

June
2004

JUNE 14

Monday, June 14, 2004

6:00 p.m. to 7:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Minard, Vice Chairman
Snyder
Unger
Boley Absent
Minear

Mahan, Chairman
Thompson, Vice Chairman
Cann Absent
Kominar
Armstead
Faircloth Absent

The meeting was called to order by Mr. Ross, Co-Chairman.

The minutes of the May 17, 2004, meeting were approved.

Debra Graham, Chief Counsel, explained the rule proposed by the **West Virginia State Board of Examiners of Land Surveyors, Rules and Minimum Standards For Practices of Land Surveying in West Virginia, 23CSR1** and stated that the Board has agreed to technical modifications.

Greg Smith, with the West Virginia Board of Professional Surveyors addressed the Committee and responded to questions.

Ms. Mahan moved that the Committee modify the proposed rule by setting the renewal fee at \$100.00 and the late fee at \$20.00 per month. The motion was adopted.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **State Fire Marshal, Fees for Licenses, Permits, Inspections, Plans Review and Other Services, 103CSR2**.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Connie Bowling, Associate Counsel, explained the rule proposed by the **Division of Highways, Department of Transportation, Traffic and Safety, 157CSR5**.

Mr. Minard moved that the proposed rule be approved. The motion was adopted.

Ms. Bowling, reviewed her abstract on the rule proposed by the **Public Service Commission, Rules for Statewide Information and Referral 211 Service, 157CSR5** and responded to questions.

Mr. Minard moved that the proposed rule be laid over until the July Interim Meetings. The motion was adopted.

Rita Pauley, Associate Counsel, explained the rule proposed by the **Bureau of Employment Programs, Rule Implementing the Requirements that Prohibits Agencies from Granting, Issuing, or Renewing Contracts, Licenses, Permits, Certification or Other Authority to Conduct a Trade, Profession or Business, 96CSR1**, stated that the Bureau has agreed to technical modifications and responded to questions.

Mary Blaine McLaughlin, Attorney, with the Bureau of Employment Programs responded to questions.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham, explained the need for reconsideration of the rule proposed by the **Board of Veterinary Medicine, Organization and Organization, 26CSR** and stated that the Board has agreed to technical modifications.

Ms. Mahan moved that the Committee reconsider its action whereby it approved the Board's proposed rule as modified. The motion was adopted.

Ms. Mahan moved that the Committee approve the modification relating to continuing education requested by the Board. The motion was adopted.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, explained the agenda for the Committee's Tuesday meeting. Mr. Minard, distributed background information on manganese entitled Support Document for Manganese Five-Mile Rule for the Committee's review prior to the meeting. Chris Hamilton, West Virginia Coal Association, addressed the Committee regarding the manganese water quality standard and responded to questions.

The meeting was adjourned.

Monday, June 14, 2004

6:00 p.m. - 7:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair	✓
Minard, Vice Chair	✓
Snyder	✓
Unger	✓
Boley	✓
Minear	✓

Mahan, Chair	✓
Thompson, Rick, Vice Chair	✓
Cann	✓
Kominar	✓
Armstead	✓
Faircloth	✓

Minutes approved

Land Surveyors - Min Stds

I explained

*Greg Smith, Bd addressed C & responded to a's
Mod. by \$100 + \$20 month late fee.*

*Mahan
Adopted*

*Mahan
adopted*

Fire Marshall

F explained

Approve

*Mahan
adopted*

Highways - Traffic & Safety

Connie explained

Approve

Minard
adopted

FSC - 211 Service

Connie explained & responded to questions (funding stream?)

Lay over til July

Minard
adopted

Employment Programs

Rita explained and responded to questions



~~Veterinary~~ Veterinary Medicine

Mary McLaughlin responded to questions

Approve as mod.

Mahan
adopted

Veterinary

Reconsider

Get mod

adopted

Mahan Rule as mod

adopted

Chris discussed
with the
do.

Rita - wants meeting

Minard distributed background info on manganese.

Chris Hamilton discussed - wants C to endorse documents; responded to a's

Lingor

nonpartisan info NBSL, CSB w/ info to educate ourselves

* check on newspaper article (Saturday ^{morning})

Monday, June 14, 2004

6:00 p.m. - 7:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair ✓
Minard, Vice Chair ✓
Snyder ✓
Unger ✓
Boley
Minear ✓

Mahan, Chair ✓
Thompson, Rick, Vice Chair ✓
Cann
Kominar ✓
Armstead ✓
Faircloth

23CBR1 - Debra - Land Surveyors - Greg

- Minard ?
- Mahan ?

~~Resolution~~ & modification

- Unger ?
- Minear
- Mahan motion
- Approved w/ Mod.

163CSR2 - Debra - Fire Marshal

- Mahan motion
- Approve *

157 CSR5 - ^{Connie} Highways, Dept. of
· Minard moves
Approved

150 CSR29 - ^{Connie} Public Service Commission
· Armstead ?'s on Funding
· Minard - any r-p from phone comp.
· Minard ^{motion} - laid over to July
Motion Carried

96 CSR1 - ^{Rita} Employment Programs, Bureau of
· Mahan ?'s on Sec. 9
· Ross ?'s Chap II Bank.
· Minard ?'s
~~Minard ?'s~~
· Mary Blaine McLaughlin w/ BEP
· Mahan moves w/ Mod.
· Approved w/ Mod.

26 CSR1 - Vet Med.
· Mahan moves
· Approved w/ add. ^{or further} Mod.
· Mahan moves
· Approved as modified

· Minard - water studies
· Rita
· Minard - hand out

· Chris Hamilton ^{WV} w/ Coal Association
· Unger ? doc. produced by
· Minard ?
· Unger ?

- Snyder
- Thompson
- Mahan
- Snyder to chair
- Unger ? to chair
- Ross
- Mahan
- Unger
- Ross
- Mahan
- Rita
- Minard moves
- Adjourned

JUNE INTERIM ATTENDANCE
Legislative Interim Meetings
June 13, 14 and 15, 2004

Monday, June 14, 2004

6:00 - 7:00 p.m.

