: Thank you, Ms. Price.

1 Our next speaker is Steve Hannah.

2 MR. HANNAH: Thank you, Mr. Chairman and
3 members of the Board. My name is Steve Hannah,
4 deputy commissioner of the West Virginia Department
5 of Agriculture. I will certainly stay within my time
6 limit and keep the comments very brief, and the
7 commission will have the written comments to you-all
8 by 5 o'clock tomorrow evening.

9 The major concern that we have, and I think
10 it's good public policy that people understand what
11 they are hearing and understand it clearly, and we
12 are very concerned that with removing the words
13 "after conventional treatment," people are assuming
14 that they can go to any stream in the State since
15 they are all most -- or will all be in Category A,
16 that they can drink that. That certainly isn't the
17 case, and I certainly would hope that we are not
18 encouraging people to do that.

19 One thing that we have seen in the last few
20 years and the Department of Agriculture has done
21 extensive testing for fecal chloroform using a DNA
22 process in the south branch valley and there is

1 mobile sources of fecal chloroform, wildlife, humans,
2 livestock.

3 We're not sure where all it's coming from,
4 but there is many sources. I think, again, we would
5 be doing a disservice to the public to invite them to
6 assume that they could drink any of that water.

7 Also concerned with that process that the
8 303(d) list would be enormous. Just most larger than
9 anyone could handle. Making the presumption that all
10 streams are Class A, I think is kind of misleading as
11 well. In that you use the procedural rules to make
12 those exceptions.

13 None of us in state government or out of
14 state government, I don't think, like the legislative
15 rule process, but it is very transparent and lets
16 everyone to have an opportunity to say how that's
17 going to effect them, not only for you, here, sitting
18 as a Board, but through the legislative process as
19 well.

20 So we have great concerns about the
21 procedural process as, I think, both sides that have
22 previously spoken, have. I'm not sure that that's

1 good public policy to go that route. Easier,
2 granted, and we would all kind of like to that, but
3 I'm not sure that that achieves the objective that we
4 are all trying to do.

5 Those are our major concerns and, again, we
6 will provide you with written comments tomorrow.
7 Thank you, Mr. Chairman.

8 CHAIRMAN SNYDER: Thank you, Mr. Hannah.
9 The next speaker would be Doyle Coakley.

10 MR. COAKLEY: I'm Doyle Coakley from
11 Webster County, and I'll be very brief. I would hate
12 to see the drinking water designation dropped or
13 permits made easier to get. Quite frankly, I can't
14 think of a stream in the state of West Virginia that
15 I would want to take a drink of water out of without
16 some chlorine, but it always seems like when these
17 changes come about, the citizens lose a little more,
18 and I'm afraid that's what might happen here. And I
19 know it's a problem to get permits for companies, but
20 I also know what companies do to people.

21 A few years ago I had calves dropping dead
22 in Amos Run. Thanks to you people, that stream is

1 much better now. Things are a lot better. But don't
2 make the system easier. The system has been failing
3 for the past -- All you've got to do -- In my
4 lifetime -- I can go out and look at the rivers and
5 you can see them, they are dirtier. Don't make them
6 -- We should be tightening it up, not making it
7 easier.

8 I do remember when I was a boy, I had a
9 little cup that I folded up and put in my pocket.
10 Maybe you-all have seen one, like an accordion? And
11 we could really take a drink of water out of the
12 stream. I would like to see it that way again
13 someday. I don't think I'll live that long.
14 Thank you.

15 CHAIRMAN SNYDER: Thank you, Mr. Coakley.
16 We've gone through the list of people signed up.
17 Would anyone else like to speak?

18 MR. BAKER: I'm Lewis Baker from Cabell
19 County, and I would like touch on three different
20 issues I have noticed and submit written comments
21 tomorrow. Those can be e-mailed, I assume, or should
22 they be written?

1 MS. CHATFIELD: If they get them by 5:00.

2 MR. BAKER: Okay. One issue is arsenic,
3 and that's one that EPA's kicking around like a
4 political football on the drinking water side of
5 things right now. And so you've got your arsenic
6 standard for groundwater kind of on hold until that's
7 settles out, and that's understandable.

8 Most of the groundwater standards, or maybe
9 all of them, I don't know, they are kind of tied to
10 the drinking water standards. So that makes sense.
11 But I've been looking into arsenic. Where I work,
12 it's an issue because I work for an association that
13 represents most of the water supplies in the state.
14 And we want to know how much of an issue arsenic is
15 going to be in West Virginia.

16 Well, it's not going to be near as bad as
17 in some of the other states, in western states where
18 there is a lot of naturally occurring arsenic, it's a
19 bigger problem. But in this part of the country, it
20 seems to be associated with organic geological
21 formations.

22 In other words, black organic shales seem

1 to be a source. It's in coal. So you see high
2 concentrations in coal ash. You see elevated levels
3 in acid mine drainage. It's in the ash from burning
4 of petroleum, and it's high levels in discharges from
5 refineries.

6 Looking at the STORET data base, I noticed
7 that historically the Ohio River sometimes goes up
8 above -- or has gone above a hundred parts per
9 billion at, I think, the northern-most end of the
10 Ohio in West Virginia. So it's coming out of
11 Pennsylvania on occasion.

12 We don't know the source, but if the water
13 quality standard is not met at that point, it might
14 become a sticky issue for us to go to Pennsylvania
15 and say who did it. We would all be investigated.
16 And maybe EPA in Pennsylvania can help us do that
17 when it crosses state boundaries.

18 But arsenic is peculiar. There is more
19 than one state of arsenic. Arsenic 3, I think, is
20 maybe more soluble and toxic, and when it becomes
21 oxidized to arsenic 5, it can precipitate out. But
22 the standard, I think, is going to be total arsenic.

1 You can have more wash off of the landscape
2 when you've got kind of wet weather. It makes sense,
3 but I mean, just humid weather maybe makes it more
4 available to move off landscape than when it's been
5 dry a while and then you have a rain.

6 But the chemistry of it is strange. Being
7 an organic matter, a geologic organic matter, makes
8 me wonder if it's not biocumulative, but I haven't
9 found that yet. Some research says it's an endocrine
10 disrupter, so maybe we should just look at it from a
11 cancer standpoint like EPA is.

12 If it's an endocrine disrupter, maybe the
13 standard ought to be a lot tighter, I don't know.
14 That would make it tougher on water systems, but, you
15 know, if it's more toxic than we thought, we have to
16 deal with it.

17 I noticed that Pennsylvania's water quality
18 standard for their streams have been 50 parts per
19 billion. No, it had been two one hundredths of a
20 part per billion in the past decade, but they moved
21 it up to 50 to meet the water quality standard that
22 EPA had.

1 Now, after taking comments from industry
2 the State made the change based on the reasoning that
3 there was no good science to leave it at .02 parts
4 per billion. But that's ironic, because at the same
5 point in time, EPA's Iris data base placed the human
6 cancer risk at .02 parts per billion.

7 So it's a contaminant that is tricky. It's
8 going to be hard to figure out what's naturally
9 occurring levels, what's, you know, when you have
10 elevated levels, where is it coming from? It can
11 vary quite a bit seasonally and from different
12 weather conditions.

13 But if the standard becomes tighter for
14 drinking water standard, then I assume that our
15 standard for our streams would also become tighter.
16 And then that may become another political fight in
17 the State.

18 We may be fighting over which streams are
19 designated drinking water or not, based on arsenic.
20 So I guess that leads to the second set of comments.

21 We should try to keep the tightest
22 standards on any stream or designated use that we

1 can. We shouldn't allow standards to slip. However,
2 I do realize that the streams are not of drinking
3 quality in the untreated condition.

4 Like Mr. Coakley said, unless you disinfect
5 the water or otherwise treat it, it's not healthy
6 even in a pristine stream. So that's just a sticky
7 situation. I'm not sure what is the best way to deal
8 with that.

9 Should the EQB make those decisions alone
10 or should the legislature have a hand in it? And,
11 you know, it's good to have checks and balances in
12 more than one agency, having veto power over another,
13 but it seems that, in general, anytime a legislature
14 has had hand in our regulations, it's been for the
15 worst.

16 So on balance, it might be better if the
17 EQB plays that role and the legislature was not in on
18 it. But, again, that's another difficult one to make
19 a call.

20 And the last thing I would like to comment
21 on is a contaminant that I don't think was on your
22 agenda, but it's one I've been here for an awful lot.

1 And that's dioxin and some of the other most toxic
2 organic compounds.

3 From the way I read the proposed rule, no
4 longer will any measure of background levels of the
5 contaminant be used. In other words, the only
6 numbers that anybody is going to look at from a
7 regulatory agency are going to be what comes out of
8 the end of a pipe and what you calculate the stream
9 line to be from what comes out of the end of a pipe.

10 For dioxin, there has been an awful lot of
11 samples taken in the Kanawha river, of fish, hundreds
12 of different fish. An awful lot of samples of
13 sediment. You can calculate or estimate water
14 concentrations from both of those from what's in the
15 fish, lipids or the sediment load.

16 Also, there has been quite a few samples of
17 water taken where the dioxin has been measured
18 directly, but because it's below EPA's detection
19 method for the method they accept, it looks like
20 nobody wants to look at any of that data. So, in
21 other words, the new improved sampling method for
22 water for dioxin is not going to be admitted as

1 evidence.

2 The only discharge that I know of where
3 dioxin was measured, and the discharge was Monsanto's
4 outfall back in the 1980's, and there it exceeded, by
5 a wide margin, the detection limit that was used in
6 the acceptable method back then.

7 It's the same method. They haven't
8 improved the method any. But the permit never did
9 include, even though it was in the discharge, the
10 permit never did include -- or never has included
11 dioxin in the permit. It excludes it.

12 So it just seems that, once again, we have
13 an effort by different entities, whether it was
14 people in the EQB or in the legislature, I don't
15 know, that made this decision to apparently exempt
16 all samples of dioxin except what comes out of
17 somebody's pipe, if they are forced to take a sample
18 of what comes out of the pipe.

19 So I'd like to have a response, I guess, to
20 my written comments as to where that decision for
21 that change came from. Was it from the EQB, or was
22 it from the legislature? And if it was from either

1 body, you know, maybe a committee in the
2 legislature -- I don't know, whatever body -- Who are
3 the people that made the decision, and how did they
4 vote on it? I think that would be important to know.
5 Thanks.

6 CHAIRMAN SNYDER: Okay. Thank you,
7 Mr. Baker. Did anyone else want to comment on the
8 Category A? Yes. You are Ms. Taylor?

9 MS. TAYLOR: Gretchen Taylor.

10 CHAIRMAN SNYDER: Gretchen Taylor?

11 MS. TAYLOR: Yes.

12 CHAIRMAN SNYDER: Okay.

13 MS. TAYLOR: I'm a resident of South
14 Charleston, and I've never been to one of these
15 before. So I wasn't really prepared to speak. So, I
16 just wanted to touch on a couple of points that have
17 been talked about already today.

18 I believe that the phrase "after
19 conventional treatment" does need to remain in the
20 language, as several folks have spoken to, that, you
21 know, the definition of "conventional treatment" is
22 still part of the water quality standard.

1 And it defines it as treatment of water
2 approved by the Bureau of Public Health to assure
3 that the water is safe for human consumption. And I
4 think that's an important thing.

5 We don't want to mislead the public. We
6 don't, certainly, want to have people, you know,
7 getting sick by drinking directly from the river --
8 rivers, I should say, or streams.

9 And as it applies to POTW's or, you know,
10 municipal discharges, I know that we're working
11 towards the elimination of using mixing zones, but
12 I'm not sure where that stands in the process. But
13 if the elimination of mixing zones goes through then
14 theoretically the end of the pipe of any municipal
15 POTW would have to be drinkable unless you keep in
16 the phrase "after conventional treatment" and all
17 that.

18 And if you are forcing the POTW's to have,
19 you know, drinkable effluent, then you've got, you
20 know, not only primary and secondary treatment, but
21 probably some other treatments as well. And I know
22 that would, you know, pretty much send most

1 municipalities belly up in terms of, you know, sewer
2 rate increases and things like that.

3 And I don't think that people moving into
4 those communities would be willing to pay for those
5 increased rates. And so you are going to see a
6 general decline, you know, in population. You know,
7 people just aren't going to settle in those areas.

8 And it appears that this proposal seems to
9 be much more restrictive than most other states
10 around here that all streams would be designated as
11 public water supply. And, also, in terms of the
12 proposed procedural rules, it does sound like a
13 reasonable and workable compromise, but again, you
14 know, there is nothing out there yet.

15 And, you know, it seems like, you know, the
16 EPA would have to buy into it or concur with it until
17 the whole process gets worked out and both sides --
18 you know, everyone gets to take a look at it.

19 I'm not sure if it's something that anyone
20 can support or agree to yet, but it seems that that
21 would be a more reasonable approach than doing some,
22 you know, legislative exception. You know, that

1 procedural rule would be, you know, easier for folks
2 to pursue if there is going to be a con -- broad band
3 or designation with everything being Category A.

4 You know, but again, you know, we do have a
5 Category C that applies to so many areas of the
6 state. You've got water contact, recreation, you
7 know, where most people out there, you know,
8 swimming, water skiing, boating, and things like
9 that.

10 And you would think that would protect
11 most, you know, folks from the casual contact of
12 water and all that, but, you know, I don't understand
13 or see why -- I understand folks who live near head
14 waters and have, you know, fresh streams bubbling up
15 from their back yards, they would want to keep them
16 clean, and I certainly respect that and understand
17 that.

18 And perhaps this can be a workable
19 compromise where, you know, the streams, the pure
20 small streams that have those conditions, we can
21 ensure that those stay pure, but for the general
22 public water supplies, I think we need to have a more

1 rational reasonable approach for some of the larger
2 water bodies of this state. That's all I have.

3 Thank you.

4 CHAIRMAN SNYDER: Thank you, Ms. Taylor.
5 Would anyone else like to speak at this time? Yes?

6 MR. MALLAN: Good evening. I'm Tim Mallan,
7 Environmental Affairs Manager for American Electric
8 Power in the state of West Virginia. I would like
9 to, if I could, just emphasize a little bit of a
10 point that was made by Mr. Goldman before, and a
11 couple of others, and that is about the question of a
12 moving a designated use.

13 The Board has obviously, I think, decided
14 that the designation of all the waters of the state
15 as Public A can have significant impacts. And the
16 Board is investigating how to lessen those impacts,
17 how, if we can come up with a procedural rule, that
18 will make it somewhat more quicker, somewhat easier
19 to run and to get a designated use.

20 The question that many of us have is can
21 the Board really do that? And we don't think, in
22 looking at the regulations, that the Board has the

1 authority to come up with a less restricted method of
2 removing a designated use.

3 And we look at, and it's in the Chamber
4 comments, the section of federal regulations of 40
5 C.F.R. 131-10-G. States may remove a designated use
6 which is not an existing use, as defined in 131-3, or
7 establish subcategories of a use if the state can
8 demonstrate that obtaining the designated is not
9 feasible.

10 It's not that the designated use is not
11 there; it's that the designated use cannot occur. It
12 lists six different tests, four of which relate
13 specifically to the physical characteristics of the
14 stream, and two of which relate to either natural
15 conditions of pollutants or the fact that controls
16 that are so expensive that they have widespread
17 social and economic impact, would be required to meet
18 the designated use.

19 So there is no simple way that EPA will
20 recognize that you can remove a designated use. This
21 is why we are concerned that if the Board goes
22 through now and establishes this use for all the

1 State, you may find out that you simply can't come up
2 with a process, that there is no way that EPA will
3 allow you to remove those unless you go through and
4 meet one or more of these six characteristics.

