



# WEST VIRGINIA MANUFACTURERS ASSOCIATION

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October 12, 2012

Mr. Kevin Coyne  
Program Manager, Water  
Quality Standards  
West Virginia Department of  
Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, S.E., WV 25304

Re: 2013 Triennial Review of Water Quality Standards

Dear Mr. Coyne:

On September 11, 2012 the West Virginia Department of Environmental Protection advised the public that it would be accepting preliminary comments on the 2013 Triennial Review of Water Quality Standards until October 12. On behalf of the West Virginia Manufacturers Association I would ask you to consider the following:

1. **Aluminum.** It is our understanding that the DEP is considering development of criteria for aluminum that is hardness-based. We believe that may be appropriate, as the toxicity of metals tends to decrease as hardness increases. The aluminum criteria would more accurately reflect actual aquatic toxicity if they were hardness-based, as are the criteria for cadmium, trivalent chromium, copper, lead, nickel, silver and zinc. However, we suggest that such a change should be instituted only after a careful consideration of its state-wide effects. Therefore, we suggest that, in the months leading up to the DEP's triennial review proposal in June of 2013, some analysis be done on average hardness levels in state streams, particularly the major rivers, so that the ramifications of such a change in the aluminum criterion can be evaluated.
2. **Beryllium.** The current beryllium criterion for public water supplies, found in Appendix E, Table 1 of the West Virginia Water Quality Standards, is .0077 ug/L, which is lower than the lowest method detection limit of 20 ng/L. 40 CFR §141.23. EPA has no recommended criterion for human health uses in its National Recommended Water

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Quality Criteria, and none of its historical criteria-listing documents support West Virginia's 7.7 ng/L criterion. The only extant national criterion for protection of human health appears to be the Safe Drinking Water Act Maximum Contaminant Level (MCL) of 4 ug/L. We understand that the DEP plans to update using the recommended MCL, and we support such a change.

3. **Selenium.** West Virginia's selenium criteria for protection of aquatic life is 20 ug/L and 5 ug/L for acute and chronic aquatic life protection, respectively. These criteria have long been acknowledged to be out-of-date and unsupported in the scientific literature, and as long ago as 2004 EPA published a draft revision of its recommended selenium criteria and solicited comments. Today, eight years later, there has been no final action, and none is expected in the near future.

We urge the DEP to use the material and data gathered by EPA, and to develop such other data as are necessary, to develop selenium criteria that are reflective of conditions in West Virginia. We understand the cost involved in such an analysis, and the difficulty in undertaking it. However, the selenium criteria continue to be a source of contention in West Virginia, and the current incorrect criteria have engendered years of litigation, resulting in permit limits that are unnecessarily low, involve extraordinary cost, and result in no significant benefit to human or aquatic life. Even if EPA were to issue its recommended selenium criteria, the DEP's effort would not be wasted, because it would have developed numbers that are based on local conditions, and therefore more appropriate than EPA's criteria. Developing selenium criteria would be a reasonable, and highly beneficial, exercise by the DEP.

4. **The Category A Use.** The State has never formally designated all water bodies as Category A, public water supplies. Only Categories B and C apply to all state surface waters. "Unless otherwise designated by these rules, at a minimum all waters of the State are designated for the Propagation and Maintenance of Fish and Other Aquatic Life (Category B) and for Water Contact Recreation (Category C) consistent with the Federal Act goals." 47 C.S.R. 2-6.1. In fact, the Environmental Quality Board, which was previously responsible for promulgating water quality standards, originally stated that it did **not** consider all state waters to be public water supplies if they are not actually used as such. In the 1986 *Rationale Document for Revision of Legislative Rules*, the EQB stated that "above all, [the EQB members] agreed that the category and criteria for public water supplies should not be applied to streams or stream segments where no one is using the waters for drinking." See EQB's 1986 *Rationale Document for Revision of Legislative Rules*, page 20.

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Furthermore, the Legislature has previously rejected the EQB's proposal to officially designate all waters of the state as Category A. The EPA has recognized this, as shown by its February 18, 2000 letter from Richard V. Pepino EPA to Senator William R. Wooton, Chair, Senate Judiciary Committee, that referred to the EQB's proposal to apply Category A on a state-wide basis. That proposal was never adopted, and the Legislature has not sanctioned the EQB's attempts to apply the Category A use throughout the State.

The DEP should acknowledge the fact that Category A is a use of limited application, and quit insisting that Category A criteria be considered in all NPDES permits, regardless of whether a public water supply actually exists. One way to clarify the water quality standards in that regard, and end the confusion that has developed over the years as a result of the DEP's misinterpretation, would be to amend the standards to expressly state that the Category A use applies only where there is a potable water supply to protect. We encourage the DEP to undertake that clarification in the 2013 Triennial Review.

We appreciate the opportunity to offer these comments, and may have other changes to the standards that we will ask you to address as we continue to assess the State's water quality standards. In the meantime, please contact us if you should have any questions or want any clarification.

Sincerely yours,

A handwritten signature in black ink that reads "Karen S. Price" followed by a small flourish.

Karen S. Price

KSP:shb