Legislative Rule-Making Review Committee

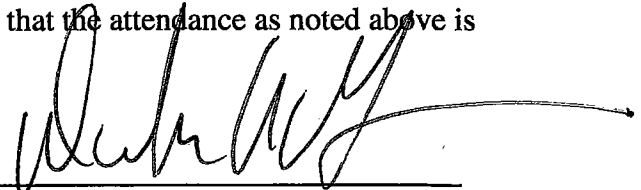
Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

Senate
Ross, Chair _____ ✓
Minard, Vice Chair _____ ✓
Snyder _____ ✓
Unger _____ ✓
Boley _____
Minear _____ ✓

House
Mahan, Chair _____ ✓
Thompson, Richard, Vice Chair _____ ✓
Cann _____
Kominar _____ ✓
Armstead _____ ✓
Faircloth _____

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

If you have any minutes that have not been turned in, please turn them into Brenda ASAP.
Please return to Brenda in Room 132-E or Fax to 347-4819.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, June 14, 2004
6:00 p.m. to 7:00 p.m.
Senate Finance Committee Room M-451

1. Approval of Minutes - Meeting of May 17, 2004
2. Review of Legislative Rules:

Approved as modified

a. Land Surveyors, West Virginia State Board of Examiners of Rules and Minimum Standards For Practice of Land Surveying in West Virginia
23CSR1

- Approve with Modifications

Approved

b. Fire Marshal, State Fees for Licenses, Permits, Inspections, Plans Review and Other Services
103CSR2

- Approve

Approved

Highways, Division of - Department of Transportation Traffic and Safety
157CSR5

- Approve

Laid over

Public Service Commission
Rules for Statewide Information and Referral 211 Service
150CSR29

- Approve with Modifications

Approve as modified

e. Employment Programs, Bureau of Rule Implementing the Requirements that Prohibits Agencies from Granting, Issuing, or Renewing Contracts, Licenses, Permits, Certificates or Other Authority to Conduct a Trade, Profession or Business.
96CSR1

- Approve with Modifications

3. Other Business

Approved as modified

Reconsideration of:
Veterinary Medicine, Board of Organization and Operation
26CSR1

- Approve further Modifications
- Approve as Modified

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule Making-Review Committee Date June 14, 2004
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Deputy Fire Marshal Anthony Carrico	207 Quannon St. Ches	State Fire Marshal	
Wanda Goodwin	1900 Kan. Blvd. E. Ches.	WV Bd. of Vet. Med.	
Greg Smith	P.O. Box 150 Glenville,	WV Bd of Prof. Surveyors	

certificate giving and the ~~shall bear the~~ signatures of the President and ~~secretary-~~
treasurer of the Board.

6.4. Every person practicing veterinary medicine in this State shall display his or her
license and ~~current~~ renewal certificate in his or her principal office, and a sign
indicating the date of expiration of the public health certificate shall be displayed in the
primary office in this state.

§26-1-67. License Renewals.

6.1. All licensed veterinarians who desire to retain their license shall, on or before
December 31 of each year, renew their licenses by ~~completing the required license~~
~~renewal form and~~ by paying the annual renewal fee as specified in the schedule of fees,
Series 6 of these rules and certify to the Board that he or she has completed all
continuing education requirements. On or before December 1 of each year, the
~~secretary-treasurer~~ Board shall mail a notice to each licensed veterinarian advising such
veterinarian that his or her license will expire on December 31 and shall provide him or
her with a form for renewal thereof. The ~~secretary-treasurer~~ Board shall issue a
certificate of renewal to all persons renewing their licenses under the provisions of this
rule. Any renewal processed by December 31 shall indicate the effective date of the
renewal to be January 1 of the next year. Any renewal processed after December 31
shall indicate the effective date of the renewal to be the date of processing.

6.2. Any person may renew an expired license within five years of the date of its
expiration by making written application for renewal and paying the current renewal fee
plus all delinquent renewal fees. Such renewal request shall also be accompanied by
completed renewal forms for the renewal years. ~~Such renewal shall not be~~
~~processed if the license holder has expired and shall be processed upon the~~
~~submission of the appropriate application and shall be processed upon the~~
~~submission of the appropriate application. After five years have elapsed from the date of expiration, a~~
license may not be renewed, and the former licensee must make application for a new
license and take and pass the license examination and meet the requirements for license
at the time of the new application. ~~the secretary-treasurer of 6.4. The secretary-~~
~~treasurer of the Board shall notify any veterinarian, by January 31, by certified mail, of~~
~~his or her failure to submit an annual renewal fee to the Board by December 31 of the~~
previous year.

6.5

* 7.3. Continuing Education - ~~Beginning 1992,~~ Effective January 1, 2005, each
veterinarian who desires to continue his or her license in good standing to practice
veterinary medicine in the State of West Virginia shall undertake at least eighteen (18)
50 minute periods of continuing education in the field of veterinary medicine during
each calendar year. A minimum of twelve (12) hours shall be in board approved
classroom scientific education. Two (2) hours of the annual mandatory continuing
education may be completed in formats which are not classroom. No periods may be
accumulated, carried forward, or held over past the calendar year in which such periods
were completed.

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Inserted: E
Deleted: eight (8)

7.4. A. Classroom courses, seminars, wet labs, and lectures sponsored by accredited
colleges of veterinary medicine, RACE, the AVMA, AAHA, state veterinary medical
associations, board certified specialty organizations and training programs provided by

SUPPORT DOCUMENT FOR MANGANESE FIVE-MILE RULE

Background: Manganese

Manganese is a naturally occurring element that constitutes approximately 0.1% of the earth's crust. Manganese occurs naturally at low levels in soil, water, and food, and is essential for normal physiological functioning in humans and all animal species. ¹ Manganese is an essential nutrient for humans and is necessary for maintaining normal bone structure and brain function.² The few instances of manganese toxicity in humans are generally related to inhalation in industrial processing accidents.³ "Manganese has a very low toxicity via oral ingestion and reports of adverse effects via the oral route of exposure are rare. Indeed, the National Recommended Water Quality Criteria for manganese for human health, which is 50 ug/L is based not on toxic effects, but rather on the secondary drinking water standard for aesthetic reasons (laundry staining) and organoleptic effects (taste)."⁴

Manganese Criterion Federal Requirements

On June 3, 2002, EPA published a notice in the Federal Register announcing its preliminary determination *NOT* to regulate manganese with a National Primary Drinking Water Regulation (NPDWR):

¹ 67 Fed. Reg. 38235 (June 3, 2002), pages 38235-38236. Copy provided as attachment "A"

² Letter dated June 24, 2003 from Jon M. Capacasa, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia's 1.0 mg/L human health criterion for manganese. Copy provided as attachment "C".

³ See attachment "A", pages 38235-38236. 67 Fed. Reg. 38235 (June 3, 2002).

⁴ See attachment "C", letter dated June 24, 2003 from Jon M. Caracas, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia's 1.0 mg/L human health criterion for manganese.

The Agency has made a preliminary determination not to regulate manganese with a NPDWR because it is generally not considered to be very toxic when ingested with the diet and because drinking water accounts for a relatively small proportion of manganese intake. ***Thus, regulation would not a present a meaningful opportunity for health risk reductions for persons served by public drinking water systems.***⁵

The federal agency finalized its initial manganese determination with final action on July 18, 2003:

After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate manganese with a NPDWR [National Primary Drinking Water Regulation] at this time, because it would not present meaningful opportunity for health risk reduction for persons served by PWS [public water systems].⁶

Thus, EPA has NO human health water quality criterion for manganese. EPA does however maintain a manganese limit with respect to aquatic organism consumption.

As mentioned previously, EPA still maintains a National Secondary Drinking Water Standard for manganese at 00.5mg/L to address aesthetic concerns. For the purposes of this rational document, it is worth noting that secondary standards ***are non enforceable standards for CWA purposes and serve only as guidance to individual states.***

EPA has no aquatic life criterion for manganese.