5 If you will look at these six
6 characteristics, you will find out that indeed,
7 almost every stream in the state of West Virginia
8 will meet those six characteristics, at least some of
9 them, that there is not a way to remove those
10 existing uses.

11 We simply ask the Board to review this, to
12 think about whether or not there does exist some kind
13 of a process before you take this action. Thank you,
14 very much.

15 CHAIRMAN SNYDER: Thank you, Mr. Mallan.
16 Any additional Category A comments? We're going to
17 take separate comments on groundwater. This is
18 probably a good time for those who may want to come
19 up and comment on the proposed rules for groundwater.

20 MS. CHATFIELD: Yes.

21 CHAIRMAN SNYDER: Libby, why don't you do a
22 lead-in?

1 MS. CHATFIELD: To give a real quick
2 summary, what we propose to do in 46 C.S.R. 12, which
3 is our requirements governing groundwater standards,
4 is to add the constituent arsenic and add it at a
5 concentration of .050 milligrams per liter, and this
6 value reflects EPA's currently effective drinking
7 water standard under the Federal Safe Drinking Water
8 Act.

9 We're aware that this constituent is
10 undergoing review currently by EPA, and we understand
11 that that process -- I think there is an expectation
12 that that process will be completed in the next year
13 or so, and we recognize that there may be a need
14 after EPA finalizes their review and establishes a
15 value, that we may have to go back and look at this
16 again, but at this point what the Board is proposing
17 is what is currently effective under the Safe
18 Drinking Water Act.

19 CHAIRMAN SNYDER: Very good. Would anyone
20 like to comment on groundwater? Mr. Goldman.

21 MR. GOLDMAN: Just very briefly. Again, my
22 name is Scott Goldman. I'm with Jackson & Kelly.

1 I'm here on behalf of the West Virginia Chamber of
2 Commerce.

3 The Chamber does not oppose the Board's
4 addition of an arsenic standard, however, the Chamber
5 does question the timing, given the Board's
6 acknowledgement of EPA's current study of the arsenic
7 standard. That's all I have.

8 CHAIRMAN SNYDER: Okay. Thank you,
9 Mr. Goldman. Any additional comments? Well, I wish
10 to -- Any from -- Libby? Anything from the Board?
11 We're done? We're done.

12 I wish to thank you all for coming. We
13 really appreciate your comments, both oral and
14 written. The written comments are always very nice
15 because it gives us time to review and go over things
16 that have been presented here. Libby has a little
17 bit of deadline. We will be getting back together on
18 July 6th to address these at again, a hearing in this
19 room.

20 MS. CHATFIELD: A meeting. Regularly
21 scheduled meeting.

22 CHAIRMAN SNYDER: Or meeting. Regularly

1 scheduled meeting. We will not be having a meeting
2 tomorrow, though. That meeting is cancelled
3 tomorrow.

4 BOARD MEMBER SAMUEL: Right.

5 CHAIRMAN SNYDER: The meeting will be July
6 6th.

7 BOARD MEMBER SAMUEL: Why was it cancelled?
8 Everything was settled. Any other details on those?

9 MS. CHATFIELD: No. I'll have a summary of
10 all the comments for you-all, and we'll go through
11 that and discuss the comments, and then you will make
12 a final decision on that day about what goes forward
13 and gets filed with the legislature.

14 CHAIRMAN SNYDER: Okay. Thank you very
15 much. And, again, thank you all for coming.

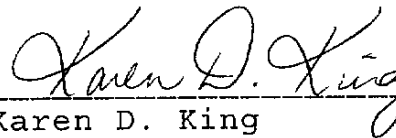
16 (WHEREUPON, the hearing was concluded at
17 7:55 p.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY AT LARGE, to wit:

I, Karen D. King, a Certified Court Reporter and Notary Public within and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the foregoing proceedings were duly reported by and before me at the time and place and for the purpose specified in the caption hereof, the witnesses having been first duly sworn by me to testify the whole truth and nothing but the truth concerning the matter in controversy.



Karen D. King
Certified Court Reporter
Notary Public



**Statement by Scott D. Goldman
on Behalf of the
West Virginia Chamber of Commerce
46 C.S.R. 1 and 46 C.S.R. 12
June 28, 2001**

Good evening. My name is Scott Goldman, and I am an attorney with the law firm of Jackson & Kelly PLLC. I am here this evening to present a brief statement on behalf of the West Virginia Chamber of Commerce. In addition to this oral statement, the Chamber will be providing written comments to the Board by tomorrow's deadline.

The Environmental Quality Board has once again proposed to amend the State water quality standards by designating all waters of the State as Category A drinking waters - even though, a conservative estimate has suggested that only 2% of surface streams are used as sources for public drinking water. Although the Board historically has received lengthy comments from the Chamber, as well as from other trade organizations and individual companies describing the inherent regulatory difficulties of designating all of the state's waters as Category A waters, the Board has elected to adopt the statewide designation. However, the Board, acknowledging the difficulty the regulated community will have if all waters of the State are considered Category A, also voted to develop an "expedited use removal process" as outlined by Libby Chatfield in a March 28, 2001 memorandum to the Board. The Chamber is disturbed by the Board's proposal to move forward on part of the Board's May 16, 2001 vote - designating all State waters as Category A - without moving forward on the remaining portion of the Board's May 16, 2001 vote - developing an expedited use removal procedure.

regulated community. Ultimately this will result in an unwarranted expense to the public at large. West Virginia and its residents are not so well endowed with extra finances as to justify unnecessary regulation.

One specific example of how the State will be significantly and negatively impacted by a statewide Category A designation is the increased number of streams which will be placed on the State's §303(d) list as not meeting the current water quality standards.

In addition, by removing the qualifying phrase "after conventional treatment" from §6.2, the Board has provided the public with a false sense of security that the waters of the State may be consumed simply by dipping your cup in the local stream. What the Board would do by removing the phrase "after conventional treatment" from 46 C.S.R. 1 §6.2 is to tell the general public that all waters of the State which are meeting Category A water quality standards would be acceptable to drink without further treatment. The Safe Drinking Water Act and its implementing regulations require extensive and thorough treatment of surface waters to reduce and/or eliminate the public's exposure to these contaminants before the water treatment system can deliver the treated water to the public. However, neither the state water quality standards nor the Clean Water Act and its implementing regulations were designed to ensure that raw surface water is free from the naturally occurring microbes referenced above, or that it is otherwise safe for human consumption prior to conventional treatment. For the Board or anyone else to imply that after designating

With regard to the Board's proposed changes to the State Groundwater Standards, the Chamber does not oppose the Board's addition of an arsenic standard. However, the Chamber does question the timing of such provision given USEPA's recent and well-publicized efforts to evaluate the arsenic standard.

Finally, the Chamber would like to request that the Board amend the State water quality standard for chloroform to conform to the current federal chloroform standard. The current State water quality standard for public water supplies for chloroform of .19 ug/l is causing regulatory problems for facilities which discharge water treated with chlorine. The EPA's recommended human health criterion for chloroform is 5.7 ug/l. By leaving in place a criterion that has been revised by EPA, the Board leaves the state open to increased and unnecessary risk of non-compliance with federal permitting requirements for both industrial facilities as well as municipalities. The Chamber urges the Board to include in its current rulemaking an update to this standard. The Chamber provides this comment to put the Board on notice that this is an issue of increasing importance which the regulated community will be pursuing for as timely a resolution as can be developed to include coordination with the Department of Water Resources to promote revision thereto.

CRANDALL PYLES HAVILAND & TURNER, LLP

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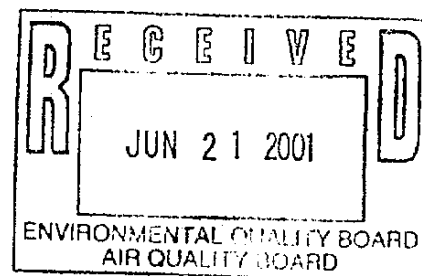
GRANT CRANDALL
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TODD A. TWYMAN
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FAX (304) 756-3123

June 20, 2001

Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

On behalf of the West Virginia Rivers Coalition and Greenbrier River Watershed Association, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, we hope the state will continue to realize the economic and

Dr. Ed Snyder
June 20, 2001
Page 3

quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

Arsenic/Groundwater

We are encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, immunological and neurological effects.

The 50 parts per billion (ppb) standard for arsenic in drinking water is based on a 1942 study by the Public Health Service, and is based on science that is nearly 60 years old. The PHS itself, in 1962, recommended lowering the arsenic standard to 10 ppb, but over the decades the federal government repeatedly has missed deadlines for a new standard. We understand that EQB is waiting for EPA to enact a new arsenic standard within the next year, and we hope that EQB will propose an arsenic standard that is much more protective than 50 ppb. Further, we hope EQB will propose a more protective arsenic standard for West Virginia even if EPA continues to fail to do so.

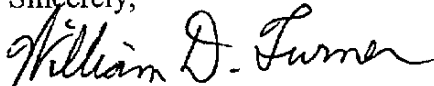
A 1999 study by the National Academy of Sciences states that the current EPA arsenic standard at 50 ppb "could easily" result in a cancer risk of 1 in 100, which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food. The report concludes, "Upon assessing the available

Dr. Ed Snyder
June 20, 2001
Page 3

evidence, it is the subcommittee's consensus that the current EPA MCL (maximum contaminant level) for arsenic in drinking water of 50 [ppb] does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible." It would seem that an arsenic level of 50 ppb is not scientifically supportable, and the justification for establishing an arsenic level of 50 ppb would be to avoid the cost of cleanup, not adequately protect public health. In light of these facts, we hope that EQB will consider a more protective arsenic standard than the proposed 50 ppb, and we recommend that EQB adopt an arsenic level of at least 10 ppb, if not a level that is even more protective.

I thank you for the opportunity to provide comments on these proposed rules.

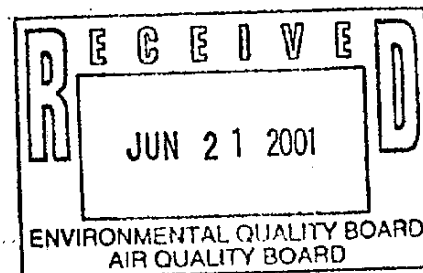
Sincerely,

A handwritten signature in cursive script that reads "William D. Turner". The signature is written in black ink and is positioned above the typed name.

William D. Turner

Friday, June 15, 2001

Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

On behalf of myself and the Blue Heron Environmental Network, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

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We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

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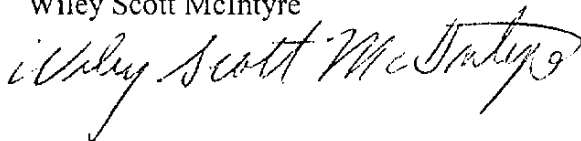
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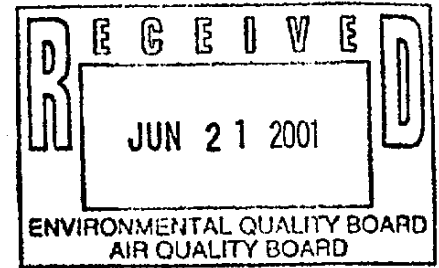
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We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

Wiley Scott McIntyre

A handwritten signature in cursive script that reads "Wiley Scott McIntyre". The signature is written in dark ink and is positioned below the typed name.



Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

Please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

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Public Health Service, and is based on science that is nearly 60 years old. The PHS itself, in 1962, recommended lowering the arsenic standard to 10 ppb, but over the decades the federal government repeatedly has missed deadlines for a new standard. We understand that EQB is waiting for EPA to enact a new arsenic standard within the next year, and we hope that EQB will propose an arsenic standard that is much more protective than 50 ppb. Further, we hope EQB will propose a more protective arsenic standard for West Virginia even if EPA continues to fail to do so.

A 1999 study by the National Academy of Sciences states that the current EPA arsenic standard at 50 ppb "could easily" result in a cancer risk of 1 in 100, which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food. The report concludes, "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL (maximum contaminant level) for arsenic in drinking water of 50 [ppb] does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible." It would seem that an arsenic level of 50 ppb is not scientifically supportable, and the justification for establishing an arsenic level of 50 ppb would be to avoid the cost of cleanup, not adequately protect public health. In light of these facts, we hope that EQB will consider a more protective arsenic standard than the proposed 50 ppb, and we recommend that EQB adopt an arsenic level of at least 10 ppb, if not a level that is even more protective.

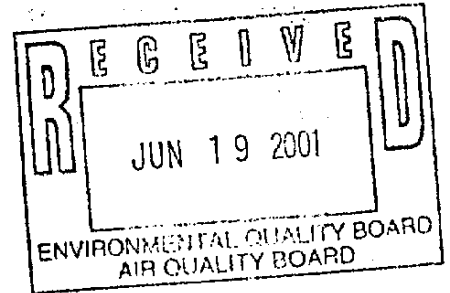
We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

Carol Z. Reuther
The Wheeling Environmentalists

Charles & Sandra Walbridge
Rt. 1, Box A43B
Bruceeton Mills, WV 26525

June 15, 2001



Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

We are writing to request that you accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

We believe that all of the state's surface waters should be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have grave concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protection for clean streams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life benefits these clean streams provide. We hope the state will continue to protect to West Virginia's rivers and streams.

We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

We are also encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, and neurological effects.

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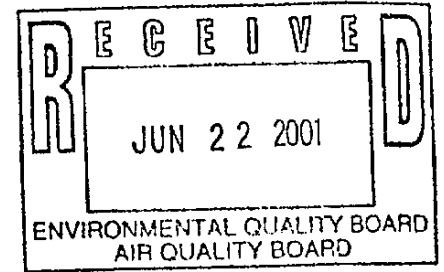
We thank you for the opportunity to provide comments on these proposed rules. Like many West Virginians, we depend on the purity of our personal water supply every day.

Sincerely,

A handwritten signature in cursive script that reads "Charlie & Sandy Walbridge". The signature is written in black ink and is positioned above the printed name.

Charlie & Sandy Walbridge

Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

On behalf of River & Trail Outfitters, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's

exceptional rivers and streams.

We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

Arsenic/Groundwater

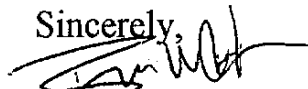
We are encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, immunological and neurological effects.

The 50 parts per billion (ppb) standard for arsenic in drinking water is based on a 1942 study by the Public Health Service, and is based on science that is nearly 60 years old. The PHS itself, in 1962, recommended lowering the arsenic standard to 10 ppb, but over the decades the federal government repeatedly has missed deadlines for a new standard. We understand that EQB is waiting for EPA to enact a new arsenic standard within the next year, and we hope that EQB will propose an arsenic standard that is much more protective than 50 ppb. Further, we hope EQB will propose a more protective arsenic standard for West Virginia even if EPA continues to fail to do so.

A 1999 study by the National Academy of Sciences states that the current EPA arsenic standard at 50 ppb "could easily" result in a cancer risk of 1 in 100, which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food. The report concludes, "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL (maximum contaminant level) for arsenic in drinking water of 50 [ppb] does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible." It would seem that an arsenic level of 50 ppb is not scientifically supportable, and the justification for establishing an arsenic level of 50 ppb would be to avoid the cost of cleanup, not adequately protect public health. In light of these facts, we hope that EQB will consider a more protective arsenic standard than the proposed 50 ppb, and we recommend that EQB adopt an arsenic level of at least 10 ppb, if not a level that is even more protective.

We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,



Billy Wilken
River & Trail Outfitters

June 20, 2001

Dr. Ed Snyder
W. Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

On behalf of all West Virginians, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

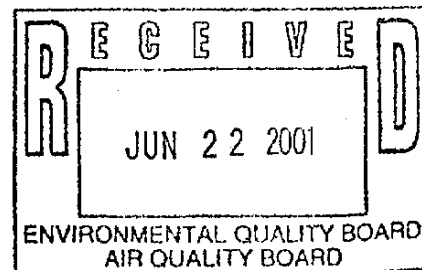
We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

Arsenic/Groundwater

We are encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low



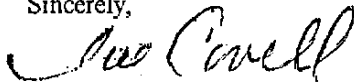
levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, immunological and neurological effects.

