



# WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

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By First Class Mail

Mr. Kevin R. Coyne  
Division of Water and Waste Management  
WVDEP  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304

**Re: Comments on Scoping Public Notice for the Triennial Review of WQS**

Dear Mr. Coyne:

I am writing on behalf of the WV Municipal Water Quality Association (MWQA) regarding the Department's recent public notice soliciting issues for the Department to consider in the upcoming triennial review of the Water Quality Standards Regulation (47 CSR 2).

The MWQA represents publicly-owned water, sewer, and stormwater utilities statewide.

#### Section 8.3. Criteria for Nutrients.

We question whether the Lake Criteria are as flexible as they could be. For example, we believe any numeric limits for TN, TP, or chlorophyll a should be expressed as annual geometric means. Moreover, we have learned from Florida that such properly expressed annual geometric mean criteria should be met in two out of three years, rather than in every year. We believe that DEP should, at a minimum, express the criteria as annual geometric means that must be met in two out of every three years.

We also vigorously disagree with EPA's disapproval of Section 8.3.a.3 and urge DWQ to include such a linkage between TN/TP levels and chlorophyll a response in lakes in the pending triennial review.

#### Section 7.2.a.2. One-Half Mile Rule for Water Intakes.

We believe that downstream intake owners should be able to waive the benefit of this rule upon request of affected upstream dischargers. Accordingly, we propose the following revision of this section for the Department's consideration:

Each segment extending upstream from the intake of a water supply public (Water Use Category 1, 2, or 3, or A), for a distance of one half (1/2) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in section 8, herein. In addition, within that one half (1/2) mile zone, the Secretary may also establish for any discharge, effluent limitations for the protection of human health that require additional removal of pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than this zone above the intake, the water supply section may include

the entire upstream watershed to its headwaters.) The one-half (1/2) mile zone described in this section shall not apply to the Ohio River main channel (between Brown's Island and the left descending bank) between river mile points 61.0 and 63.5 and mile points 70 and 71. However, a downstream intake owner may waive the benefit of this provision through a written waiver delivered to the Department. Such waiver may be revoked at any time in writing. Upon receipt of such revocation, the Department will process a modification of any affected upstream discharge permits to impose limits in accordance with this section.

Bacteria Criteria - Appendix E, Table 1.

We urge the Department to change from fecal coliform to e.coli as the State's freshwater bacteria criterion. We further urge the state to adopt e.coli criteria consistent with EPA's pending national update to the e.coli criteria. We understand that will entail a standard of 126 counts, expressed as a geometric mean over a 90-day rolling period along with a Statistical Threshold Value of 235 counts which can be exceeded in 25% of the samples during the 90-day period.

In addition to adopting this criterion for assessing ambient water quality, we urge the department to specify the 126 value as a monthly geometric mean and the 235 count value as a weekly geometric mean.

Section 8.18.2 Methylmercury.

Water column mercury is a long-term exposure (lifetime of the fish of concern) rather than a daily, weekly, or monthly issue. Thus, we urge the Department to express the 12 nanogram/liter water column criterion as an annual average criterion. This is scientifically a more accurate implementation of the methylmercury criterion. We believe a number of states have adopted this approach.

Section 8.33 – Turbidity.

We question whether the turbidity standards in Section 8.33 are unnecessarily stringent and believe they should be revisited during this triennial review. We will provide the Department with examples of other States with less stringent (and more appropriate) EPA approved TSS criteria.

Thank you for considering our comments. Please let us know if we may provide further information on any of these issues as the Department prepares a draft update to the regulation.

Sincerely,



F. Paul Calamita  
General Counsel

C: MWQA Board of Directors  
Mr. Scott Mandirola