⁵ See attachment "A", 67 Fed. Reg. 38235 (June 3, 2002).

⁶ 68 Fed. Reg. 42898 (July 18, 2003) pages 42903-42904. Copy provided as attachment "B".

**History:
Manganese Criteria Promulgation and Implementation
In West Virginia**

The State of West Virginia and EPA have a long and well-documented history regarding the promulgation, approval and implementation of manganese criteria. Until the mid-1990s, West Virginia maintained a water quality criterion of 1.0 mg/L for manganese in streams classified as *either* public drinking water supplies or aquatic life uses. West Virginia maintained these criteria despite overwhelming evidence that treatment for manganese is more deleterious than the manganese itself.⁷ In 1997, after an exhaustive review of technical information and supporting scientific data, the West Virginia Environmental Quality Board deleted the aquatic life criterion for manganese. EPA Region III subsequently approved the deletion of the aquatic life criterion for manganese.

In 1997 the EQB also promulgated (in response to an earlier EPA disapproval), a manganese human health criterion of 1.0 mg/L. EPA approved this criterion in June 2003.⁸

Following the deletion of the manganese aquatic life criterion and promulgation of the manganese human health criterion in October 1999, the West Virginia Environmental Quality Board (EQB) voted to adopt a further revision to the state's manganese human health criterion:

The manganese human health criteria shall not apply where the discharge point of manganese is located more than five miles upstream from a known drinking water source.⁹

⁷ See generally attachments "D", "E", "F" and "G".

⁸ See attachment "C", Letter dated June 24, 2003 from Jon M. Caracas, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia's 1.0 mg/L human health criterion for manganese.

The rationale behind this revision was straightforward and supported by evidence previously relied upon by the EQB (and EPA in its subsequent approval) in deleting the aquatic life criterion for manganese: Treatment for manganese to meet the human health criterion usually involves elevating the pH of discharges to 9 or 10 which has a far more negative impact on aquatic biota than does the manganese itself.¹⁰ In June 2003 EPA disapproved this addition to the state's water quality standards rule.¹¹ In an effort to resolve this issue and implement a standard that provides protection to both public drinking water supplies and the aquatic biota, the West Virginia Legislature again revised the language of the manganese human health criterion:

The manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption.;¹²

This latest revision was intended to resolve a perceived deficiency of the previous language in that the 1999 version failed to establish a "protection zone" adequate to ensure that public drinking water systems would not be affected by manganese discharges.

**Specific Comments:
Revised Manganese Human Health Criterion**

Category A waters are described as waters which, after conventional treatment, are used for human consumption.¹³ The manganese criterion for

⁹ W.Va. Code of State Rules, 46-1-6.2.d.

¹⁰ See generally attachments "D", "E", "F" and "G".

¹¹ Letter dated June 26, 2003 from Donald Welsh, Regional Administrator, EPA Region III to Dr. Edward Snyder, Chair, West Virginia EQB. Copy provided as attachment "H".

¹² Committee Substitute for House Bill 4193. Copy provided as attachment "I".

¹³ W.Va. Code of State Rules, 46-1-6.2.

public drinking water is 1.0 mg/l. The proposed rule change simply clarifies that the manganese human health criterion does not apply in those water bodies or water body segments *that do not actually serve* as public drinking water supplies. As previously mentioned a similar, but somewhat differently worded provision was adopted by West Virginia and submitted to the U.S. Environmental Protection Agency for review on August 31, 2000. Almost three years later, by letter of June 26, 2003, U.S. EPA declined to approve the change, stating that:

West Virginia established a manganese criterion of 1 mg/l to protect public water supply use. The five-mile rule suspends this criterion for certain waters depending on the proximity of the discharge point to drinking water intakes. 40 C.F.R. § 131.11 states that criteria must be scientifically defensible and protect the designated use. West Virginia's inconsistent application of its criterion for manganese across different segments of State waters without technical support violates 40 C.F.R. 131.11(a)(1). The criteria adopted to protect public water supply use must uniformly apply to all streams designated for such use, unless a sound scientific rationale supports the application of different criterion.¹⁴

¹⁴ See attachment "I", Letter dated June 26, 2003 from Donald Welsh, Regional Administrator, U.S. Environmental Protection Agency (Region III) to Dr. Edward Snyder, Chair, West Virginia Environmental Quality Board disapproving the five mile manganese exemption.

EPA's denial letter ties together two issues that should be separated. The first issue is whether the proposed criterion will be protective of the use. Indeed, this is, and rightfully should be, the only substantive issue. See 40 C.F.R. § 131.6 & 131.11(a)(1). The second issue raised by EPA, and the primary one on which it seemingly relied to disapprove the earlier standard, was that West Virginia does not limit the application of other criteria to the five-mile zone upstream of public water intakes. **Whether the State applies a more restrictive rule to other pollutants, though, is not properly an issue for EPA's consideration in its review of the proposed manganese criterion and whether the manganese criterion is protective of stream uses.**

Indeed, other states which are subject to federal review and approval of water quality standards just as West Virginia is have adopted similar provisions regarding the protection of public drinking water system intakes. The Ohio River Valley Water Sanitation Commission (ORSANCO), which establishes water quality standards for the Ohio River, recently reviewed the manner in which EPA-approved state water quality standards addressed or defined public drinking water uses. It found as follows:

In Ohio, designated uses are provided in Chapter 3745-1-07 of the Ohio Administrative Code. Section (B)(3)(a) designates that all surface waters within five hundred yards of an existing public water supply surface water shall be classified as 'Public Water Supply.'

All streams in Kentucky (401 Kentucky Administrative Regulations 5:026) are designated for warm water aquatic habitat and primary and secondary contact recreation. The designation for domestic water supply is applicable only at points of intake.

The Illinois Administrative Code (Title 35, Section 303.202) dictates that 'waters of the State shall meet the public and food processing water supply standards . . . at any point at

which water is withdrawn for treatment and distribution as a potable supply or for food processing.’

Indiana proscribes definitions very similar to those in Illinois. The Indiana Administrative Code (327 IAC 2-1-3 states: ‘Surface waters of the state are designated for full-body contact recreation . . . (and) All waters . . . (except where exempt) will be capable of supporting a well-balanced, warm water aquatic community . . . All waters which are used for public or industrial water supply must meet the standards for those uses at the points where the water is withdrawn.’

Not only is West Virginia’s currently proposed manganese exemption similar to the approaches referenced above, it is more *restrictive* than the approaches taken by each of these other states.

As for the scientific basis of the criterion—the response is simple. Water quality criteria for public drinking water withdrawals are protective of the use if the criteria are met at the point where water is withdrawn for treatment for human consumption. The five-mile upstream limit simply adds a measure of safety to ensure that public drinking water supplies are adequately protected from potential upstream discharges of manganese by assuring that upstream discharges of manganese will be substantially diluted before reaching a public water intake. A similar reasoning was relied upon by EPA in the agency’s approval of West Virginia’s human health criterion for manganese: “...the criterion of 1.0 mg/L in West Virginia is intended to make it easier for reducing the Mn [manganese] level to meet the [secondary, non enforceable standard] of 0.005 mg/L in the finished water and is unlikely to pose adverse health effects to the general public.”¹⁵

¹⁵ See attachment “C”, letter dated June 24, 2003 from Jon M. Caracas, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia’s 1.0 mg/L human health criterion for manganese..