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We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,



Sue Covell
Rt1-Bx 245
Harrisville, WV 26362
(304) 628-3743

Kathryn Allen Stone
26 Birch Tree Lane
Charleston, WV 25314

June 20, 2001

Dr. Ed Snyder
W.V. Environmental Quality Board
1615 Washington Street East
Charleston, WV 25311

Dear Dr. Snyder:

I would like to submit the following comments for your consideration with respect to your organization's proposed rules for the Category A drinking water designation and proposed rules for groundwater. These are as follows:

Category A Drinking Water:

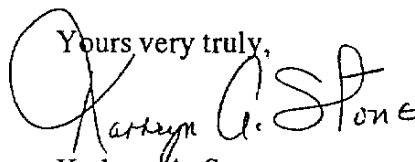
- designate all surface water in the state of West Virginia Category A without exemptions
- recognize the importance of clean streams for both economic reasons and quality of life reasons
- allow full public comment and review for any proposed exemptions from Category A exemption

Arsenic/Groundwater:

- maintain the arsenic standards commensurate with that proposed by the National Academy of Sciences, irrespective of whether EPA proposes a more protective arsenic standard. (arsenic level of 50 ppb is not scientifically supportable for a good public health standard; recommended arsenic level of at least 10 ppb or less is desirable)

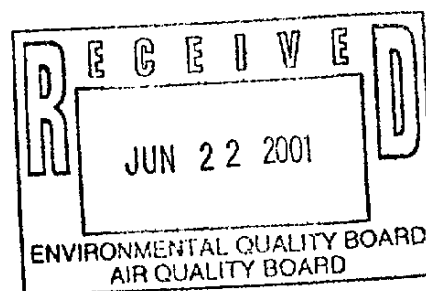
Thank you for your consideration of this serious matter. If you watched Bill Moyers' 'Earth on the Edge' on television last night, you would realize the 'gold-like value' of potable water everywhere on earth. We are so fortunate here in West Virginia to have wonderful streams, relatively unpolluted. We must look on these as treasures, not only for ourselves but for our heirs.

Yours very truly,

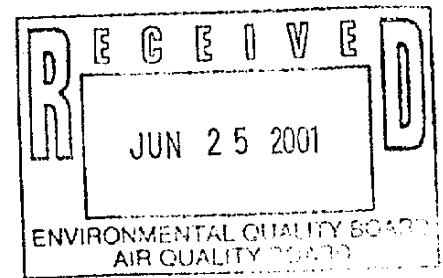


Kathryn A. Stone
Interfaith Global Climate Change
Committee of West Virginia

cc: M. Leitch



Greenbrier River Watershed Association
P.O. Box 1419
Lewisburg, West Virginia
www.greenbrierriver.org



June 20, 2001

Dr. Ed Snyder
W. Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

On behalf of the two hundred and fifty members of the Greenbrier River Watershed Association, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater. Our organization is dedicated to preserving the quality of the environment in the beautiful Greenbrier River watershed and we could use some assistance from regulators to do it!

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to

development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

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We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslee McCarty". The signature is written in black ink and is positioned above the typed name.

Leslee McCarty, Coordinator, GRWA

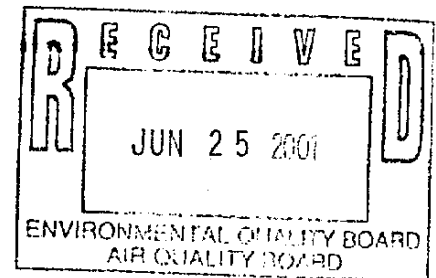
Stewards of the Potomac Highlands

P.O. Box 455

Wardensville WV 26851



June 22 2001



Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

We are a nonprofit citizens advocacy group, Stewards of the Potomac Highlands. We advocate for the protection and preservation of nature, history and community in the eastern eight counties of West Virginia and in surrounding areas.

Please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water: We ask that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for cleanstreams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

We understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, we are satisfied with how the standard has been historically applied in West Virginia. We hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, we will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment



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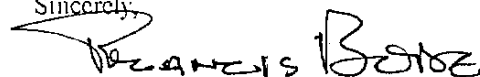
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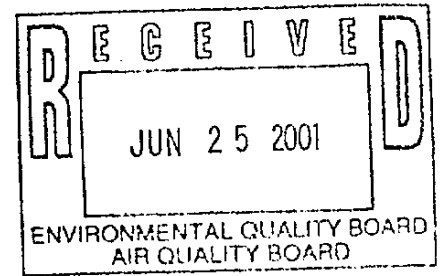
Sincerely,



Francis Bode, Secretary
Stewards of the Potomac Highlands

June 18, 2001

Dr. Ed Snyder
W. Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

On behalf of {your organization}, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We uphold the EQB proposal to retain this designation as applying to all West Virginia surface waters. We do have concerns about the exemptions to Category A standards not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

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Arsenic/Groundwater

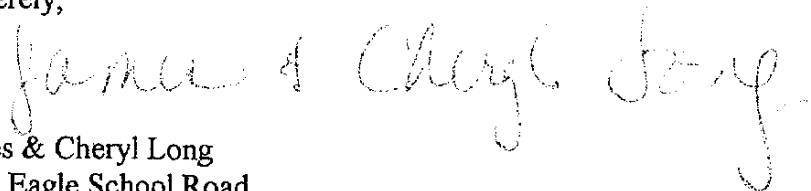
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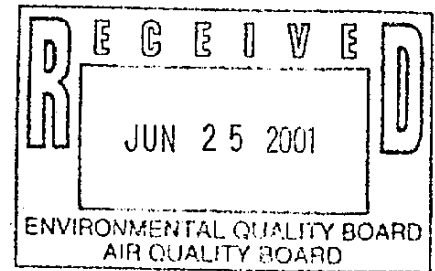
We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,



James & Cheryl Long
2290 Eagle School Road
Martinsburg, WV 25401

Dr. Ed Snyder
W. Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

On behalf of {your organization}, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decade. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

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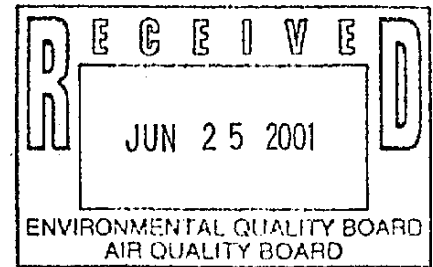
We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

Diane Burnham
35 Poplar Ave
Wheeling WV
26003

6/22/01

Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

Please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and rules for groundwater.

Category A Drinking Water

All of the state's surface waters should be designated Category A, as they have been for decades. I support EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, I have concerns about exemptions to the Category A standard being dropped from the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and I am encouraged that EQB recognizes this.

I understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. **For the record, I am satisfied with how the standard has been historically applied in West Virginia.** I hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, I will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, **and request EQB allow for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.**

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Thank you for the opportunity to provide comments on these proposed rules.

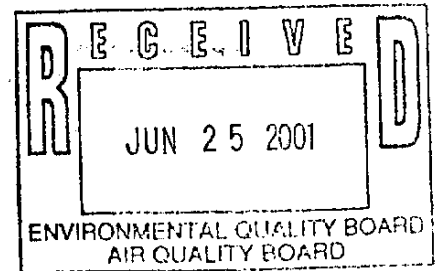
Sincerely,

A handwritten signature in black ink, appearing to read "Gary Zuckett", written over a horizontal line.

Gary Zuckett
POB 144
Pullman, WV 26421

June 21, 2001

Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

Please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

I ask that all of the state's surface waters be designated Category A, as they have been for decades. I applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, I hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

I understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, I am satisfied with how the standard has been historically applied in West Virginia. I hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, I will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

Arsenic/Groundwater

I am encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of

Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, immunological and neurological effects.

The 50 parts per billion (ppb) standard for arsenic in drinking water is based on a 1942 study by the Public Health Service, and is based on science that is nearly 60 years old. The PHS itself, in 1962, recommended lowering the arsenic standard to 10 ppb, but over the decades the federal government repeatedly has missed deadlines for a new standard. I understand that EQB is waiting for EPA to enact a new arsenic standard within the next year, and we hope that EQB will propose an arsenic standard that is much more protective than 50 ppb. Further, I hope EQB will propose a more protective arsenic standard for West Virginia even if EPA continues to fail to do so.

A 1999 study by the National Academy of Sciences states that the current EPA arsenic standard at 50 ppb "could easily" result in a cancer risk of 1 in 100, which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food. The report concludes, "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL (maximum contaminant level) for arsenic in drinking water of 50 [ppb] does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible." It would seem that an arsenic level of 50 ppb is not scientifically supportable, and the justification for establishing an arsenic level of 50 ppb would be to avoid the cost of cleanup, not adequately protect public health. In light of these facts, I hope that EQB will consider a more protective arsenic standard than the proposed 50 ppb, and I recommend that EQB adopt an arsenic level of at least 10 ppb, if not a level that is even more protective.

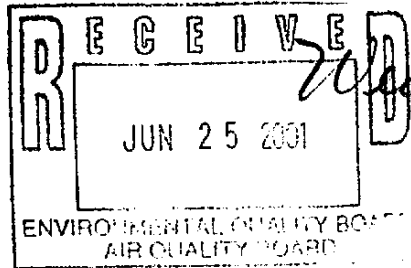
Thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis D. Slider". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mr. Francis D. Slider
Rt 1 Box 163-A2
Middlebourne, WV 26149
304-758-2500

Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder:

On behalf of {your organization}, I ask that you please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

We advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

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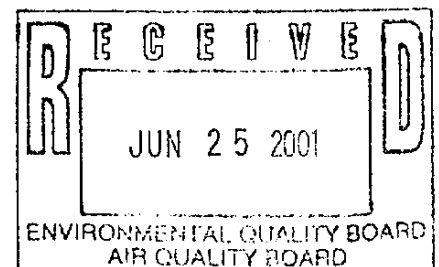
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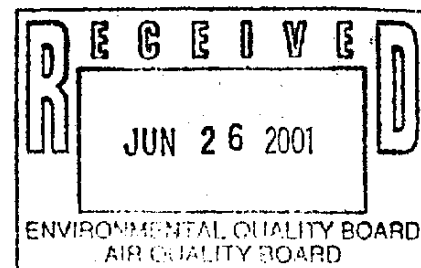
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We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

Trudy J. Cover





June 25, 2001

Dr. Edward M. Snyder, Chairman
Environmental Quality Board
1655 Washington Street, East
Charleston, West Virginia 25311

Re: Proposed changes to 46 CSR 1 and 46 CSR 12

Dear Chairman Snyder:

The following comments are provided on behalf of the Independent Oil and Gas Association of West Virginia (IOGA) to the proposed modifications to 46 CSR 1 (Water Quality Standards) and 46 CSR 12 (Groundwater Quality Standards).

A. Comments on the modifications to the Water Quality Standards (46 CSR 1)

Statewide Category A Designation. IOGA strongly opposes the Board's decision to designate all waters of the state as Category A. Designating all surface waters as public water supply use is inappropriate because it does not take into account the actual uses that are being made of surface waters, and therefore, has no basis in fact. This blanket approach to the Category A designation without corresponding factual basis results in the most restrictive method for protecting the state's drinking water supplies. Moreover, by classifying waters that historically have not been suitable for public water supply, the designation will have the unintended result of significantly expanding the states list of impacted streams under section 303(d) of the federal Clean Water Act. In light of the enormous commitment of resources by both the state and the regulated community that will result from such expanded listings, the Board should consider adoption of an alternative policy that will not result in this inclusion of streams on the state's impaired waters list without a legitimate scientific basis.

Other options considered by the Board are less restrictive yet ensure full protection of actual uses occurring in the surface waters of the state. These options should be revisited. IOGA incorporates by reference and supports the comments of the West Virginia Manufacturers Association and the West Virginia Chamber of Commerce for 46 CSR 1 and strongly urges the Board to not designate all surface waters of the state as Category A.

Lastly, if the Board adopts its proposal to designate all waters of the state as Category A, IOGA requests that the Board only apply the Category A designation to surface waters. As proposed, section 6.2. applies Category A to all waters. Under the West Virginia Water Pollution Control Act, water is defined as "any and all water on or beneath the surface of the ground . . ." W.Va. Code § 22-11-3(23). As this rule only applies to surface waters, section 6.2 should be revised read "all surface waters."

Removal of "after conventional treatment" language. The Board proposes to remove the portion of the definition of public water supply in Sec. 6.2 that requires treatment before surface water is actually used as a drinking water source. This provision has appeared in the surface water quality standards for decades for good reason. The Board should not do anything to encourage the use of the state's surface waters for human consumption without first requiring some treatment. Again, IOGA incorporates the comments of the West Virginia Manufacturers Association and the Chamber of Commerce on this important public health and policy issue.

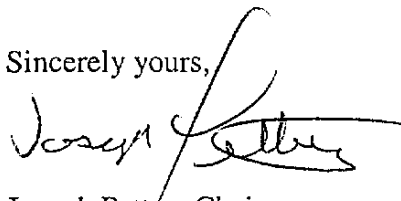
Deletion of Antidegradation Implementation Procedures. IOGA supports the Board's deletion of the Antidegradation Implementation Procedures set forth in Appendices F, F-1 and F-2. However, to implement the Legislative intent of House Bill 3240 (2001 Session), the Association recommends that all references to Appendices F, F-1, and F-2 be deleted from 46 CSR 1, e.g. sections 4.1.b.1 and 4.1.c., because these appendices reference subject matter under the regulatory jurisdiction of the Department of Environmental Protection ("DEP") and the Board has no authority to incorporate by reference DEP regulations.

B. Comments on the modification to the Groundwater Quality Standards (46CSR12)

IOGA supports the Board's proposal to institute an arsenic limit at 50 ppb, the current drinking water standard used by the EPA. Although the EPA is presently considering a lower limit for arsenic, an interim limit at the current standard is appropriate and provides certainty to the regulated community.

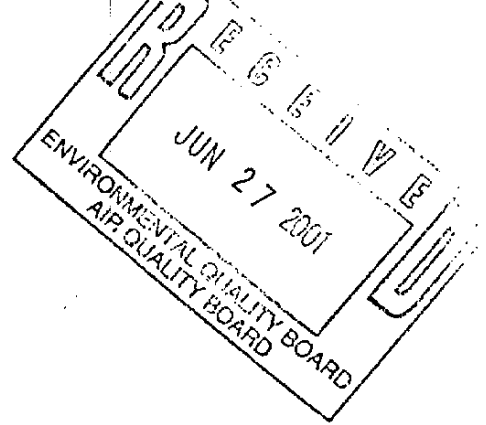
We thank the Board for the opportunity to provide these comments.

Sincerely yours,



Joseph Pettey, Chair
IOGA Environmental and Safety Committee

cc: Michael D. Herron
Executive Director
Independent Oil & Gas Association of West Virginia



June 26, 2001

Dr. Ed Snyder
W. Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

Please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater.

Category A Drinking Water

I ask that all of the state's surface waters be designated Category A, as they have been for decades. I applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

Category A must be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies. West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Rather than viewing protections for clean streams as an impediment to development, I hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

I understand that regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied. For the record, I am satisfied with how the standard has been historically applied in West Virginia. I hope the EQB's proposal will not be an avenue by which exemptions are given more frequently. In particular, I will be interested in how EQB develops the procedural rule for implementing the proposed rule for drinking water, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard.

