

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title:

“Requirements Governing Water Quality Standards”, 47CSR2

A. AUTHORITY:

W.Va. Code §22-11-4(a)(16); 22-11-7b

B. SUMMARY OF RULE:

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

DEP is proposing several changes to the rule, as follows:

Additions have been made to § 47-2-3 “Conditions Not Allowable In State Waters” that include water withdrawal activities and presence of algae blooms which would alter the integrity of the waters of the State.

Section 7.2.a.2 establishes the half mile zone upstream of a drinking water supply intake and identifies an exception to the half mile zone on the Ohio River. This section has been revised to reflect the changes to the site specific exception which was filed as an emergency rule and approved by the Secretary of State on March 5, 2010.

Due to its expiration date, the proposed rule removes the exception for Harmon Creek.

The proposed rule also extends the exception on the Ward Hollow of Davis Creek variance from July 1, 2010 to July 1, 2014. The exception was approved by EPA in September 2006 and the status of the site and the discharge has not changed since that time. The variance will remain in effect until the next triennial review and at that time will be reevaluated.

Nutrient criteria (phosphorus and chlorophyll-a) have been revised for cool and warm water lakes. Phosphorus changed from 50 µg/l to 40 µg/l for warm water lakes and chlorophyll-a criteria has been changed from 30 µg/l to 20 µg/l for warm water lakes and from 15µg/l to 10µg/l for cool water lakes. Language has also been added to identify at what point a lake would be considered exceeding criteria.. Stream nutrient criteria was added with a site specific nutrient criteria proposed for the Greenbrier River.

A number of changes in Appendix E, Table 1 of the rule have been made. The rule updates the

chronic iron criterion for trout waters from 0.5 mg/l to 1.0 mg/l which is EPA's national recommended water quality criterion for aquatic life. Total dissolved solids criteria of 500 mg/l has been added to the rule for Category A Human Health based on the secondary drinking water MCL. Footnote 4 has been revised to reflect human health protection from organoleptic as well as toxic effects.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

Although the State is required by the federal Clean Water Act to adopt water quality standards, there is no direct federal counterpart regulation. Therefore, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its meeting on May 27, 2010, the Environmental Protection Advisory Council discussed this rule. (See minutes for Council's discussion.)