Additionally, applying the manganese criterion in a more restrictive manner than is proposed by the so-called five-mile rule poses greater environmental risk than does expansion of the criterion to all waters. For example, the coal industry operates in the very headwaters of many small streams—typically far more than five miles upstream of a public water intake. Manganese is a natural component of rock and drainage associated with mining, thus manganese is a primary concern for the mining industry. *The coal industry already has to meet technology-based limitations of 2.0 mg/l avg. mo. and 4.0 mg/l max. daily for manganese.*

Imposition of a 1.0 mg/l or lower standards typically requires operators to raise the pH of their treated water substantially higher than necessary to meet the technology-based standards of 2.0 mg/l avg. and 4.0 mg/l max. In some cases, *raising the pH to levels of 10 or higher is necessary to precipitate out the manganese.* Additionally, in extreme cases, it can require coal operations to re-acidify effluent before discharge—all of which greatly increases the risk of upsets and treatment accidents that can harm aquatic life.

By limiting the application of the criterion to a five-mile zone upstream of public drinking water supply intakes and establishing a protective zone around and above these intakes, West Virginia will reduce the likelihood of harm to aquatic life from manganese treatment while also protecting actual drinking water sources.

Conclusion

While the Legislature maintains that the original manganese exemption language was more than adequate to justify its addition to the state's water quality standards rule, *we have strengthened the language of the exemption considerably.* The

current manganese exemption provides more than adequate protection to public drinking water supply intakes. Given the relative innocuous nature of manganese itself and the treatments necessary to remove it from discharges that are more harmful, EPA should approve the proposed exemption. Further, similar, *less protective* provisions have been promulgated by other states and approved by EPA.

JUNE 15

Monday, June 15, 2004

2:00 p.m. to 4:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Minard, Vice Chairman
Snyder
Unger
Boley
Minear

Mahan, Chairman
Thompson, Vice Chairman
Cann
Kominar
Armstead
Faircloth

Absent
Absent

The meeting was called to order by Ms. Mahan, Co-Chairman.

Joe Altizer, Associate Counsel, updated the Committee on new correspondence since the May Interim Meetings.

Eric Carlson, with the Environmental Protection Agency gave an introduction to the presentation.

Cheryl Atkinson, Environmental Protection Agency, explained the Water Quality Standards process under the Clean Water Act and responded to questions.

Allyn Turner, with the West Virginia Department of Environmental Protection addressed the Committee and responded to questions.

Libby Chatfield, Environmental Quality Board, addressed the Committee and responded to questions. Ms. Chatfield stated that the Environmental Quality Board has decided to forward the West Virginia Coal Association packet to the Environmental Protection Agency.

Mr. Ross suggested a joint meeting between the Committee and the Environmental Quality Board.

Mr. Kominar suggested the Committee take a look at the structure of the Environmental Quality Board.

Ms. Boley requested a copy of the West Virginia Code regarding the make-up of the Environmental Quality Board.

Chis Hamilton, with the West Virginia Coal Association addressed the Committee and responded to questions.

The meeting was adjourned.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, June 15, 2004
2:00 p.m. to 4:00 p.m.
House Finance

1. **Water Quality Standards contained in 46SCR1, Pursuant to HCR52 and SCR39**

Overview of EPA policy and review PROCESS relating to state water quality program:

Evelyn S. Macknight
Branch Chief
Office of Watersheds
Region 3, Environmental Protection Agency

Eric Carlson
Congressional/State Liaison
Environmental Protection Agency
Wheeling Office, Region 3

2. **Other Business**

Tuesday, June 15, 2004

2:00 p.m. - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert "Bob" Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair ✓
Minard, Vice Chair ✓
Snyder ✓
Unger ✓
Boley ✓
Miner ✓

Mahan, Chair ✓
Thompson, Rick, Vice Chair ✓
Cann ✓
Kominar ✓
Armstead
Faircloth

Mahan called meeting to order.

Joe updated C on correspondance since May meeting

Cheryl Atkinson, EPA

Eric Carlson - intro

Water Quality Stds process under Fed law (Clean H₂O Act)

Question & Ans on Process

Ellen ^{Jones} Wheeler - Waste Water Mgt

Libby Chatfield - EQB

addressed C & responded to questions

EQB agreed to forward Coal Assn packet to EPA → requested any further info. Bd hasn't look at substance - can't comment on it or support it

It meeting with EQB in July?

- Komisar wants to look at structure of EQB - Mahan
- not sure it is part of Committee's charge.
- Boley wants copy of code regarding make-up of EQB
- Chris Hamilton - Coal Assn responded to questions

Tuesday, June 15, 2004

2:00 p.m. - 4:00 p.m.

Legislative Rule-Making Review Committee

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officio nonvoting member

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Senate

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Thompson, Rick, Vice Chair
Cann
Kominar
Armstead
Faircloth

- Mahan called to order
- Joe Altizya opening presentation
- Sheril Adkinson^(EPN) - overview of Water Qua Program
- Eric Carlson ?; answer opened
- Snyder comment
- Snyder ?; answered by ~~Adkinson~~ Adkinson ?; Carlson
- ~~Earl~~ Ross comment of 5 mile rule
- Cann ?
- Mahan comment
- Minard ? and comment
- Minear comment ; ?
- Snyder comment ; ?
- Cann ?
- Mahan comment followed by Joe Altizya and Rita Parley
- Ross comment

- Turner
- Ellen ~~Wheeler~~ - w/ DEP Waste Management
 - Kominar comment
 - Libby Chadfield - EQB
 - Ross comments ; ?
 - Mahan comment ; ?
 - Ross ? meeting w/ the EQB
 - * Joint Meeting proposed ; Agreed upon
 - Ungele comment ; ?
 - Kominar comment structure of EQB
 - Boley ? make up of EQB - copies
 - Ross ?
 - Pann ?
 - Minick ?

- Chris Hamilton - WV Coal Ass.
- Kominar ? to Chris Hamilton on Background of May.
- ~~Ross~~ Snyder proposed it be on Agenda next month

Agreed

JUNE INTERIM ATTENDANCE
Legislative Interim Meetings
June 13, 14 and 15, 2004

Tuesday, June 15, 2004

2:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

Senate

Ross, Chair

Minard, Vice Chair

Snyder

Unger

Boley

Minear

House

Mahan, Chair

Thompson, Richard, Vice Chair

Cann

Kominar

Armstead

Faircloth

I certify that the attendance as noted above is correct.



Staff Person

Debra Graham

If you have any minutes that have not been turned in, please turn them into Brenda ASAP.
Please return to Brenda in Room 132-E or Fax to 347-4819.