WEST VIRGINIA-CITIZEN ACTION GROUP
1324 VIRGINIA STREET, EAST • CHARLESTON, WEST VIRGINIA 25301 • 304-346-5891

Arsenic/Groundwater

I am encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, immunological and neurological effects.

The 50 parts per billion (ppb) standard for arsenic in drinking water is based on a 1942 study by the Public Health Service, and is based on science that is nearly 60 years old. The PHS itself, in 1962, recommended lowering the arsenic standard to 10 ppb, but over the decades the federal government repeatedly has missed deadlines for a new standard. I understand that EQB is waiting for EPA to enact a new arsenic standard within the next year, and we hope that EQB will propose an arsenic standard that is much more protective than 50 ppb. Further, I hope EQB will propose a more protective arsenic standard for West Virginia even if EPA continues to fail to do so.

A 1999 study by the National Academy of Sciences states that the current EPA arsenic standard at 50 ppb "could easily" result in a cancer risk of 1 in 100, which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food. The report concludes, "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL (maximum contaminant level) for arsenic in drinking water of 50 [ppb] does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible." It would seem that an arsenic level of 50 ppb is not scientifically supportable, and the justification for establishing an arsenic level of 50 ppb would be to avoid the cost of cleanup, not adequately protect public health. In light of these facts, I hope that EQB will consider a more protective arsenic standard than the proposed 50 ppb, and I recommend that EQB adopt an arsenic level of at least 10 ppb, if not a level that is even more protective.

Thank you for the opportunity to provide comments on these proposed rules.

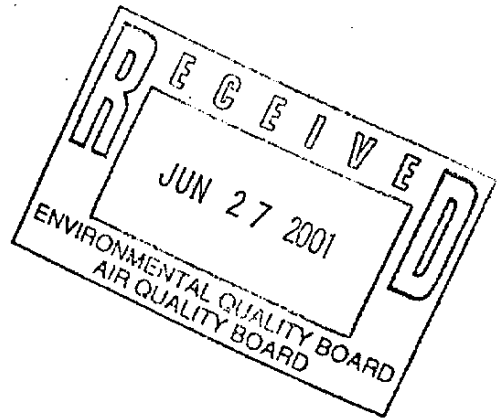
Sincerely,



Norman Steenstra
Executive Director, WV Citizen Action Group

June 25, 2001

Dr. Ed Snyder
WV Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



Dear Dr. Snyder,

The standards of quality drinking water that West Virginians have enjoyed for the past 20 years is a valuable heritage. The Environmental Quality Board has been successful in maintaining Category A drinking water and hopefully will continue its diligence in protecting the states waters.

Communities frequently use surface waters for their supply, just as individual homes use springs, wells and river water. The health of West Virginia neighborhoods is directly affected by its water supply. The expansion of the infrastructure for future development is also directly proportionate to the quality of its waters.

Category A must continue to be applied to all West Virginia surface waters. Exemptions to the standard need to continue to go through the legislative rulemaking process. A public hearing on changes to Category A would be beneficial to the West Virginia community.

The Environmental Quality Board's consideration of the states's arsenic standard for groundwater is timely. The public health effects from continual low concentrations of arsenic is well documented. The 50 parts per billion standard is too high and needs to be lowered to 10 parts per billion or less.

Thank you.

Sincerely,

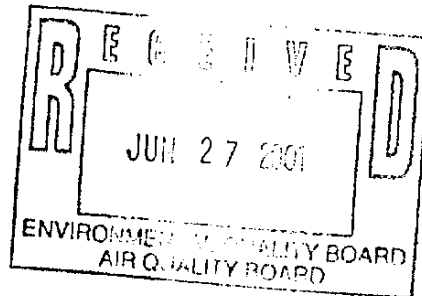
A handwritten signature in cursive script that reads 'Deana Smith'.

Deana Smith
HC 78 Box 99A1
Rock Cave, WV 26234



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA, INC.

Dr. Ed Snyder
WV Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311



June 25, 2001

Dear Dr. Snyder,

On behalf of the League of Women Voters of West Virginia we wish to make comments about Water Quality standards for surface and groundwater.

We favor the Category A designation for the surface waters of the state with site specific exemptions; however, we urge the Environmental Quality Board to be careful when it issues exemptions so that our waters are protected from unacceptable practices. We support full public participation in the exemption process.

As to the arsenic standard for groundwater, we are troubled by the proposed 50 ppb designation. We believe water treatment operators and their customers should not have to bear the costs of treating the water to the degree necessary to protect public health from arsenic.

Scientists have found that arsenic in drinking water causes bladder, lung, and skin cancer and may cause kidney and liver cancer. Also arsenic is harmful to the central and peripheral nervous systems, heart and blood vessels, and skin. It may cause birth defects and reproductive problems.

The U. S. 50 ppb maximum contaminant level is a 1942 value, designated before human health data were gathered and analyzed. A 1999 report by the National Academy of Science estimates that in a 25 state EPA study more than 56 million Americans drank tap water that posed an unacceptable risk. The NAS recommended an MCL no higher than 3 ppb. Industry pressured the Clinton administration to raise that to 10 ppb.

We realize the Bush administration has put on hold the proposed MCL for arsenic in drinking water; but we believe West Virginians' health should not be compromised by the lack of action at the national level. Not allowing groundwater to have unacceptable levels of arsenic in the first place will be a step towards protecting public health as well as saving the costs of cleaning up drinking water sources to protective levels.

Thank you for our opportunity to comment on the proposed rules.

Sincerely,

SR/HG

Helen Gibbins

Sharon Rowe, President
31 Poplar Grove Estates
Princeton, WV 24740

Helen Gibbins, Natural Resources Director
6128 Gideon Rd.
Huntington, WV 25705

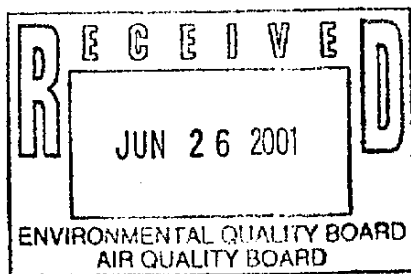
TO: W. Va. EQB

I strongly support applying Category A to all West Virginia waters. As a resident in a rural area who lives on a stream - I know that many people need high-quality water. These streams are a cornerstone of property values. Do not remove any class A protections, insist on full procedural notice & comment for every exemption - including legislative approval.

And for goodness' sake do not allow the 50 ppb limit on arsenic to stand. We need to tighten carcinogen standards, not loosen them!

Thomas Rodd
Rte 2 Box 78
Moatsville WV 26405

Thomasrodd@hotmail.com





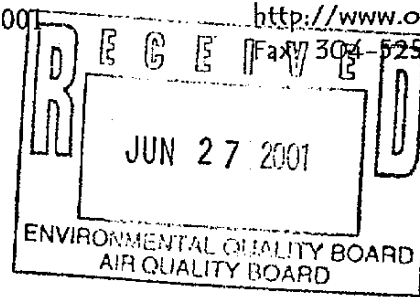
Ohio Valley Environmental Coalition

P.O. Box 6753
Huntington, WV 25773-6753
Phone: 304-522-0246

25 June 2001

<http://www.ohvec.org>

Fax: 304-525-6984



Dr. Ed Snyder
W.Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV 25311

Dear Dr. Snyder:

On behalf of the Ohio Valley Environmental Coalition (OVEC), please accept the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation and proposed rules for groundwater:

Category A Drinking Water

- **OVEC requests that all the state's surface waters be designated Category A, as in the past decades.** We commend EQB's proposal to retain this designation as applying to all West Virginia surface waters. OVEC requests that Category A be applied to all West Virginia surface waters to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and to account for future development and the need for future clean drinking water supplies.
- **OVEC believes that exemptions to the Category A standard should go through the legislative rulemaking process.**
- West Virginia is fortunate to have so many streams that are clean enough to be used as drinking water supplies and we are encouraged that EQB recognizes this. Clean streams are an asset to economic development and quality-of-life in West Virginia, and OVEC hopes the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.
- Although the regulated industry and the West Virginia Legislature have requested the EQB review how Category A is applied, **OVEC is satisfied with how the standard has been historically applied in West Virginia.** We hope that the EQB's proposal will not provide an avenue by which exemptions are given more frequently.
- In particular, OVEC believes that **full public comment and review should be part of the process** for implementing the proposed rule for drinking water as well as for any and all exemptions from the Category A standard.

Arsenic/Groundwater

- **OVEC commends the EQB for examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic.** According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels

include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, and adverse effects to the immune and neurological systems.

- In 1962, the Public Health Service recommended lowering the science based standard for arsenic in drinking water from 50 parts per billion (ppb) to 10 ppb, yet for decades the federal government repeatedly has missed deadlines for a new standard. OVEC is aware that EQB is waiting for EPA to enact a new arsenic standard within the next year, and we strongly recommend that EQB will propose an arsenic standard for West Virginia that is much more protective than 50 ppb even if EPA fails to do so.
- OVEC contends that based on a 1999 study by the National Academy of Sciences, the current EPA arsenic standard at 50 ppb poses an unacceptable cancer risk (1 in 100), which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food and would not achieve EPA's goal for public health protection and should be set below 50 ppb. Therefore, OVEC supports EQB in establishing an arsenic standard at 10 ppb or lower, to protect human health, not industry's bottom line.

Thank you for the opportunity to provide comments on these proposed rules.

Sincerely,

A handwritten signature in cursive script that reads "Janet Fout". The signature is written in black ink and is positioned above the printed name.

Janet Fout, Project Coordinator

**Statement by Scott D. Goldman
on Behalf of the
West Virginia Chamber of Commerce
46 C.S.R. 1 and 46 C.S.R. 12
June 28, 2001**

Good evening. My name is Scott Goldman, and I am an attorney with the law firm of Jackson & Kelly PLLC. I am here this evening to present a brief statement on behalf of the West Virginia Chamber of Commerce. In addition to this oral statement, the Chamber will be providing written comments to the Board by tomorrow's deadline.

The Environmental Quality Board has once again proposed to amend the State water quality standards by designating all waters of the State as Category A drinking waters - even though, a conservative estimate has suggested that only 2% of surface streams are used as sources for public drinking water. Although the Board historically has received lengthy comments from the Chamber, as well as from other trade organizations and individual companies describing the inherent regulatory difficulties of designating all of the state's waters as Category A waters, the Board has elected to adopt the statewide designation. However, the Board, acknowledging the difficulty the regulated community will have if all waters of the State are considered Category A, also voted to develop an "expedited use removal process" as outlined by Libby Chatfield in a March 28, 2001 memorandum to the Board. The Chamber is disturbed by the Board's proposal to move forward on part of the Board's May 16, 2001 vote - designating all State waters as Category A - without moving forward on the remaining portion of the Board's May 16, 2001 vote - developing an expedited use removal procedure.

regulated community. Ultimately this will result in an unwarranted expense to the public at large. West Virginia and its residents are not so well endowed with extra finances as to justify unnecessary regulation.

One specific example of how the State will be significantly and negatively impacted by a statewide Category A designation is the increased number of streams which will be placed on the State's §303(d) list as not meeting the current water quality standards.

In addition, by removing the qualifying phrase "after conventional treatment" from §6.2, the Board has provided the public with a false sense of security that the waters of the State may be consumed simply by dipping your cup in the local stream. What the Board would do by removing the phrase "after conventional treatment" from 46 C.S.R. 1 §6.2 is to tell the general public that all waters of the State which are meeting Category A water quality standards would be acceptable to drink without further treatment. The Safe Drinking Water Act and its implementing regulations require extensive and thorough treatment of surface waters to reduce and/or eliminate the public's exposure to these contaminants before the water treatment system can deliver the treated water to the public. However, neither the state water quality standards nor the Clean Water Act and its implementing regulations were designed to ensure that raw surface water is free from the naturally occurring microbes referenced above, or that it is otherwise safe for human consumption prior to conventional treatment. For the Board or anyone else to imply that after designating

With regard to the Board's proposed changes to the State Groundwater Standards, the Chamber does not oppose the Board's addition of an arsenic standard. However, the Chamber does question the timing of such provision given USEPA's recent and well-publicized efforts to evaluate the arsenic standard.

Finally, the Chamber would like to request that the Board amend the State water quality standard for chloroform to conform to the current federal chloroform standard. The current State water quality standard for public water supplies for chloroform of .19 ug/l is causing regulatory problems for facilities which discharge water treated with chlorine. The EPA's recommended human health criterion for chloroform is 5.7 ug/l. By leaving in place a criterion that has been revised by EPA, the Board leaves the state open to increased and unnecessary risk of non-compliance with federal permitting requirements for both industrial facilities as well as municipalities. The Chamber urges the Board to include in its current rulemaking an update to this standard. The Chamber provides this comment to put the Board on notice that this is an issue of increasing importance which the regulated community will be pursuing for as timely a resolution as can be developed to include coordination with the Department of Water Resources to promote revision thereto.

**Comments of the
West Virginia Manufacturers Association
regarding
West Virginia Water Quality Standards
46 C.S.R.1**

June 28, 2001

I. Introduction.

The Environmental Quality Board (the Board) has proposed two significant changes to the West Virginia water quality standards providing for the protection of public water supplies. The first, in Section 6.2, is to drop the phrase "after conventional treatment" from the description of the waters that are included within the public water supply use (Category A). The second, in Sections 6.1 and 6.2, is to apply the public water supply use to all water bodies throughout the state.

The West Virginia Manufacturers Association (the WVMA) adamantly opposes the deletion of the phrase "after conventional treatment" from the description of a public water supply. The WVMA also opposes application of Category A on a statewide basis, but believes that a reasonable compromise would involve a statutory change to allow easier removal of the Category A use. As the Board has not proposed such a legislative change, and has not explained how the use can be easily removed, the WVMA opposes the Board's current proposal.

The WVMA also offers comments on some aspects of water quality standards that it believes should be considered by the Board. These changes – adoption of a revised chloroform criterion for public water supplies and use of harmonic mean flow for setting permit limits – are consistent with EPA guidance and should be incorporated in West Virginia water quality standards.

II. Changes to Water Quality Standards

A. Statewide Application of Category A.

At the Board's May meeting, the West Virginia Department of Environmental Protection (DEP) resubmitted to the Board a document summarizing its historical perspective on the public water supply use. The DEP contends that Category A (or its former designation) has always been a state-wide use, not limited to areas where the water was actually used as drinking water. The WVMA believes that the DEP's historical view of the Category A use is incorrect, because it is only

recently that Category A became relevant to NPDES permits or that the Category A criteria differed significantly from other criteria. In addition, the Board's own statements on the subject reveal that the Board never intended the public water supply criteria to apply where they were unneeded.

Although the DEP's history of the application of the public water supply use begins in 1967, it was only much later that the use became important in a practical sense, and the issue of how the use should be applied was debated in earnest. As we believe the DEP would readily admit, water quality-based permit limits were not common until the late 1980's, and the WVMA would assert that permit limits based on Category A have not been consistently applied thereafter. Even today, the DEP does not apply its policy uniformly. For example, the general NPDES permit (WV/NPDES WV0113506) for stripper oil wells is expressly inapplicable in Category A waters. If all waters are Category A, where is the general permit meant to be used?

As late as 1984 most of the criteria were established by watershed or water body type, not use, so that, for example, the Kanawha River Basin, Zone Two, had a chloride limit of 150 mg/l, while the Bluestone River and nearby watersheds had a limit of 100 mg/l. This made it difficult to tell what was the limiting use, and accordingly the importance of individual uses and their effect on permitting decisions was negligible. In 1985 the Board changed its approach to designate criteria according to use, but there was still no reason to believe that the DEP was applying the use universally. A review of the criteria proposed in 1985 and adopted in 1986 show that there were few substances in the Water Resources Board's Series I rule (the predecessor to 46 C.S.R. 1) for which the public water supply use (Category B at that time) criteria were more stringent than the national goal uses found in Categories D (aquatic life) or A (water contact recreation). Only arsenic, chlorides, fecal coliform, fluoride, nitrate and selenium had lower criteria established for the public waters supply use than for the other uses, and then only marginally so. Before this began to change with the adoption of new criteria in the early- to-mid 1990's there would have been no reason for anyone to be on notice of the DEP's alleged state-wide application of the public water supply use, because it would have affected very few dischargers.