West Virginia Environmental Quality Board
1615 Washington Street, East, Suite 301, Charleston, West Virginia 25311

clerk@wvaqbeqb.org
www.wveqb.org

(304) 558-4002
(800) 480-4598
Fax: (304) 558-4116

June 15, 2004

Donald S. Welsh, Regional Administrator
US Environmental Protection Agency, Region III
1650 Arch Street (3RA00)
Philadelphia, Pennsylvania 19130-2029

RE: West Virginia Water Quality Standards – 46 CSR 1, Requirements Governing Water Quality Standards

Dear Mr. Welsh:

The Environmental Quality Board filed a package in support of revisions to West Virginia's water quality standards with your office on June 7, 2004. A summary document submitted with that package provided an explanation of the Board's efforts regarding development of supporting documentation for revisions to section 6.2.d of the rule, which addresses the application of the human health criterion for manganese. As the summary indicates, letters received by the Board from the West Virginia Legislature on this matter recommend submitting information compiled by the West Virginia Coal Association as well as seeking information from other interested parties.

Enclosed is a copy of a packet of information provided to the Board from the West Virginia Coal Association on June 8, 2004, which includes a rationale for the revision to section 6.2.d. of the rule. The Board has not reviewed or discussed the contents of this package, and does not make a recommendation regarding the information included. We are forwarding this to you in response to the request from the West Virginia Coal Association and based on the recommendations from the West Virginia Legislature's Senate Judiciary Committee and Legislative Rule-Making Review Committee.

The Board intends to circulate a notice that we have forwarded this information to you and provide an opportunity for others interested in this matter to send information on this revision to us. We intend to forward such additional information to you as it is received. We understand that the agency has a short time frame for making a decision on this revision; we will encourage commenters to provide their information to us as quickly as possible.

If you have any questions about the enclosed information, please contact Libby Chatfield, the

Board's technical advisor at (304) 558-4002.

Sincerely,

Edward M. Snyder EMC

Edward M. Snyder
Chair

enclosures



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel
Joseph A. Altizer, Associate Counsel

Rita A. Pauley, Associate Counsel
Connie A. Bowling, Associate Counsel
Brian Skinner, Associate Counsel
Felisha N. Cassell, Administrative Assistant

May 26, 2004

Edward M. Snyder, Ph.D., Chair

WV Environmental Quality Board
1615 Washington Street, East
Suite 301
Charleston, WV 25311-2126

Dear Mr. Snyder:

Pursuant to a motion adopted at the Legislative Rule Making and Review Committee (LRMRC) during the May 17th Legislative Interim Committee meetings, we are writing to convey the Committee's wish that the Environmental Quality Board (EQB) make every effort to gain the Environmental Protection Agency's (EPA) approval of the Maganese amendment as adopted by the Legislature during the 2004 Regular Session. We understand the time-frame for this undertaking is short and requires immediate action by the EQB.

We offer these comments in an attempt to impart the Committee's view of its role and that of the EQB in this process. We enter into informal negotiations with affected interests necessary to get rules passed by the Legislature. Over several months last year this Committee undertook to provide a forum to find amenable solutions to several EQB water quality program amendments that were not well received by the regulated community. The Committee was placed in the difficult position of trying to evaluate and amend EQB's proposals in a manner that would derive sufficient support of the rule to allow its enactment by the Legislature but still gain federal approval.

LRMRC is not an administrative body, therefore, it does not and cannot create any administrative record. The Committee listens

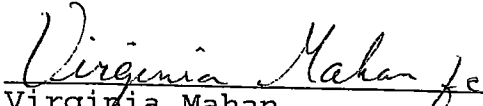
to the competing interests. We receive advice from the Board's representative and the Department of Environmental Protection (DEP), to obtain the scientific data or information necessary to consider the concerns of the various groups that offer comment and attempt to influence the outcome of the Legislative process. By the nature of the Legislative process, this body does not generate any scientifically justifiable documentation nor any record upon which a scientific analysis could be based. It is our view that this duty is placed with the agency that is charged with promulgation of the rule. Frankly, we think that this is self evident, but in light of your request to the two Judiciary chairmen in the May 10, 2004 letter, and the comments received in our May meeting, we feel compelled to restate this point.

We appreciate the difficult situation the EQB is in as a part-time board with a small staff being charged with a daunting task of making fair policy decisions in a limited time period. Since the creation of the EQB, the Legislature has given much deference to the EQB in making water quality policy decisions. However, this Committee and the Legislature as a whole operate in the context of the political and economic realities of this state, requiring the Legislature to be sensitive to the balance of protecting both the environment and the vitality of the business climate in this state. As a result, this Committee and the Legislature often try to encourage compromise.

We ask the Board to make every effort to develop an adequate record to facilitate the approval of the public policy of the state of West Virginia as reflected by the rules authorization bill contained in Enrolled House Bill 4193, including receiving recommendations from the DEP, coal industry, and other interested parties and utilization of Board resources in every effort to present this program amendment in a context that will maximize the likelihood of EPA's approval.

Sincerely,


Michael Ross


Virginia Mahan

cc: President Tomblin and Speaker Kiss, Chairmen Kessler and Amores, members of LRMRC and Libby Chatfield.



WEST VIRGINIA LEGISLATURE
STATE CAPITOL
CHARLESTON, WEST VIRGINIA 25305

June 8, 2004

Mr. Eric Carlson
Congressional/State Liaison
Environmental Protection Agency
Wheeling, WV

Dear Mr. Carlson:

The committee conducting the study is the Legislative Rule Making and Review Committee. This committee annually reviews all state agency legislative rules submitted to the Legislature for approval. It is important in framing the context of the discussion next week to note that the presentation/discussion will be to citizen members of a part-time legislature that generally do not have scientific backgrounds or any detailed understanding of the federal criteria associated with adopting water quality standards. So I would encourage a general overview of the purpose of the triennial review, what happens at the various levels of federal disapproval, and what results if the state fails to act or otherwise not meet federal requirements, specifically relating to program amendments considered by the committee this last session.

These issues include:

- 1) Adopting new or different standards for aluminum, selenium and manganese;
- 2) The state's options relating to adoption of the 69 new pollutant criteria published in the Water Quality Standards handbook last year. Please explain the history and criteria for adoption of the additional 69 pollutant criteria; and
- 3) The requirements and purpose and need for listing of additional trout streams to the current list of designated trout streams.

I would also suggest discussing the EPA's position on the

continued objection by industry for the designation of all state waters as Category A streams.

I understand you are limited in your ability to comment on specific proposals and as to what the EPA's position is on any specific program amendment. So please do not feel obligated to respond to those questions. The best we can hope for as a result of this meeting is a better understanding by the Legislative members and staff as what the federally proscribed parameters are of any action the state may undertake and the repercussions of the state's failure to meet those parameters.

I did not receive a good response for our solicitation of questions/concerns from industry, business and other citizen groups. Enclosed with this fax are the questions we did receive. I am sure your presentation to the committee will facilitate further discussions. As I mentioned in the e-mail the meeting is from 2:00 - 4:00 p.m. on Tuesday, June 15th. It is located in the House Finance Committee Room which is on the third floor of the main capitol building, Room 464.

Thanks for agreeing to participate. I look forward to meeting you.

Sincerely,



Joe Altizer
Counsel to LRMRC

cc: Senator Ross and Delegate Mahan Chairs, and Rita Pauley and Debra Graham, Counsels for Legislative Rule Making and Review

Teri Anderson

From: <BMcClure@wvawater.com>
To: <Tanders@mail.wvnet.edu>
Sent: Wednesday, June 02, 2004 4:17 PM
Subject: Fw: Questions for Erick Carlson

Terri,

Here's the question we would put forth to Mr. Carlson. Thanks for allowing the chance to present questions.

Rebecca K. McClure
Southeast Region Government Affairs
304.340.2005 Office
304.340.2096 Fax
304.549.1024 Cell

----- Forwarded by Becky McClure/WVAWC/AWWSC on 06/02/2004 04:16 PM -----

Tom Holbrook

To: Becky
McClure/WVAWC/AWWSC@AWW
06/01/2004 05:00 PM cc:
Subject: Questions for Erick Carlson

As small and medium water systems work toward compliance with Stage II of the DBP Rule and the IESWTR the issue of elevated aluminum levels in the process waste water discharged to the stream will become apparent. Will this issue be taken into consideration during the state mandated review of the aluminum standard? A change to an alternative coagulant is possible in some cases but may create additional problems for a number of utilities.

Tom Holbrook
American Water - Southeastern Region
Charleston, WV
Ph 304-353-6334
Fax 304-340-2845
Cell 304-545-1220
tholbrook@amwater.com

Questions for the United States Environmental Protection Agency Concerning West Virginia's Water Quality Standards. Requested by the West Virginia Legislative Rule-making Review Committee.

Attention: Terri Anderson

From: West Virginia Environmental Council, Don S. Garvin, Jr., Legislative Coordinator
And, West Virginia Rivers Coalition, Liz Garland, Issues Coordinator

Submitted: June 2, 2004

The Interim Rulemaking Review Committee of the West Virginia Legislature (Committee) has requested members of the West Virginia's environmental community to pose questions about Water Quality Standards (WQS) for the U.S. Environmental Protection Agency (EPA) to answer at the June interim meetings. This memo includes questions prepared jointly by the West Virginia Rivers Coalition and West Virginia Environmental Council. The questions are related to specific issues raised during the 2004 legislative review of the WQS package and general to EPA's review, approval and oversight process.

Procedural Questions:

1. West Virginia's Environmental Quality Board (EQB) completed the Triennial Review and submitted a complete WQS package to the 2004 legislative session. At the close of the session, the legislature approved an alternative package for submission to EPA. The alternative package includes some new criteria and eliminated other critical elements of the original package. West Virginia has attempted to maintain a track record of properly and efficiently complying with Triennial Reviews. In EPA's opinion, does the rule passed by the 2004 legislature still fulfill federal requirements of the Triennial Review process?
2. EPA has ruled on similar proposals related to criteria for aluminum, selenium and manganese. The proposals to weaken water quality protection from those pollutants were disapproved. Does EPA recognize the latest proposals as significantly changed that they merit EPA consideration?
 - What scientific support would be necessary to propose weakening the criteria for each of those pollutants?
 - How does EPA think the proposed weaker standards would affect anti-degradation implementation in West Virginia?
3. The anti-degradation implementation procedures, with some exception, are approved by EPA and in practice by West Virginia's Department of Environmental protection (DEP). Approved was a Tier 2.5 "trout waters list". The list remains "presumptive" by DEP. How does EPA see current WQS applying to the Tier 2.5 waters?

Questions Specific to the 69 Toxic Pollutants:

- EPA provides different options for adopting Priority Toxic Pollutant Criteria in their WQS Handbook. The WQS package presented to the 2004 West Virginia legislature was consistent with use of EPA's Option 1. This option recommends adopting statewide numeric criteria in the state's WQS for toxic pollutants for which EPA has developed criteria guidance, regardless of whether the pollutants are known to be present. Alternatively, industry lobbyist have proposed that Option 2 be the West Virginia model. Option 2 recommends adopting criteria to support designated uses where such pollutants are discharged or are present in the affected waters and could be expected to interfere with designated uses. If this Option is exercised in other states, are comparisons between options available to demonstrate additional burdens related to cost and time for permitting reviews?
 - How many states in Region 3 or states surrounding West Virginia use the Option 2 approach?
 - Would EPA provide the information each of those states used to make the demonstrations required by Option 2? Or would EPA provide appropriate contacts within each state?

Questions Specific to Selenium:

- We understand EPA is revising a criteria document for aquatic life protection from the pollutant selenium. Does EPA have a timeline for completion of the document, particularly a time for public comment? Are you able to comment, at this early stage, whether or not the document will make criteria recommendations consistent with West Virginia's proposed changes?
 - Would EPA explain the concerns the U.S. Fish and Wildlife have of the proposed selenium criteria? How will EPA address those concerns in its criteria document and under any review of West Virginia's proposal?
 - EPA's proposed chronic criteria value utilizes a fish tissue concentration measure instead of an instream water quality concentration. All other numeric criteria recommended by EPA use instream values. We believe fish tissue values will 1) require more time and effort to review, and 2) be difficult to acquire in waters already impaired and poorly supporting fish, especially those where fish habitats are obliterated, as in mountaintop removal mining valley fills. Would EPA please comment on the appropriateness of using fish tissue concentrations in West Virginia?
 - Should West Virginia anticipate implementation guidance to accompany the revised criteria document or will the State be asked to develop their own guidance for applying and measuring fish tissue concentrations of selenium?

Questions Specific to Aluminum:

- EPA has reviewed West Virginia's aluminum criteria many times in the past. Please explain the importance of aluminum protection and EPA's past objections to earlier proposals.
 - In order to protect fish health, is it possible for West Virginia to adopt a more protective limit in areas where lower pH would cause greater toxicity?

Questions Specific to Manganese:

- A proposal similar to that being considered by the Committee was recently disapproved by EPA. Because it is important to protect drinking water for all West Virginians, does EPA support maintaining protective criteria for manganese, yet allowing use removal through the provisions of West Virginia's Procedural Rules Governing Reclassification of Waters Designated for Public Water Supply?

Questions Specific to Category A Use:

- The Committee is considering a wholesale revision to the statewide application of Category A use. Infrequent use of the existing exemption process has demonstrated that the need to remove the use is rare. Is EPA supportive of the Procedural Rules Governing Reclassification of Waters Designated for Public Water Supply that was adopted by EQB in order to expedite drinking water use removal as necessary?
 - If the Procedural Rules were presented to EPA for approval, how would EPA proceed and how quickly would EPA approve any revision?
 - Would eliminating broad application of Category A protection mean that a Use Attainability Analysis (UAA) would be required for each West Virginia waterway?