There were other, more concrete reasons for dischargers to conclude, prior to the early 1990's, that the Board did not intend the public water supply use criteria to apply to every water body in the state. In the revisions to the water quality standards submitted to the Legislature in 1993 the

Water Resources Board adopted changes to the water quality standards that specifically identified the aquatic life (Category B) and water contact recreation (Category C) uses as state-wide uses. Category A was notable by its absence. If all uses have applied at all times, as the DEP contends, there would have been no need to specify that Categories B and C were state-wide uses. Similarly, at some point after 1986 the Water Resources Board adopted a list of public drinking water suppliers and put it in Appendix B, which it designated as drinking water supplies where Category A criteria applied. If all waters are Category A, and always have been, a list of water intakes was unneeded.

The WVMA is not relying solely on circumstantial evidence in concluding that the Board did not originally conceive of applying the public water supply use to all state water bodies. The Board responded to public comments with regard to public water supply use designation during the 1985-1986 review of water quality standards and specifically stated that the public water supply use was limited in application.

The Board responded to the first group of comments by agreeing that all waters actually used for human consumption should be included in the definition and therefore protected. They further agreed that defining where the criteria are to apply as part of the definition might be improper. *Above all, they agreed that the category and criteria for public water supply should not be applied to streams or stream segments where no one is using the water for drinking.*

State Water Resources Board of West Virginia Rationale Document for Revision of Legislative Rules Series I, II, III and IX, January 6, 1986, at pages 19-20 (italics added). It is hard to imagine a clearer statement that the Board did not intend streams that are not used as public water supplies to be protected as public water supplies.

The WVMA provides the foregoing history because it does not believe that the Board has always intended to apply Category A on state-wide basis even if that is how the Board interprets its rule now. However, our opposition to the application of Category A throughout the state is motivated by our concern about the present-day effects of that designation. Making Category A a state-wide designation will continue to produce problems that are difficult to anticipate now, but will arise in the future. For example, mixing zones are not allowed on streams with a 7Q10 flow of 5 cfs

or less. What will be done if a mixing zone is needed to meet the 230 ppm chlorides criteria for chronic effects on aquatic life, but such a mixing zone would inadvertently allow discharges in excess of the 250 mg/l criteria for Category A? What additional streams will be placed on the 303(d) list of impaired streams, when the more stringent Category A criteria apply throughout the state? What of a human health criterion like chloroform (see discussion below) which should be changed, but would not be as great an issue if the criterion did not have universal application?

The WVMA has repeatedly urged the Board to adopt a system whereby it would protect all public water suppliers by requiring that dischargers prevent exceedances of the water quality criteria for Category A at the point of intake. One such proposal is set out in the May 15, 2001 letter to the Board, attached. An alternative that the Board appears inclined to consider, and one the WVMA could support in concept, is an expedited process for removing the Category A use where it is not an existing use. The Board proposes doing this through a procedural rule, but the WVMA is not convinced that this can be done. The water quality standards are a legislative rule, and removal of a use is a change to a legislative rule that must be made in accordance with *W. Va. Code* §29A-3-9. The WVMA is not sure how the use could be removed through a procedural rule, absent some sort of statutory change.

The WVMA believes that a statutory change not unlike that allowing the Board to establish remaining variances would be needed if the Board is to remove the Category A use without legislative review. See *W. Va. Code* §22B-3-4(c). The WVMA asks that the Board commit to asking the Legislature for the statutory changes needed for removal of designated uses that are not existing uses. Such a change might be made by adding, as *W. Va. Code* §22B-3-4(e), the following (or similar) language:

The board may remove the public water supply use on a water body, where removal of the use will not result in the criteria for that use being violated at the intake for a public water supply, prior to the issuance of a national pollutant discharge elimination system (NPDES) permit by the department of environmental protection in accordance with 33 USC Section 1311(p) of the federal Water Pollution Control Act. Such removal is not subject to review by the legislative rule-making review committee or approval by the legislature required by sections nine and eleven, article three, chapter twenty-nine of the code.

If this statutory change were adopted, the Board would be able to propose use removals without having to go through the time-consuming process of obtaining Legislative approval, and the removals could be accomplished in time for prompt permit action.

The statutory change would greatly reduce the time involved in the use removal, but would not detail how the use removal would be done, or what must be demonstrated to the Board. Therefore, the content of the rule describing how the Category A use can be removed is an important factor in evaluating the Board's proposal. The WVMA anticipates that the rule would allow removal of the use upon a showing that there is no downstream use of a stream as a potable water source that would be affected by a discharge. The WVMA would oppose as unworkable any use removal procedure that involved significantly more data, such as socio-economic studies or other involved methods. We urge the Board to develop the use-removal rule, if only in draft, before assigning Category A throughout the State, so all parties can evaluate the extent and effect of the Board's proposal.

A further concern the WVMA has about the Board's proposal is the lack of commitment from EPA to support removal of the Category A use without the need to follow the EPA's full use removal procedures in 40 C.F.R. 131.10. If EPA will oppose adoption of a simple method of Category A use removal, the WVMA questions whether the Board should proceed with its proposal. An involved use removal procedure, meeting EPA's most stringent requirements, is unworkable.

Absent confirmation that the Board will ask for a statutory change, some clarification of the effort and expense that will be required for removal of the public water supply use, and an indication of whether EPA will support and approve the Board's action, the WVMA cannot support the proposed designation of Category A as a state-wide use. We urge the Board to withdraw its proposed change, and spend the coming year drafting the rule that will set forth the requirements for Category A removal, advocating the needed statutory changes, and confirming EPA's support for this course of action.

B. Change in the Definition of the Category A Use.

While the expedited removal of Category A would alleviate most of the concerns felt by WVMA members about state-wide application of the Category A use, there is no similar relief that

would address the concerns about the changes to the definition of the Category A use. Currently, the standards (Section 6.2) provide that the public water supply use applies to waters that, "after conventional treatment," are used for human consumption. The Board proposes to radically alter the nature of water quality standard protection in West Virginia by deleting the "after conventional treatment" language. By doing so, the Board would be mandating that each stream in West Virginia should be pure enough to be drunk without any kind of preliminary treatment. Such an approach is unworkable. The DEP should not be encouraging people to believe that they can drink directly from state streams without any kind of conventional treatment, such as filtration, settling, or destruction of pathogens.

Other states recognize the need to require conventional treatment for public water supplies. The Chamber of Commerce has done a survey of public water supplies in our neighboring states, and those states specify that public water supply criteria apply where conventional treatment is provided. There is no reason for West Virginia to be different on that score.

The ramifications of the Board's proposal are too great to ignore. To implement the new definition of Category A, the Board would have to reconsider its criteria. One criterion that would have to be changed if citizens are to be encouraged to drink directly from state streams would be the Category A fecal coliform criterion, as fecal coliform is not allowed in treated drinking water. Because of fecal coliform contributions from wildlife alone, the revised standard could not be met in most streams of the state. A new fecal coliform criterion would have implications for the agricultural industry, as well as require homeowners to close septic tanks that were contributing to violations of the criterion. Municipalities would have to produce an effluent from their sewage plants that was about as clean as the drinking water that they provide to their citizens. It is unrealistic to expect the degree of wastewater treatment that the Board is requiring by its change of the public water supply definition.

In extending the Category A use state-wide, and changing the definition of the public water supply use, the Board is also increasing the number of streams that will qualify for the 303(d) list of impaired water bodies. The list consists of streams and lakes that are not attaining designated and existing uses. Presumably there are few state streams, even in rural areas, that are currently safe for drinking without any treatment. The Board's change will expand the number of streams on the

303(d) list, without there being any reasonable expectation that a total maximum daily load could be developed that would make the streams drinkable, without treatment.

The Board should continue to define public water supplies as those waters used for drinking after conventional treatment. It should also require that, if individuals wish to be afforded the protections of the Category A use, they give fair notice of their use of a water body for potable water. If persons want to drink directly from a stream, they should let those who are affected by that decision know of their choice, and they should be required to justify that decision. In some rural areas, drinking from a stream may be a reasonable choice. In other places, where an adequate water supply is otherwise readily available, the need to protect the use is called into question.

C. Chloroform Criterion.

The EPA's most stringent recommended human health criterion for chloroform is 5.7 ug/l. See *National Recommended Water Quality Criteria*, EPA 822-Z-99-001 (April 1999); 62 Fed. Reg. 42160. The chloroform criterion for public water supplies in West Virginia is .19 ug/l. This criterion could cause significant problems for any discharger that uses water that has been chlorinated. Many manufacturers obtain water for their processes from municipalities that treat their drinking water with chlorine. These manufacturers could end up with levels of chloroform in their discharges that exceed the standard, even though they do not use chlorine in their processes. In the same way, municipalities that meet the Safe Drinking Water Act limits for trihalomethanes in their drinking water could be violating water quality standards for chloroform when the water ends up in the POTW.

The WVMA suggests that the Board avoid problems inherent in its chloroform standard by adopting the EPA-recommended criterion for public water supplies in its final rule. In the alternative, the Board could acknowledge the need for the change in the chloroform criterion, so that those who wish to petition the legislature to make the change would have the Board's position on the record.

D. Antidegradation Implementation.

The Board has proposed deletion of Appendices F, F1, F2, and F3, relating to the Board's previously promulgated antidegradation implementation procedures and associated lists. The

language in Section 4 referring to Appendix F has not been proposed for deletion, however. Since the DEP would not be placing its implementation plan in the Board's rule, we assume this is an oversight, and the Board intends to remove all references to Appendix F in Sections 4.1.b.1 and 4.1.c. In addition, the Board may consider changing Section 4.1.d to remove the sentence describing the method for nominating streams for outstanding national resource water status, as the DWR will be setting procedures for that review.

To clarify the role of the Board on the issue of antidegradation implementation, we recommend a statement be included in Section 4 of the rule to read as follows:

Note: For the procedures for implementation of this policy, see regulations of the Department of Environmental Protection.

E. Harmonic Mean Flow.

The WVMA provided the Board with a letter dated May 15, 2001 setting forth its reasons for believing that the Board should authorize the use of harmonic mean flow for setting permit limits for carcinogens. The DEP appears to support the use of that design flow. The WVMA has attached that letter and incorporates it into these comments.

III. Conclusion

On behalf of its member companies, the WVMA thanks the Board for this opportunity to comment on the draft changes to the West Virginia water quality standards.

Respectfully submitted this 28th day of June, 2001

Karen S. Price, President

West Virginia Manufacturers Association



WEST VIRGINIA MANUFACTURERS ASSOCIATION

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Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@citynet.net

May 15, 2001

Dr. Edward Snyder, Chairman
Environmental Quality Board
1615 Washington Street, East
Charleston, WV 25311

Re: Revisions to 46 C.S.R. 1, West Virginia's
Water Quality Standards

Dear Dr. Snyder:

The West Virginia Manufacturers Association understands that the Environmental Quality Board will be considering changes to the West Virginia water quality standards, 46 C.S.R. 1, at its meeting on May 16, 2001. We urge the Board to consider two changes dealing with the application of Category A, for protection of public water supplies, and the use of harmonic mean flow as the design flow for establishing permit limits for carcinogens.

We would propose that 46 C.S.R. 1-7.2.a.2 be amended to provide as follows:

7.2.a.2. Category A criteria must be met at the point of intake for each surface water intake described in Section 6.2. herein, assuming that conventional treatment of the water shall occur. Any or all of the following methods may be required to assure that the Category A criteria will be met at the point of an intake described in Section 6.2:

7.2.a.2.1. A survey by a discharger to determine that the Category A criteria will not be exceeded as a result of the discharge;

7.2.a.2.2. A mixing zone study, modeling or other method approved by the Chief to demonstrate that a discharge will not cause exceedance of the Category A criteria at the intake; or

7.2.a.2.3. Application of the Category A criteria throughout a stream segment extending up to one-half mile above an intake, and permit limits set accordingly, as an additional margin of safety, except that such a half-mile zone shall not apply to the Ohio River

Board of Directors

AEP	Downard Hydraulics, Inc.	Georgia-Pacific Corporation	Marble King, Inc.	U.S. Silica Company
Ashland Inc.	DuPont	Halltown Paperboard Company	One Valley Bank	Union Carbide Corporation
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Bayer, Inc.	Eikem Metals Company	Imation	PPG Industries, Inc.	Weirton Steel Corporation
Capitol Cement Corporation	Flexsys	Inco Alloys International, Inc.	Quebecor Printing	Wheeling-Pittsburgh Steel Corp.
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The Dean Company	GE Plastics	Koppers Industries, Inc.	Rhone-Poulenc Ag Company	

Dr. Edward Snyder, Chairman
May 15, 2001
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main channel between Brown's Island and the left descending bank) between river mile points 61.0 and 63.5 until June 30, 2003.

Not all waterbodies in the state are used as public water supplies, nor should they be designated as such. For those streams that are used as drinking water sources, the water quality standards should require compliance with the water quality criteria where it will be used (the point of intake), or a short distance upstream as a margin of safety. The language we have proposed puts the burden on a discharger to confirm that surface water intakes will be receiving water that satisfies the Category A criteria.

We are aware that the question was raised as to whether the Category A use must be removed in order to adopt this definition. We do not believe any use removal is required. Section 6.1 of the water quality standards specifically states that Categories B (aquatic life) and C (water contact recreation) are the only state-wide uses, unless others are designated. No other uses are identified as state-wide uses in the water quality standards. If the Board wishes to designate other uses, such as Category A, as having state-wide application, it must do so through rulemaking, not administrative fiat. In addition, if Category A has been designated a state-wide use, it is a designated use that is not an existing use in most areas of the state. As such, it should have been subject to a use analysis pursuant to 40 C.F.R. §131.10(j), which requires a use attainability analysis whenever designating a use that is not an existing use.

Designating all water bodies as Category A does nothing more to protect water supplies than the language proposed above, and it increases the likelihood that the waterbody will be added to the 303(d) list of impaired streams because of violations of the Category A criteria, even though such streams are not used as a public water supply. This would mean that total maximum daily loads (TMDLs) would be developed for protection of a use that is not even present, a complete waste of resources.

The problems that universal application of Category A criteria causes for the coal industry because of manganese discharges are well documented. Those problems could be avoided by applying Category A in those cases where water is taken from a stream for potable use, rather than in every area of the state.

We would also ask the Board to allow the use of harmonic mean flow for setting permit limits for carcinogens. Harmonic mean flow remains the design flow for setting discharge limits for carcinogens that is recommended by the EPA. In its *Water Quality Standards Handbook - Second Edition*, EPA - 823-B-93-002 (September 1993) EPA stated it

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 health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant (for example, 2 liters of water per day for

Dr. Edward Snyder, Chairman
May 15, 2001
Page 3

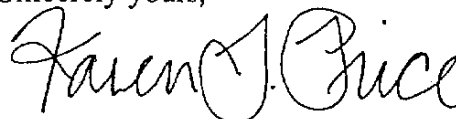
70 years). To estimate the concentrations of a toxic pollutant in those 2 liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques.

Water Quality Standards Handbook at 5-10. In its *Technical Support Document for Water Quality-based Toxics Control*, EPA/505/2-90-001 (March 1991) at page 88 EPA made clear that "[t]he long-term harmonic mean flow is recommended as the design flow for carcinogens." Criteria for carcinogens are set at extremely low levels based on an assumption of average exposure over many years, and using the harmonic mean flow to develop permit limits accurately implements the criteria. It provides protection to human health without unduly burdening regulated industry. Without harmonic mean flow, dischargers are faced with permit limits that may be too small to measure, and require inordinate effort to reduce, without significant environmental improvement.

We encourage the Board to propose a change in the water quality standards to allow use of harmonic mean flow to set permit limits for carcinogens. The appropriate way to accomplish that would be deletion of the text at Section 8.2.b. and replacing it with "Harmonic mean flow is the appropriate design flow for calculating permit limits for carcinogens." By doing so the Board would allow comment on this important issue by the Office of Water Resources, EPA, and the public.

Thank you for the opportunity to present these arguments on behalf of the West Virginia Manufacturers Association. We believe they represent the thoughts of many in the regulated community, and hope they will give be given careful consideration by the Board.

Sincerely yours,

A handwritten signature in cursive script that reads "Karen S. Price". The signature is written in black ink and is positioned above the printed name.

Karen S. Price

KSP:shb



WEST VIRGINIA RIVERS COALITION

801 N. Randolph Avenue • Elkins, West Virginia 26241 • (304) 637-7201 • www.wvrivers.org

June 28, 2001

Dr. Ed Snyder, Chairman
West Virginia Environmental Quality Board
1615 Washington St.
Charleston, WV 25311

Dear Dr. Snyder:

On behalf of the West Virginia Rivers Coalition (WVRC), I respectfully submit the following comments pertaining to the West Virginia Environmental Quality Board's (EQB) proposed rules for the Category A drinking water designation (46 CSR 1) and proposed rules for groundwater (46 CSR 12).

Category A

We have been involved in the Category A issue for a number of years, and continue to advocate that all of the state's surface waters be designated Category A, as they have been for decades. We applaud EQB's proposal to retain this designation as applying to all West Virginia surface waters. We also applaud the positions of the West Virginia Department of Environmental Protection – Division of Water Resources and the West Virginia Bureau for Public Health (BPH) that all surface waters should retain the Category A designation. However, we have concerns about exemptions to the Category A standard not going through the legislative rulemaking process.

WVRC holds the position that Category A must be applied to all West Virginia surface waters for two principal reasons: 1) to account for individual households and small communities that use surface waters for drinking (after conventional treatment) who are not serviced by a municipal provider or public service district, and who are not identified by surveys of surface water users in inventories such as BPH's Zones of Critical Concern; and, 2) to account for future development and the need for clean drinking water supplies when new intakes are installed, including new uses by individual households and small communities who will take water directly from the stream for use as drinking water supplies.

West Virginia is fortunate to have so many streams that are indeed clean enough to be used as drinking water supplies, with conventional treatment, and we are encouraged that EQB

and state regulatory agencies recognize this fact. Rather than viewing protections for clean streams as an impediment to industry, we hope the state will continue to realize the economic and quality-of-life asset these clean streams are to West Virginia, and we hope the state will continue to apply such good protections to West Virginia's exceptional rivers and streams.

We understand that regulated industry and West Virginia Legislature have requested that the EQB review the Category A application. WVRC would note for the record that we are satisfied with how the standard has been historically applied in West Virginia, and see no need for changes. We hope the EQB's proposed rule will not be an avenue by which the number of exemptions to the standard is greater than if such exemptions were to go through the legislative rulemaking process.

In particular, we will be interested and involved in how EQB develops the procedural rule for implementing the proposed rule for Category A, and hope that EQB allows for full public comment and review not only in the procedural rule, but also in each and every exemption it proposes to grant from the Category A standard. We will be particularly interested in how EQB proposes to grant such exemptions, especially the extent to which parties seeking variances will be required to account for all surface water users likely or potentially to be affected. We also will be curious to learn how EQB intends to account for future uses and drinking water needs should those needs arise – from direct stream use to municipal intakes – downstream of a facility that has been granted an exemption from the Category A standard. How will the EQB propose to ratchet up such exempted dischargers to properly protect new downstream drinking water supplies?

Arsenic/Groundwater

WVRC is encouraged that EQB is examining the state's arsenic standard for groundwater and is concerned about the public health effects of arsenic. According to the National Academy of Sciences, long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer. Non-cancerous effects of ingesting arsenic at low levels include cardiovascular disease, diabetes, and anemia, as well as reproductive, developmental, immunological and neurological effects.

The 50 ppb standard for arsenic in drinking water is based on a 1942 study by the Public Health Service, science that is nearly 60 years old. The PHS itself, in 1962, recommended lowering the arsenic standard to 10 ppb, but over the decades the federal government repeatedly has missed deadlines for a new, more protective standard. We understand that EQB is looking to EPA to enact a new arsenic standard within the next year, and WVRC asks that EQB propose an arsenic standard that is much more protective than 50 ppb. Further, we ask that EQB propose a more protective arsenic standard for West Virginia even if EPA continues to fail to do so.

A 1999 study by the National Academy of Sciences states that the current EPA arsenic standard at 50 parts per billion (ppb) "could easily" result in a cancer risk of 1 in 100,

which is about 10,000 times higher a cancer risk than EPA would allow for carcinogens in food. The report concludes, "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL (maximum contaminant level) for arsenic in drinking water of 50 [ppb] does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible." It would seem that an arsenic level of 50 ppb is not scientifically supportable, and the justification for establishing an arsenic level of 50 ppb would be to avoid the cost of cleanup. WVRC realizes that arsenic is naturally occurring in some West Virginia soils, and a default to natural background may be appropriate in those strata if the natural background is higher than the arsenic standard. In light of these facts, we hope that EQB will consider a more protective arsenic standard than the proposed 50 ppb, and WVRC recommends that EQB adopt an arsenic level of at least 10 ppb, if not a standard that is more protective.

Please feel free to contact me should you have any questions regarding these comments. We thank you for the opportunity to provide comments on these proposed rules.

Sincerely,



Nathan Fetty
Issues Coordinator

From: Brad Taylor <btaylor1@mindspring.com>
To: <clerk@aqbeqb.state.wv.us>
Date: Fri, Jun 29, 2001 11:54 AM
Subject: WV Water Quality

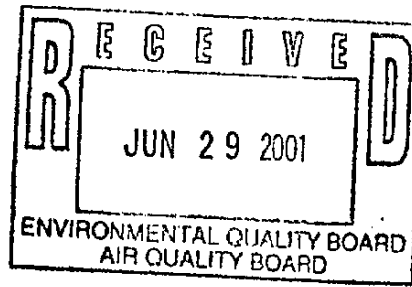


Dear EQB:

The EQB is currently developing water quality standards for streams and groundwater in West Virginia. I want to strongly urge the Board to implement the sort of stringent standards that will insure the protection of both. Our water must remain safe for drinking, for the sake of our state's (and our children's) future.

Please develop strong standards that will provide maximum protection for this essential West Virginia resource.

Sincerely,
Brad Taylor
P.O. Box 1190
Keyser, WV 26726



Edward M. Snyder, Chairman
Environmental Quality Board
1655 Washington Street, East
Charleston, West Virginia 25311

June 28, 2001

RE: Comments on the Proposed Changes to 46 CSR 1 and 46 CSR 12

Dear Chairman Snyder:

American Electric Power Company (AEP) respectfully submits to the West Virginia Environmental Quality Board (the "Board") comments on the proposed modifications to 46 CSR 1 (Water Quality Standards) and 46 CSR 12 (Groundwater Quality Standards).

After reviewing the proposed modifications of 46 CSR1 and 46 CSR 12, AEP agrees with and supports the comments submitted by the West Virginia Chamber of Commerce (the "Chamber") and West Virginia Manufacturers Association (WVMA). To summarize key points of the Chamber's and WVMA's comments:

- 46 CSR 1:
 - The Board is urged not to apply the public water supply use Category A to all state waters, and instead, either continue to apply it to specifically qualified waters, or undertake a statutory change to allow easier removal of Category A use.
 - The Board is urged not to change the definition of public water supply by deletion of the phrase "after conventional treatment," as this would create an unworkable regulatory approach.
- 46 CSR 12: The Board has proposed the addition of an arsenic standard to the state groundwater quality standards. AEP is in agreement with the Board's promulgation of the arsenic standard at a level of 0.05 mg/L.

With the exception of the listed concerns in the Chamber's and WVMA's comments, AEP is currently satisfied with the language and looks forward to the final rule. We appreciate this opportunity to comment. If you have any questions concerning these comments, please call me at 614/223-1233.

Sincerely,

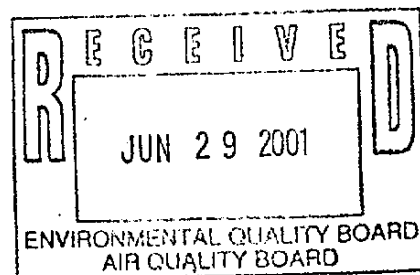
A handwritten signature in black ink, appearing to read "Alan R. Wood".

Alan R. Wood, P.E.
Manager, Water and Ecological Resource Services

WEIRTON
STEEL CORPORATION

June 29, 2001

Mr. Edward M. Snyder
Chairman
West Virginia Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, West Virginia 25311



RE: Comments on Proposed Changes to 46CSR1 and 46CSR12

Dear Mr. Snyder:

Weirton Steel Corporation ("WSC") is pleased to submit the following comments on proposed amendments to the Surface Water Quality Standards, 46 CSR 1, and the Groundwater Quality Standards, 46 CSR 12, filed on May 29, 2001.

Surface Water Quality Standards (46CSR1)

Statewide Category A Designation. WSC has commented previously on the Board's decision to designate all waters of the state as Category A and would like to emphasize those comments again. Designating all surface waters as appropriate for public water supply use may at first blush seem an environmentally proactive thing to do, however, upon careful review is simply bad public policy. A blanket approach to the Category A designation without corresponding factual basis results in the most restrictive method for protecting the state's drinking water supplies. This approach has an adverse impact on West Virginia's regulated entities in several ways. First, to the extent a permittee has to comply with drinking water criteria on a stream that is not a drinking water source and existing treatment on its discharge does not achieve the criteria, the permittee must either install additional treatment for protecting a non-existing use, or obtain a variance to demonstrate that the receiving water does not constitute a drinking water source - an expensive and protracted process. Second, the mere designation of all state streams as drinking water sources, with the resultant application of different and frequently lower water quality criteria to all state waters, will cause more streams to be added to the state's list of impaired streams under Sec. 303(d) of the Clean Water Act. The enormous commitment of resources both by the state and the regulated community that results from such a listing should compel the adoption of policies that assure that streams will be added to the list only where there is a practical justification for doing so. The EQB's proposal runs counter to this common sense principle.

Other options considered by the Board are less restrictive yet ensure full protection of actual uses occurring in the surface waters of the state. These options should be revisited. WSC

incorporates by reference and supports the comments of the West Virginia Manufacturers Association and the West Virginia Chamber of Commerce for 46 CSR 1 and strongly urges the Board to not designate all surface waters of the state as Category A.

Removal of "after conventional treatment" language. The Board proposes to remove the portion of the definition of public water supply in Sec. 6.2 that requires treatment before surface water is actually used as a drinking water source. This provision has appeared in the surface water quality standards for decades for good reason. The EQB should not do anything to encourage the use of the state's surface waters for human consumption without first requiring some treatment. Again, WSC incorporates the comments of the Manufacturers Association and the Chamber of Commerce on this important public health and policy issue.

Groundwater Quality Standards (46CSR12)

WSC supports the Board's proposal to institute an arsenic limit at 50 ppb, the current drinking water standard used by the EPA. Although the EPA is presently considering a lower limit for arsenic, an interim limit at the current standard is appropriate.

We thank the Board for the opportunity to provide these comments.

Sincerely yours,



Mark Vignovic
Director, Environmental Control

#167505

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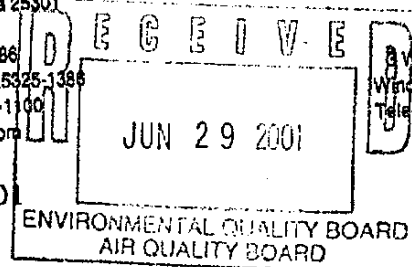
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June 29, 2001



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Via Facsimile and Mail

Dr. Edward M. Snyder, Chair
West Virginia Environmental Quality Board
1615 Washington Street, East
Charleston, West Virginia 25311

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." CAWV joins in the written comments of the West Virginia Chamber of Commerce and West Virginia Manufacturers Association and incorporates their comments herein by reference.

CAWV looks forward to working with the Board as it reassesses this important issue in the future. Thank you for the opportunity to provide these comments. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leonard Knee".

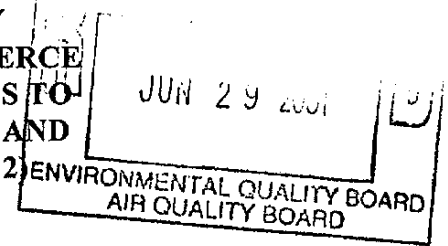
Leonard Knee

LK/jlh

cc: Jeff Van Matre
Richard Thomas

ENV.ENV.0010836

**WRITTEN COMMENTS SUBMITTED BY
THE WEST VIRGINIA CHAMBER OF COMMERCE
IN RESPONSE TO THE PROPOSED CHANGES TO
WATER QUALITY STANDARDS (46 C.S.R. 1) AND
GROUNDWATER STANDARDS (46 C.S.R. 12)**



June 29, 2001

Water Quality Standards - 46 C.S.R. 1

Public Water Supply Use Designation Across the State. The Environmental Quality Board ("Board") has proposed changes to 46 C.S.R. 1, §6.2 to provide that Category A – Water Supply, Public shall apply to all waters of the state. Modification to the provision addressing public water supplies has been on the Board's agenda for a number of years. Each time modification is proposed the comments and suggestions indicate that there is no justification for revising the regulatory program. Public water supplies are well protected under the current program. Addition of the overly broad use designation to the entire state will result in increased regulation, but not increased protection. With increased regulation will come increased operational costs for both the state and the regulated community. Ultimately this will result in an unwarranted expense to the public at large. West Virginia and its residents are not so well endowed with extra finances as to justify unnecessary regulation.

For example, listing all streams in the state as Category A will greatly impact the number of streams that will become water quality limited streams under the Clean Water Act, §303(d). The Board is reminded that the state TMDL program already has a significant TMDL development task ahead of it with the current §303(d) list. As will be discussed in detail below, the creation of a statewide-designated use will also result in significant public and private costs for the removal of that designation where necessary. The Board is reminded that the WV Division of Water Resources is currently underfunded and under-staffed. The Board is urged to give careful consideration to the impacts of its rulemakings on its sister agencies and the public. One of the primary sources of concern about the Board's rulemaking authority is its impact on other agency's regulatory programs. The Chamber membership must take into consideration all environmental regulatory programs and the state budget to implement those programs.

Finally, but most importantly, the Board is **legally prohibited** from declaring that all waters of the State should be designated as Category A without performing additional work. The federal water quality standards declare that "[a] State must conduct a use attainability analysis . . . whenever . . . [t]he State designated or has designated uses that do not include the uses specified in" §101(a)(2) of the federal Clean Water Act. 40 C.F.R. 131.10(j)(1). (A copy of 40 C.F.R. 131.10 is attached.) Section 101(a)(2) of the federal Clean Water Act provides that, wherever attainable, the country should strive for a goal "which provides for the protection and propagation of fish, shellfish, and wildlife [i.e., fishable] and provides for recreation in and on the water [i.e., swimmable.]" 33 U.S.C. §1251(a)(2). Section 101(a)(2) of the federal Clean Water Act is silent on "drinking

water" as a use. Thus, read together, the federal Clean Water Act and the federal water quality standards specifically prohibit States from designating water uses other than "fishable" or "swimmable" unless the State first conducts a use attainability analysis. Accordingly, and until the Board performs a use attainability analysis¹ for every water body in the State of West Virginia, the Board may not designate all waters of the State, "by default," as Category A.