We thank you for the opportunity to present a few of our questions. Please feel free to contact us if any clarification is required or any further questions arise:

Don Garvin, WV Environmental Council's Legislative Coordinator, dsgir@aol.com or (304) 472-8716, or
Liz Garland, WV Rivers Coalition's Issue Coordinator, lgarland@wvrivers.org or (304) 637-7201.

SUPPORT DOCUMENT FOR MANGANESE FIVE-MILE RULE

Background: Manganese

Manganese is a naturally occurring element that constitutes approximately 0.1% of the earth's crust. Manganese occurs naturally at low levels in soil, water, and food, and is essential for normal physiological functioning in humans and all animal species. ¹ Manganese is an essential nutrient for humans and is necessary for maintaining normal bone structure and brain function.² The few instances of manganese toxicity in humans are generally related to inhalation in industrial processing accidents.³ "Manganese has a very low toxicity via oral ingestion and reports of adverse effects via the oral route of exposure are rare. Indeed, the National Recommended Water Quality Criteria for manganese for human health, which is 50 ug/L is based not on toxic effects, but rather on the secondary drinking water standard for aesthetic reasons (laundry staining) and organoleptic effects (taste)."⁴

Manganese Criterion Federal Requirements

On June 3, 2002, EPA published a notice in the Federal Register announcing its preliminary determination *NOT* to regulate manganese with a National Primary Drinking Water Regulation (NPDWR):

¹ 67 Fed. Reg. 38235 (June 3, 2002), pages 38235-38236. Copy provided as attachment "A"

² Letter dated June 24, 2003 from Jon M. Capacasa, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia's 1.0 mg/L human health criterion for manganese. Copy provided as attachment "C".

³ See attachment "A", pages 38235-38236. 67 Fed. Reg. 38235 (June 3, 2002).

⁴ See attachment "C", letter dated June 24, 2003 from Jon M. Caracas, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia's 1.0 mg/L human health criterion for manganese.

The Agency has made a preliminary determination not to regulate manganese with a NPDWR because it is generally not considered to be very toxic when ingested with the diet and because drinking water accounts for a relatively small proportion of manganese intake. ***Thus, regulation would not present a meaningful opportunity for health risk reductions for persons served by public drinking water systems.***⁵

The federal agency finalized its initial manganese determination with final action on July 18, 2003:

After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate manganese with a NPDWR [National Primary Drinking Water Regulation] at this time, because it would not present meaningful opportunity for health risk reduction for persons served by PWS [public water systems].⁶

Thus, EPA has NO human health water quality criterion for manganese.

EPA does however maintain a manganese limit with respect to aquatic organism consumption.

As mentioned previously, EPA still maintains a National Secondary Drinking Water Standard for manganese at 00.5mg/L to address aesthetic concerns. For the purposes of this rational document, it is worth noting that secondary standards ***are non enforceable standards for CWA purposes and serve only as guidance to individual states.***

EPA has no aquatic life criterion for manganese.

⁵ See attachment "A", 67 Fed. Reg. 38235 (June 3, 2002).

⁶ 68 Fed. Reg. 42898 (July 18, 2003) pages 42903-42904. Copy provided as attachment "B".

**History:
Manganese Criteria Promulgation and Implementation
In West Virginia**

The State of West Virginia and EPA have a long and well-documented history regarding the promulgation, approval and implementation of manganese criteria. Until the mid-1990s, West Virginia maintained a water quality criterion of 1.0 mg/L for manganese in streams classified as *either* public drinking water supplies or aquatic life uses. West Virginia maintained these criteria despite overwhelming evidence that treatment for manganese is more deleterious than the manganese itself.⁷ In 1997, after an exhaustive review of technical information and supporting scientific data, the West Virginia Environmental Quality Board) deleted the aquatic life criterion for manganese. EPA Region III subsequently approved the deletion of the aquatic life criterion for manganese.

In 1997 the EQB also promulgated (in response to an earlier EPA disapproval), a manganese human health criterion of 1.0 mg/L. EPA approved this criterion in June 2003.⁸

Following the deletion of the manganese aquatic life criterion and promulgation of the manganese human health criterion in October 1999, the West Virginia Environmental Quality Board (EQB) voted to adopt a further revision to the state's manganese human health criterion:

The manganese human health criteria shall not apply where the discharge point of manganese is located more than five miles upstream from a known drinking water source.⁹

⁷ See generally attachments "D", "E", "F" and "G".

⁸ See attachment "C", Letter dated June 24, 2003 from Jon M. Caracas, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia's 1.0 mg/L human health criterion for manganese.

The rationale behind this revision was straightforward and supported by evidence previously relied upon by the EQB (and EPA in its subsequent approval) in deleting the aquatic life criterion for manganese: Treatment for manganese to meet the human health criterion usually involves elevating the pH of discharges to 9 or 10 which has a far more negative impact on aquatic biota than does the manganese itself.¹⁰ In June 2003 EPA disapproved this addition to the state's water quality standards rule.¹¹ In an effort to resolve this issue and implement a standard that provides protection to both public drinking water supplies and the aquatic biota, the West Virginia Legislature again revised the language of the manganese human health criterion:

The manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption.;¹²

This latest revision was intended to resolve a perceived deficiency of the previous language in that the 1999 version failed to establish a "protection zone" adequate to ensure that public drinking water systems would not be affected by manganese discharges.

**Specific Comments:
Revised Manganese Human Health Criterion**

Category A waters are described as waters which, after conventional treatment, are used for human consumption.¹³ The manganese criterion for

⁹ W.Va. Code of State Rules, 46-1-6.2.d.

¹⁰ See generally attachments "D", "E", "F" and "G".

¹¹ Letter dated June 26, 2003 from Donald Welsh, Regional Administrator, EPA Region III to Dr. Edward Snyder, Chair, West Virginia EQB. Copy provided as attachment "H".

¹² Committee Substitute for House Bill 4193. Copy provided as attachment "I"

¹³ W.Va. Code of State Rules, 46-1-6.2.

public drinking water is 1.0 mg/l. The proposed rule change simply clarifies that the manganese human health criterion does not apply in those water bodies or water body segments *that do not actually serve* as public drinking water supplies. As previously mentioned a similar, but somewhat differently worded provision was adopted by West Virginia and submitted to the U.S. Environmental Protection Agency for review on August 31, 2000. Almost three years later, by letter of June 26, 2003, U.S. EPA declined to approve the change, stating that:

West Virginia established a manganese criterion of 1 mg/l to protect public water supply use. The five-mile rule suspends this criterion for certain waters depending on the proximity of the discharge point to drinking water intakes. 40 C.F.R. § 131.11 states that criteria must be scientifically defensible and protect the designated use. West Virginia's inconsistent application of its criterion for manganese across different segments of State waters without technical support violates 40 C.F.R. 131.11(a)(1). The criteria adopted to protect public water supply use must uniformly apply to all streams designated for such use, unless a sound scientific rationale supports the application of different criterion.¹⁴

¹⁴ See attachment "I", Letter dated June 26, 2003 from Donald Welsh, Regional Administrator, U.S. Environmental Protection Agency (Region III) to Dr. Edward Snyder, Chair, West Virginia Environmental Quality Board disapproving the five mile manganese exemption.