It has been argued that the Board's proposed action is simply a "clarification" because both the Division of Water Resources and the Board have always "assumed" that all waters of the State were Category A - even though such waters were never formally or informally designated Category A. That is, the Board is essentially stating that Category A is an "existing use." Both the State and federal water quality standards identically² define "existing uses" as "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." 46 C.S.R. 1 § 2.7³ and 40 C.F.R. § 131.3(e). Although the Division of Water Resources may have "always assumed" that the waters of the State were designated Category A for the purpose of NPDES permit issuance, the State waters have neither been officially "designated" as Category A nor have all waters of the State been "existing" sources of public drinking water, as less than 2% of all West Virginia streams are existing, current sources of public drinking water.⁴

We strongly urge the Board to share in that responsibility by not applying the public water supply use category across the state to all waters.

¹ The federal water quality standards define "use attainability analysis" as "a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors described in [40 C.F.R.] §131.10(g)." 40 C.F.R. §131.3(g).

² The State definition of "existing uses" refers to "uses actually attained in a water body" while the federal definition refers to "uses actually attained in the water body."

³ The 2001 Legislature made revisions to 46 C.S.R. 1 and, on July 2, 2001, the definition of "existing uses" will be renumbered as 46 C.S.R. 1 § 2.11.

⁴ According to information within the West Virginia DEP's manual entitled, "West Virginia Watershed Management Framework Manual," (May 15, 1997), and other readily available DEP information, West Virginia waters make up 32 hydrologic regions, 344 major sub-watersheds, and 9000 different streams totaling more than 28,000 miles. In contrast, based upon Don Koontz' March 26, 1999 comments to the Board, there are approximately 675 public water supply systems in West Virginia (including surface water, groundwater and non-transient, non-community systems). Of this total, approximately 141 systems have surface water intakes, and the remaining 530+ systems secure their potable water from groundwater wells. Based on these Bureau of Public Health numbers, even if each of the 141 public water supply systems were located individually on one of the state's 9000 streams, less than 2% of all streams within the state would actually qualify for the Category A use. In reality, many of the large streams (the Ohio, Kanawha, Elk Rivers, etc.) have multiple public water supply intakes; therefore, the number of West Virginia streams with public water supply intakes is probably less than 1% of all West Virginia streams. When a Board member inquired about the number of West Virginians who consume directly from a stream, Don Koontz estimated that a very small number of families, most of whom may be living in abject poverty, actually secured untreated or inadequately treated drinking water directly from a stream.

Elimination of "after conventional treatment" language. The Board has proposed in §6.2 elimination of the qualifier that would provide that Category A would describe "waters which, after conventional treatment, are used for public consumption." As proposed all waters of the state would be required to meet the drinking water standards, prior to any treatment. The Chamber has reviewed other Region III states and determined the following with regard to the applicability and definition for "public waters." **It should be noted that the Region III states of Pennsylvania, Maryland, and Delaware all define public water supply as waters which, after treatment are used for public consumption. This is also the case for the Ohio River Sanitary Commission (ORSANCO).**

Pennsylvania: "Potable Water Supply – Used by the public as defined by the Federal Safe Drinking Water Act, 42 U.S.C.A. § 300F, or by other water users that require a permit from the Department under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1 – 721.18), or the act of June 24, 1939 (P.L. 842, No. 365) (32 P.S. §§ 631 – 641), after conventional treatment, for drinking, culinary and other domestic purposes, such as inclusion into foods, either directly or indirectly. §93.3, Table 1.

Delaware: "Public Water Supply – Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations: (i) Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in: (A) unacceptable levels of taste or odor in the treated water; (B) significant disruption of the treatment processes at the treatment facility; or (C) concentrations of toxic substances in the treated water that may be harmful to human health. §11.2.a

Maryland: "Public water supply" means any water of this State with the designated use of public water supply and which is suitable for human consumption when treated to meet the requirements of COMAR 26.04.01. §26.08.01.01 (72).

Virginia: The term is not defined in the regulations. As pointed out by Libby Chatfield in her February 6, 2001 memorandum, the drinking water use category is designated on a stream-by-stream basis, rather than statewide as proposed by the Board.

ORSANCO. The Compact authorizes ORSANCO to develop standards for the treatment of sewage and industrial wastes discharged to the Ohio River. The purpose of these standards is to ensure that the water quality of the river is suitable for the uses designated by the Compact; public and industrial water supply (after reasonable treatment), recreational use, and warm water aquatic habitat, as well as other legitimate uses. The standards recommend stream criteria to assure that these uses will be achieved, and set waste water discharge requirements to attain these criteria.

The Chamber also recommends that the Board not eliminate the language that qualifies public water supplies as waters which after conventional treatment, are used for public consumption.

Removal of Use Categories. The Board has proposed addition of section 6.2.b which would allow request for relief from a state-wide public use designation by removal of a use. Such a procedural rule would be required by EPA to comply with the requirements set forth in 40 CFR §131.10(g) and (h) which provide as follows:

(g) States may remove a designated use which is not an existing use, as defined in §131.3, or establish sub-categories of a sue if the State can demonstrate that attaining the designated use is not feasible because:

- (1) Naturally occurring pollutant concentrations prevent the attainment or the use:
or
- (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
- (3) 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
- (4) 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
- (5) 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;
or
- (6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(h) States may not remove designated uses if:

- (1) They are existing uses, as defined in §131.3, unless a use requiring more stringent criteria is added; or
- (2) Such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

Accordingly, the "relief" that would be offered by a provision to address the over application of the public use designation is a detailed use attainability analysis. Again,

the Board has proposed a regulatory hurdle that will result in extensive public and private administration costs.

It should also be noted that the removal of a designated use presents a very high hurdle. The fact that the designated use is not an existing use, which appears to be the basis being considered by the Board for such an action, is not even one of the factors EPA allows for consideration.

As stated above, there are 6 conditions that EPA allows to be considered in removing a designated use that is not an existing use (note that, of course, an existing use designation can not be removed). Of these 6, four are directly related to the actual physical makeup of the water body. For the public drinking water category any stream that has sufficient flow and the depth to accommodate a water intake could not make this showing. The other two, require a demonstration that conditions already exist making attainment of the use so expensive or socially and economically devastating that attainment can not be justified. It is obvious that the vast majority of streams in West Virginia that will be newly moved into Category A by the Board's proposal will not meet the criteria for a use removal. The Board has no discretion in making such a determination. EPA must approve any use designation change. Unless a demonstration can be made to the satisfaction of EPA that the stream in question meets one or more of the above criteria the Board can not make such a change.

Thus the Board's proposal will result in placing all of West Virginia's stream irrevocably into the Public Drinking Water category, leading to the imposition of increased treatment requirements to protect a use that does not, and in the great majority of cases, will not exist. There is no possibility of a streamlined or expedited use removal process.

Although the Board, during its May 16, 2001 meeting, voted to adopt "relaxed" use removal standards in order to satisfy the argument that use attainability analyses are burdensome and expensive. However, the Board has stated that it does not have time to adopt a relaxed use removal standard until 2002. Thus, the Board would be placed with the curious position of requiring all waters of the State to be Category A – regardless of whether the water is being used as a public drinking water supply – while not providing any relief to potential dischargers who wish to prove that the water is not meeting the use. That is, even though the Board has specifically acknowledged that if all waters of the State are designated Category A there needs to be an administratively acceptable method to remove such use, the Board will not provide that "relaxed" use removal method until one year after all waters are declared Category A.

The Chamber urges the Board not to apply the public use category across the state, and instead, continue to apply it on a case-by-case basis. There is no current data that suggests that the state's water resources for public use are being compromised as the

result of the case-by-case designation and permitting process. The Board's proposal suggests that in exchange for an across the state application of the use it would provide a escape hatch for those stream segments that should not be so designated. The regulatory escape hatch is far more expensive that a case-by-case application of the use designation.

Mangangese. The Chamber supports the Board's conclusion that the manganese human health criteria should not be applied more than five miles upstream from a known drinking water source. The Board has acknowledged the regulatory burden caused by applying the public water supply use category across the state with regard to this parameter. In its proposal for manganese, the Board would have the permit writer consult the very list of public water supplies that it is proposing for removal from the regulation. If such a list is appropriate for manganese it stands to reason it would work for all other public health water quality criteria. The Chamber urges the Board to apply a similar reasonableness approach to application of the public use category generally.

Removal of the List of Public Water Supplies. The Chamber does not support the removal of the list of public water supplies in exchange for application of Category A across the entire state. In this instance the Board is trading the task of creating an appropriate list (a list that principally already exists between the resources of the DEP and the DOH), in exchange for an overly broad designation of all streams as public use category streams. The Board's proposal shifts the workload and expenses of administering the program from the simplified list concept to the highly complex regulatory use removal process. The Chamber objects to this proposal.

Chloroform. The Chamber requests that the Board amend the State water quality standards for Chloroform for the following reasons. Membership in the Chamber have determined that the state water quality standard for protection of human health (based on consumption of water and fish consumption) for chloroform of 0.19 ug/l is causing regulatory problems for facilities which discharge water treated with chlorine, including water obtained from municipalities. The EPA's recommended human health criterion for chloroform is 5.7 ug/l. See *National Recommended Water Quality Criteria*, EPA 822-Z-99-001 (April 1999); 62 Fed. Reg. 42160. The Chamber urges the Board to update its standard for chloroform. It is important that the state have a current and effective water quality program. By leaving in place a standard that has been revised by EPA, the Board leaves the state open to increased and unnecessary risk of non-compliance with federal permitting requirements for both industrial facilities as well as municipalities. The Chamber urges the Board to include in its current rulemaking an update to this standard. The Chamber provides this comment to put the Board on notice that this is an issue of increasing importance which the regulated community will be pursuing for as timely a resolution as can be developed to include coordination with the Department of Water Resources to promote revision thereto

WVCOC COMMENTS ON 46 C.S.R. 1 AND 46 C.S.R 12
JUNE 29, 2001
PAGE 7

Groundwater Standards - 45 C.S.R 12

The Board has proposed the addition of an arsenic standard to the state groundwater quality standards. The Chamber does not object to the adoption of an arsenic standard, but cautions against adoption of rules in the face of EPA's own action on the matter. The federal EPA has not finalized its arsenic rulemaking for drinking water standards but expects to do so at any time. The Chamber does not object to the Board's promulgation of the arsenic standards.

Respectfully submitted this 29th day of June, 2001.

(iii) An identification of the surface waters for which the Tribe proposes to establish water quality standards.

(4) A narrative statement describing the capability of the Indian Tribe to administer an effective water quality standards program. The narrative statement should include:

(i) A description of the Indian Tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the Tribal governing body and copies of related Tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing, reviewing, implementing and revising water quality standards;

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) Additional documentation required by the Regional Administrator which, in the judgment of the Regional Administrator, is necessary to support a Tribal application.

(6) Where the Tribe has previously qualified for eligibility or "treatment as a state" under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which has not been submitted in a previous application.

(c) Procedure for processing an Indian Tribe's application.

(1) The Regional Administrator shall process an application of an Indian

Tribe submitted pursuant to § 131.8(b) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(2) Within 30 days after receipt of the Indian Tribe's application the Regional Administrator shall provide appropriate notice. Notice shall:

(i) Include information on the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters; and

(ii) Be provided to all appropriate governmental entities.

(3) The Regional Administrator shall provide 30 days for comments to be submitted on the Tribal application. Comments shall be limited to the Tribe's assertion of authority.

(4) If a Tribe's asserted authority is subject to a competing or conflicting claim, the Regional Administrator, after due consideration, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 131.8(a)(3).

(5) Where the Regional Administrator determines that a Tribe meets the requirements of this section, he shall promptly provide written notification to the Indian Tribe that the Tribe is authorized to administer the Water Quality Standards program.

[56 FR 64895, Dec. 12, 1991, as amended at 59 FR 64344, Dec. 14, 1994]

Subpart B—Establishment of Water Quality Standards

§ 131.10 Designation of uses.

(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State 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. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into

From: Deana Smith <dsphoto@msys.net>
To: <clerk@aqbeqb.state.wv.us>
Date: Fri, Jun 29, 2001 3:13 PM
Subject: Category A & arsenic standards

Dear Dr. Snyder,

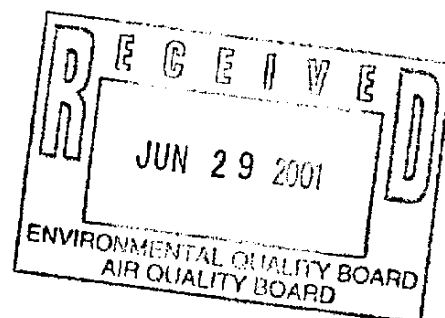
On June 25th I wrote you a letter and last night I attended the EQB public hearing. I am becoming increasingly concerned about the fate of West Virginia's waters.

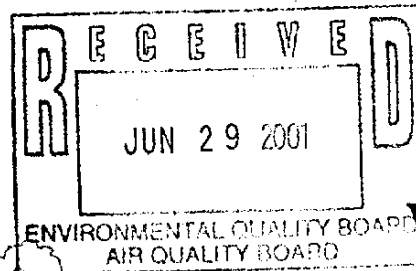
I live on the headwaters of the Little Kanawha River. I regularly enjoy swimming and wading in the river, and yes, sometimes even having a drink. It's not pristine but darn close. By the time the Little Kanawha River gets to Parkersberg, it is filthy. Residents cannot even go swimming. The degradation of this river even with the strong controls of Category A has not stopped its destruction. To weaken the existing laws could possibly lead to the demise of the Little Kanawha headwaters. There are people in this rural community who use the headwaters of this river as their source of drinking and household water, fishing and general pleasure.

I again urge you to maintain Category A drinking water and to take this opportunity of revision to lower the arsenic levels to 10 parts per billion or lower.

Thank you.

Deana Smith
HC 78 Box 99A1
Rock Cave, WV
26234





SIERRA CLUB

WEST VIRGINIA CHAPTER

June 27, 2001

P.O. Box 4142
Morgantown, WV 26504

Dr. Ed Snyder
W. Va. Environmental Quality Board
1615 Washington St., East
Charleston, WV

RE: Amendments to 46CSR12 establishing standards for arsenic in ground water

Dear Dr. Snyder:

The West Virginia Chapter of the Sierra Club opposes the proposed ground water quality standard for arsenic of 0.05 mg/liter (50 ppb).

The best available review of health effects of arsenic is a 1999 report from the National Academy of Sciences available at: <http://www.nap.edu/books/0309063337/html/index.html>

This report concludes: "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL for arsenic in drinking water of 50 µg/L does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible."

As made clear by the National Academy of Sciences, the 50 ppb standard is not adequate to protect human health or the environment. To adopt such a standard at this time would allow ground waters in West Virginia to legally become contaminated to levels that would threaten human health. This standard would allow polluters to claim that their actions were permissible and would prevent the DEP from enforcing more stringent clean up standards needed to protect human health.

The one point on which there is overwhelming consensus is that the 50 ppb level is wrong. Implementation of a 50 ppb standard would allow levels of ground water contamination that may someday require very expensive clean up and remediation. Since prevention is infinitely more cost-effective than remediation, the EQB should not be creating pollution clean up problems for industry or citizens by allowing contamination levels that will require remediation at some time in the future.

Some may argue that a drinking water MCL may not be appropriate as a ground water standard and that a more relaxed standard is acceptable. However, the West Virginia Groundwater Protection Act clearly establishes the policy of protecting existing and future uses and existing quality of the state's ground water resources. The principal use for ground water is for drinking water supplies, thus a realistic drinking water standard must form the basis of a groundwater standard.