EPA's denial letter ties together two issues that should be separated. The first issue is whether the proposed criterion will be protective of the use. Indeed, this is, and rightfully should be, the only substantive issue. See 40 C.F.R. § 131.6 & 131.11(a)(1). The second issue raised by EPA, and the primary one on which it seemingly relied to disapprove the earlier standard, was that West Virginia does not limit the application of other criteria to the five-mile zone upstream of public water intakes. **Whether the State applies a more restrictive rule to other pollutants, though, is not properly an issue for EPA's consideration in its review of the proposed manganese criterion and whether the manganese criterion is protective of stream uses.**

Indeed, other states which are subject to federal review and approval of water quality standards just as West Virginia is have adopted similar provisions regarding the protection of public drinking water system intakes. The Ohio River Valley Water Sanitation Commission (ORSANCO), which establishes water quality standards for the Ohio River, recently reviewed the manner in which EPA-approved state water quality standards addressed or defined public drinking water uses. It found as follows:

In Ohio, designated uses are provided in Chapter 3745-1-07 of the Ohio Administrative Code. Section (B)(3)(a) designates that all surface waters within five hundred yards of an existing public water supply surface water shall be classified as 'Public Water Supply.'

All streams in Kentucky (401 Kentucky Administrative Regulations 5:026) are designated for warm water aquatic habitat and primary and secondary contact recreation. The designation for domestic water supply is applicable only at points of intake.

The Illinois Administrative Code (Title 35, Section 303.202) dictates that 'waters of the State shall meet the public and food processing water supply standards . . . at any point at

which water is withdrawn for treatment and distribution as a potable supply or for food processing.’

Indiana proscribes definitions very similar to those in Illinois. The Indiana Administrative Code (327 IAC 2-1-3 states: ‘Surface waters of the state are designated for full-body contact recreation . . . (and) All waters . . . (except where exempt) will be capable of supporting a well-balanced, warm water aquatic community . . . All waters which are used for public or industrial water supply must meet the standards for those uses at the points where the water is withdrawn.’

Not only is West Virginia’s currently proposed manganese exemption similar to the approaches referenced above, it is more *restrictive* than the approaches taken by each of these other states.

As for the scientific basis of the criterion—the response is simple. Water quality criteria for public drinking water withdrawals are protective of the use if the criteria are met at the point where water is withdrawn for treatment for human consumption. The five-mile upstream limit simply adds a measure of safety to ensure that public drinking water supplies are adequately protected from potential upstream discharges of manganese by assuring that upstream discharges of manganese will be substantially diluted before reaching a public water intake. A similar reasoning was relied upon by EPA in the agency’s approval of West Virginia’s human health criterion for manganese: “...the criterion of 1.0 mg/L in West Virginia is intended to make it easier for reducing the Mn [manganese] level to meet the [secondary, non enforceable standard] of 0.005 mg/L in the finished water and is unlikely to pose adverse health effects to the general public.”¹⁵

¹⁵ See attachment “C”, letter dated June 24, 2003 from Jon M. Caracas, Director, Water Protection Division, U.S. Environmental Protection Agency (Region III) to Dr. Edward M. Snyder, Chair, West Virginia Environmental Quality Board approving West Virginia’s 1.0 mg/L human health criterion for manganese..

Additionally, applying the manganese criterion in a more restrictive manner than is proposed by the so-called five-mile rule poses greater environmental risk than does expansion of the criterion to all waters. For example, the coal industry operates in the very headwaters of many small streams—typically far more than five miles upstream of a public water intake. Manganese is a natural component of rock and drainage associated with mining, thus manganese is a primary concern for the mining industry. *The coal industry already has to meet technology-based limitations of 2.0 mg/l avg. mo. and 4.0 mg/l max. daily for manganese.*

Imposition of a 1.0 mg/l or lower standards typically requires operators to raise the pH of their treated water substantially higher than necessary to meet the technology-based standards of 2.0 mg/l avg. and 4.0 mg/l max. In some cases, *raising the pH to levels of 10 or higher is necessary to precipitate out the manganese.* Additionally, in extreme cases, it can require coal operations to re-acidify effluent before discharge—all of which greatly increases the risk of upsets and treatment accidents that can harm aquatic life.

By limiting the application of the criterion to a five-mile zone upstream of public drinking water supply intakes and establishing a protective zone around and above these intakes, West Virginia will reduce the likelihood of harm to aquatic life from manganese treatment while also protecting actual drinking water sources.

Conclusion

While the Legislature maintains that the original manganese exemption language was more than adequate to justify its addition to the state's water quality standards rule, *we have strengthened the language of the exemption considerably.* The

current manganese exemption provides more than adequate protection to public drinking water supply intakes. Given the relative innocuous nature of manganese itself and the treatments necessary to remove it from discharges that are more harmful, EPA should approve the proposed exemption. Further, similar, *less protective* provisions have been promulgated by other states and approved by EPA.

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule Making - Review Committee Date June 15, 2004
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
CHRIS HAMILTON	CHRS.	WV Con 2	
Bill FANEY	Charleston	WV Coal Assoc.	
Tom Board	WV Chamber of Commerce	Charleston	
JASON BOSTIC	Charleston	WV Coal Association	
LES SHOEMAKER	^{Buckhannon} WV Farm Bureau	WV Farm Bureau	
DAVID VANDER LIND	WV DEP / NITRO	WV DEP	
Charles Sturey	Nitro	WV DEP	
Tom Malbrook	Charleston, WV	American Water Company	
Betsy McClure	CHRS	" " "	
Connie Crater Lewis	Charleston	WV Environmental Council	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule Making-Review Committee Date June 15, 2004
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Libby Chalcraft	WV EQB Charleston	WV EQB	
Allyn Turner	WV DEP	WV DEP	
Mike Withers	WV DNR	WV DNR	
Mike McNulty	WV Rural Water Association		
Jel Dawley	WV DEP		
Richard Stevens	2003 QUARRIER ST. CHAS, WV 25311	WV DENTAL ASS'N.	
Karent Price	290 Quamier St WV CHAS WV 25311	WVMA.	
Tim Mallon	507-1100 707 No. 5th Charleston, WV	REP	
John R. Surber	7 PLAYERS CLUB DR. CHARLESTON, WV 25311	Arch Coal	
Kestie Muchnok	Morgantown		

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Leg. Rule Making Review Committee Date: June 15, 2004
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
ED MURKINEN	1900 KANAHA BLVD CHARLESTON, WV 25305	WVDOF	
SANDY MARINACEI	1900 KANAHA BLVD CHAR. WV 25305	WVDA	
CORKY DeMARCO	WV OIL + NATURAL GAS Assoc. PO BOX 3231 CHARLESTON, WV 25332	WVONGA	
Jim Swetten	Old Hickory Plant 1007 Industrial Rd. Old Hickory, TN	DuPont	