"Not blind opposition to progress, but opposition to blind progress."

Arsenic is a known human carcinogen and the drinking water standard acknowledges this fact. The standard is not based simply on extrapolation from animal data, rather, it is based on actual human disease and human exposure data.

Arsenic also has demonstrated adverse effects in humans on the cardiovascular system and is a significant cause of hypertension and other cardiovascular diseases. EPA has admitted that there are additional health benefits that were not included in their cost-benefit analysis, but they did not specifically monetize the cardiovascular health benefits of decreasing arsenic in water and so that information is not incorporated into their cost-benefit analysis. Thus, their cost/benefit ratios underestimate the true economic benefits of reducing arsenic in drinking water. From this, we can also conclude that the benefits for protecting existing quality are even greater than EPA's analyses imply.

In fact, a major point of concern motivating the Bush administration's delay in implementing the revision of the drinking water standard is the expense of treating contaminated source water to remove arsenic to an acceptable concentration. For West Virginia to adopt a ground water standard that would unnecessarily impose these clean up costs on public and private drinking water supplies is clearly not in the economic interests of West Virginia's citizens.

We recommend that the standard be set no higher than 10 ppb as proposed by US-EPA last year, and that existing quality be maintained where that existing quality is better than the 10 ppb standard. The 10 ppb standard has been under development for years and is backed by the preponderance of sound scientific data. A 10 ppb standard also matches the level set previously by the World Health Organization and the level recommended by the U.S. Public Health Service as long ago as 1962.

We recognize that there is a great deal of debate over water quality standards for arsenic. Future research may well justify even more stringent standards than the 10 ppb level. In fact, levels as low as 3 ppb have been scientifically justified and this more stringent level may be required in the near future. Thus, protecting existing quality where it is better than 10 ppb is also justified.

We urge the Board to adopt a standard of 10 ppb and to protect existing ground water quality.

We would prefer to see NO STANDARD AT ALL, rather than one which we know in advance will allow unacceptable levels of ground water pollution.

Sincerely,



James Kotcon
State Government Programs Chair
West Virginia Sierra Club



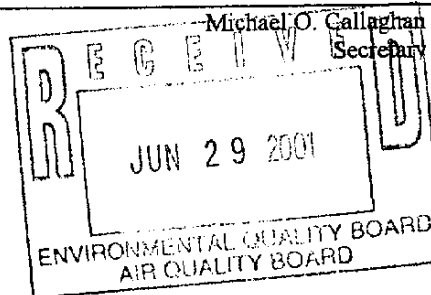
Division of Water Resources
1201 Greenbrier Street
Charleston, WV 25311
Phone (304) 558-0375
Fax (304) 558-5903

West Virginia Department of Environmental Protection

Bob Wise
Governor

June 28, 2001

Environmental Quality Board
1615 Washington Street, East
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 Department of Environmental Protection (DEP) and the Division of Water Resources (DWR) appreciates the opportunity to comment on the Environmental Quality Board's (EQB or Board) proposed changes to 46 CSR Series 1 filed with the Secretary of State's Office on May 29, 2001.

As the Board may be aware, the DWR has previously forwarded comments by letters 3/31/00 and 8/16/00 relating to the recent triennial review and other proposed Water Quality Standard (WQS) revisions. We remind the Board that a number of those previously raised issues yet require investigation and consideration. As a result, the following comments are principally limited to those proposed revisions subject to the May 29 filing as they relate to the 7/1/99 effective rule with expectation that the Board will address the remaining issues in the future.

Reference Sections 2.1, 2.2, 2.3, 2.18, 2.21, 2.22, 2.26 and 2.27

Board may seek to remove these new definitions that all relate to Appendix F, which is concurrently being removed as a result of the requirements of HB3240.

Reference Section 4.1.b.2.B.

It is this Agency's understanding that a 2001 6th Edition of the "High Quality Streams" list is available from the Wildlife Resource Section of DNR. You may wish to reflect this in this segment of the rule.

Reference Section 4.1.d.

Reference to "that" category in the second paragraph should be "this".

"To use all available resources to protect and restore West Virginia's
environment in concert with the needs of present and future generations."



West Virginia
Department of
Environmental Protection

Reference Section 6.1

With the recognition that specified criteria are yet absent from the rule, should reference to "wildlife" not also be incorporated in minimum designated uses? Note that the reference to wildlife is reflected in 4.1.b. of the Antidegradation Policy as well as in the language of 6.1.a.

Reference Section 6.1.a.

The first sentence in the first paragraph should be divorced from the remainder of this section. Additionally, the second sentence of the first paragraph, if the Board seeks to continue its inclusion in the rule, should be separately delineated as new Section 6.1.e. However, the intent of this language has always been unclear and the DWR requests the Board's basis or rationale to clarify the intent of this language. For example, does this language reflect requirements on the DEP or Board to justify or determine "existing" uses and if so, this language may now have meaning as the requirements resulting from HB3240 will delegate the authority of determining "existing uses" to DEP as of 7/1/01. Alternately, was the intent of this language to reflect consideration of the "future" use of waters for the use categories specified? Clarification and explanation of the intent behind this language is suggested.

Reference Section 6.2.c.

Does the reference to Section 7.2.a.2. reflect that the half-mile rule does apply to discharges of Mn.? The meaning of this reference in this section is unclear and should therefore be clarified.

Reference Section 7.2.c.4.

It appears that the sixth and eighth sentences in the first paragraph are somewhat redundant and could be combined. Also, the term "continuing" in the last sentence of the second paragraph should be "continued". Further, note that historically, the DWR has applied the existing 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 DWR'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 DWR again 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 stream's 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.

Reference Section 7.2.d.32.

Appears the wording "(Reserved)" must now be included, as the previously listed variances have been removed.

Reference Section 8.2. and 8.2.1 in Appendix E

The DEP recognizes and agrees with the inclusion of the revised aquatic life criteria for ammonia. However, recognition of the specified early life stage present (March 1 – October 31) and absent (November 1 to the last day of February) periods now additionally need to be reflected for the Main Stem of the Ohio River as ORSANCO claims data to support the relaxed criteria and has promulgated such in their 200 Revisions to their Pollution Control Standards. Additionally, Footnote 'd' needs to reflect the term early life state "present" equation as this was the intent of the DWR when the proposal was offered to the EQB. This footnote would therefore apply to all other state waters except the Main Stem of the Ohio River.

Further, note that the formula in 8.2. is suspected to be a divisional function, which does not appear in the equation.

Again, this Agency yet has a number of additional issues raised in previous communications to the Board and requests that these issues be addressed at the Board's earliest convenience.

This office continues to appreciate the opportunity to be an active participant in the Board's process of standards revisions.

Very truly yours,

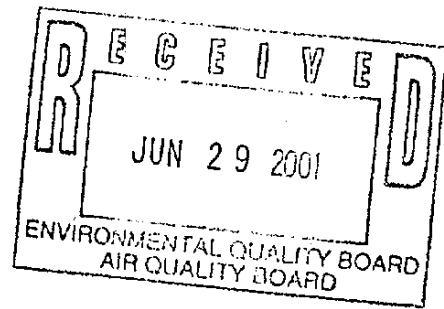


Allyn G. Turner

Director

AGT:rsr

From: Lew Baker <lab1@ezwv.com>
To: AQBEQB CLERK <clerk@aqbeqb.state.wv.us>
Date: Fri, Jun 29, 2001 4:29 PM
Subject: Re: Proposed Rule



Comments to WV EQB, regarding proposed Water Quality Standards:

From Lewis Baker, Huntington June 29, 2001

These comments are presented to the Board, as a supplement to my oral comments at the EQB evening meeting June 28, 2001. Like my oral comments, they are in regards to three areas:

- (1) Drinking Water Use Designation. The EQB has been considering removing the drinking water designated use from many of our stream segments, as a general policy. This would be a poor policy, and should be avoided. Removal of the drinking water use designation may be defensible, in a case by case basis, after careful consideration of ample site specific data, costs and benefits. In regards to whether the EQB should make changes to use designations, without the approval of the legislature, this could be considered permissible, and perhaps preferable, but only if the EQB has carefully considered ample site specific data in each case.
- (2) Arsenic Standard for Ground Water. WV's Ground Water Standards are based on drinking water standards (MCLs), which are set by EPA. As the EPA is in the process of adopting a new standard for arsenic, the EQB's proposal to adopt that new standard rather than the old one (50 ppb) seems logical. However, WV's WQS for arsenic in surface waters is already set at the old drinking water standard. The state of Pennsylvania, and I assume WV and other states, replaced the pre-existing surface water WQS (0.02 ppb) with the much less stringent 50 ppb MCL in the 1990s. This was questionable, because EPA was at the same time looking at making the MCL much lower. My question for the EQB is this: if the MCL becomes more stringent, will the GW standard and the WQS also become more stringent?
- (3) Instream concentrations of dioxin. The language for dioxin and other highly toxic organics seems to suggest background levels will not be determined in an honest scientific manner. The proposed language for 8.22.1 reads: "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, where applicable." This language does not allow for any actual instream (background) measurements, which may be gained from new methods already employed in WV by ORSANCO, USEPA, and USGS. These agencies have found dioxin concentrations in the lower Kanawha to typically be about 5000% of the WQS, which should certainly NOT be ignored by rule or regulators any longer. This proposed language would provide for an essential exemption for the need to determine background levels of dioxin, prior

to setting discharge concentrations and flow rates in an NPDES permits under the Clean Water Act. The largest pulp mill proposed for North America (at Apple Grove, WV) was not built because the state had ignored its responsibility to include dioxin background concentrations in its permit. My question to the EQB is this: when was the quoted language inserted into the proposed rule, who suggested the change, and who approved it?

AQBEQB CLERK wrote:

>

> The Environmental Quality Board filed the proposed rule (46 CSR 12 - Groundwater) on May 29th, 2001. The Public Hearing will be held at 7:00 p.m. on June 28th, 2001, at 1615 Washington St., E., Second Floor Conference Room. The deadline for the submission of written comments to the Board is 5:00 p.m. on June 29, 2001.

>

> Attached is the Statement of Circumstances, the Summary of Proposed Changes, and the proposed rule. (If you don't open this in wordperfect, the formatting may be off.)

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> Name: 46CSR12circumstances5-01wp.doc

> 46CSR12circumstances5-01wp.doc Type: Microsoft Word Document (application/msword)

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> Encoding: base64

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> Name: 46CSR12summary5-01WP.doc

> 46CSR12summary5-01WP.doc Type: Microsoft Word Document (application/msword)

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> Encoding: base64

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> Name: Groundwater Series 12 for 2002.wpd

> Groundwater Series 12 for 2002.wpd Type: WordPerfect Document (application/wordperfect5.1)

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> Encoding: base64

**RESPONSES TO COMMENTS and EXPLANATION OF PROPOSED
AMENDMENTS
46 CSR 12
Requirements Governing Groundwater Standards
July 27, 2001**

This document describes the changes proposed in the Groundwater Standards rule. For each proposed change, the following are provided: a description of the existing rule; the amendment proposed by the Board in its May 29, 2001 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.

APPENDIX A

This section outlines the allowable constituent concentrations in groundwater.

Proposed Changes

The constituent arsenic is added to the list with concentration limit (not to be exceeded) of 0.050 mg/L.

Comments Received

1. Commenters expressed support for the proposed value for arsenic, indicating that it is the Maximum Contaminant Level (MCL) currently in effect for arsenic under the federal Safe Drinking Water Act. They acknowledged that US EPA is presently considering a lower limit for arsenic, but suggested that the value proposed is appropriate and provides certainty to the regulated community.
2. Commenter indicated no objection to the adoption of the proposed arsenic standard, but cautioned against adoption of rules in the face of EPA's own action on the matter. Indicated that the federal EPA has not finalized its arsenic rulemaking for drinking water standards but expects to do so at any time.
3. Commenters expressed concern that the .050 mg/L value for arsenic may not be fully protective of human health. These commenters cited findings by the National Academy of Sciences that long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung and prostate cancer, cardiovascular disease, diabetes, anemia, and adverse effects to reproductive developmental immune and neurological systems. The commenters, citing additionally the NAS study's finding that a standard of 50 ppb has a cancer risk factor of 1 in 100 (1 case per 100 people), recommended that the Board adopt a more stringent standard of 10 ppb (or 0.010 mg/l) for arsenic.

4. Commenter expressed concern about the proposed value for arsenic – indicated that the Bush administration has put proposed MCL on hold but believes West Virginian's health should not be compromised by the lack of action at the national level. Not allowing groundwater to have unacceptable levels of arsenic in the first place will be a step towards protecting public health as well as saving the costs of cleaning up drinking water sources to protective levels.

5. Commenter expressed concern about the proposed value for arsenic – indicating that the arsenic level of 50 ppb (.050 mg/L) is not scientifically supportable (citing 1999 National Academy of Sciences study) and the justification for establishing an arsenic criterion at that concentration would be to avoid the cost of cleanup, not to adequately protect public health.

6. Commenter cited 1999 National Academy of Sciences report which concluded that "Upon assessing the available evidence, it is the subcommittee's consensus that the current EPA MCL for arsenic in drinking water of 50 ug/L does not achieve EPA's goal for public health protection and therefore requires downward revision as promptly as possible". Commenter further stated that the West Virginia Groundwater Protection Act clearly establishes the policy for protecting existing and future uses and existing quality of the state's groundwater resources. The principal use for ground water is for drinking water supplies, thus a realistic drinking water standard must form the basis of a groundwater standard. Recommends that the standard be set no higher than 10 ppb as proposed by US EPA last year and that existing quality be maintained where that existing quality is better than the 10 ppb standard. Commenter would prefer to see no standard at all rather than one which we know in advance will allow unacceptable levels of groundwater pollution.

7. Commenter indicated that surface water standard for arsenic (human health) is already set at 50 ppb. Asked if the MCL becomes more stringent, will the groundwater standard and the surface water standard also become more stringent?

Board Response

As indicated in the Summary and Statement of Circumstances which accompanied this proposed rule, the Board recognizes that USEPA is in the process of reviewing it's current MCL for arsenic. We are proposing a standard of .050 mg/l because it is the currently effective value for federal Safe Drinking water Act purposes.

WV Code §22-12-4, which establishes the Board's authority to promulgate the groundwater standards, provides the following:

Such standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall such standards allow contaminant levels in ground water to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking water Act. The board may set standards more

restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater.

The Board believes that it is important at this time to adopt a groundwater standard for arsenic to provide basis for regulating that contaminant under the Groundwater Protection Act and other appropriate programs. Although we considered postponing this decision until the ongoing EPA review of arsenic is complete, we ultimately determined that adoption now of the currently effective MCL as the most prudent course of action.

We believe that doing so is consistent with our charge under the Groundwater Protection Act. One important factor taken into consideration in this decision is that the value we propose is the same value that is currently used by the WV Bureau for Public Health in regulating arsenic in the state's drinking water. Further, we are aware of the time and effort that US EPA has already invested and continues to expend in its review the current MCL for arsenic. This Board has neither the technical or monetary resources to conduct the level of review being conducted by US EPA. That, coupled with our statutory authority - which specifically references EPAs MCLs as appropriate levels for groundwater standards - persuades us that adoption of the currently effective MCL value of 0.050 mg/l is appropriate.

We acknowledge the concerns of those advocating a more protective value for arsenic. We assume that EPA is considering the most current data and information available as it continues its review, including the information upon which the NAS based its recommendations in 1999. We intend to follow EPAs actions on arsenic closely, and will make every effort to readdress the arsenic criterion as soon as an updated value is recommended by EPA.

Board Action

Language adopted as proposed.